

## STATE OF WISCONSIN CLAIMS BOARD

On August 22, 2019, at the State Capitol Building in Madison, Wisconsin, the State of Wisconsin Claims Board considered the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Timothy Jahns	Administration	\$2,799.26
2. Kip & Nancy Peters	Transportation	\$8,320.23

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
3. Derrick Sanders	Innocent Convict Compensation	\$5,754.965.00
4. Tracy B. Anderson	Corrections	\$265.29
5. Deleon Harland	Corrections	\$36.32
6. Mario A. Harris, Sr.	Corrections	\$269.46
7. Ralph Jurjens, III	Corrections	\$310.32
8. Phillip Keller	Corrections	\$54.94
9. Anthony M. Lee	Corrections	\$189.95
10. Davon Thompson	Corrections	\$189.26
11. Larry Whittaker	Corrections	\$156.98
12. Andrew Whitcomb	Corrections	\$379.27
13. Deron D. Love	Corrections	\$5,000.00
14. Charles Blunt, Sr.	Corrections	\$656.58
15. Alonzo J. Gray	Corrections	\$1,864.00
16. Robert L. Hamilton	Corrections	\$194.12

***With respect to the claims, the Board finds:***

*(Decisions are unanimous unless otherwise noted.)*

1. **Timothy Jahns** of Sun Prairie, Wisconsin claims \$2,799.26 for damage to his vehicle caused by a burst water pipe in the parking garage under the GEF II building. The claimant's vehicle was parked in the garage on February 3, 2019, when an overhead waterpipe burst, causing several ceiling tiles and a lighting fixture to fall onto claimant's vehicle. The vehicle suffered several dents and scratches on the front half of the car. Claimant does not have an assigned parking space in the garage but had been given permission from his bureau director to park there on weekends. Claimant has vehicle insurance with a \$500 deductible but would prefer not to submit a claim to his insurance because he does not want his rates to go up. He requests reimbursement for the full estimated cost of repairing his vehicle.

The Department of Administration recommends denial of this claim. DOA states that a negligence claim requires a duty to conform to a certain standard of conduct to protect others against unreasonable risks. That standard of conduct is "ordinary care." The day this incident took place, temperatures in the Madison averaged 40 degrees. This unseasonably warm day was preceded by the "polar vortex" (January 29 through February 1), with average temperatures well below 0 degrees. This extreme cold resulted in many frozen pipes throughout buildings in the area. DOA's Bureau of Risk Management received over 80 separate reports of freeze damages at state-owned buildings in Madison that weekend. DOA points to the fact that its Division of Facilities Development and Management anticipated potential issues arising from the extreme temperatures and brought in extra staff that weekend to inspect DOA managed buildings, including the GEF II building. However, the pipe which cracked in this incident was covered in lagging, which precluded staff from discovering damage on visual inspection. When the damage was discovered, DOA staff took prompt action to fix it. DOA believes that this event was caused by extreme temperatures and that there was nothing

the department could have reasonably done to prevent the damage to claimant's vehicle. DOA believes the damage to claimant's vehicle was unfortunate but that the department met the "ordinary care" standard and that this claim should be denied. Finally, DOA notes that claimant has vehicle insurance with a \$500 deductible. DOA believes claimant's concern regarding increased insurance rates is misplaced because, as a general matter, insurance premiums are only impacted when an insured is at fault. DOA therefore also recommends that if the Claims Board chooses to make an award to this claimant, the amount should be limited to his \$500 deductible.

The Board concludes the claim should be paid in the reduced amount of \$500.00 based on equitable principles. The Board further concludes, under authority of Wis. Stat. § 16.007(6m), payment should be made from the Department of Corrections appropriation Wis. Stat. §20.505(5)(ka). *[Member Kasper not participating.]*

**2. Kip Peters** of Roberts, Wisconsin, claims \$8,320.23 for property damage caused by flooding of a ditch along Hwy. 65 in Roberts, Wisconsin. Claimant states that flooding of the drainage ditch has been a problem since he purchased the home in 2016. When the ditch backs up, the water spills over into his yard and in March 2019, flooded the lower level of his home. Claimant contacted St. Croix County and the Department of Transportation in 2017 and the county re-dug the ditch. Claimant notes that the water is supposed to flow north along the ditch to a drainage pond but believes the grade of the ditch is insufficient to keep the water flowing. He also notes that the Hwy. 65 culvert is a 30" concrete culvert but the culvert to the north is a 26" steel culvert. He believes this culvert is too small to accept the drainage from the larger culvert. Claimant requests reimbursement for the flood damage to his home and also asks that the drainage ditch be fixed so this doesn't happen again.

DOT recommends denial of this claim. DOT records indicate that claimant's house was built 15 years ago in a natural drainage-way. This drainage-way flows east to west from an agricultural field towards STH 65 and under the highway through a culvert pipe towards claimant's home. It then moves northwesterly through claimant's lot towards a drainage pond. DOT notes that this drainage pattern existed well before claimant's house was built. Pursuant to drainage law, DOT is obligated to pass the water under the highway to continue on its natural course, which is what occurs in this case. Several years ago, claimant contacted DOT and the department had the county clean out the ditch and add a small earthen berm to reduce the water flowing onto claimant's property. This was done as a good neighbor gesture. DOT will continue to conduct routine maintenance of the culvert pipe and drainage ditch but is not responsible for the flow of water into the drainage-way, which existed long before claimant's house was built.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. The Board further encourages DOT to continue to discuss this issue with claimant in hopes of finding a resolution.

**3. Derrick Sanders** of Gary, Indiana, claims \$5,754,965.00 for Innocent Convict Compensation pursuant to Wis. Stat., § 775.05. In October 1993, claimant was convicted of first-degree intentional homicide, party to a crime. Jason Bowie was shot and killed in an abandoned building in November 1992. Claimant and two other individuals, Anthony Boddie and John Peavy, were charged in the incident. Bowie was severely beaten at two different houses before being taken down an alley to a boarded-up house where he was murdered. Boddie, Peavy, and claimant were involved in the beating. At some point, Boddie and Peavy took Bowie to the boarded-up house and Boddie shot him in the head. Boddie pled guilty to first-degree intentional homicide and Peavy pled guilty to an amended charge of first-degree intentional homicide, party to a crime. Claimant entered a no-contest plea to first-degree intentional homicide, party to a crime.

Claimant states that he always maintained that he was not involved in or aware of the shooting. He states that he had ineffective legal counsel, who did not explain to him the meaning of "party to a crime." The Court of Appeals vacated claimant's plea in 1995, finding

that he did not knowingly and intelligently enter the plea because he did not fully understand the potential for punishment if convicted. The case was remanded for further proceedings. In 1996, claimant's new counsel had him re-enter the same no contest plea with the same sentence he received at his original sentencing. In August 2018, the Circuit Court vacated claimant's plea, concluding that "the State has failed to demonstrate that a factual basis existed for the defendant's plea or by clear and convincing evidence that he entered his plea knowingly, voluntarily and intelligently, with an understanding of the nature of party to a crime, and more to the point, how his conduct satisfied the elements of PTAC liability." The court stated, "It would be manifestly unjust if the defendant were to remain convicted of first-degree intentional homicide, party to a crime, and therefore, he must be allowed to withdraw his plea."

In September 2018, a Milwaukee County Assistant District Attorney stated in court that he had requested police officers re-interview Boddie in August 2018, and that Boddie had attested in that interview that while he, Peavy, and claimant were all involved in the beating of Bowie, that Boddie alone took Bowie to the basement of the abandoned house and shot him. The DA's Office moved to dismiss the charges against claimant.

Claimant states that his wrongful, 26-year imprisonment resulted in the loss of liberty, property, earning potential, and reputation. He notes that at the time of his arrest he was employed full-time, had no criminal record and was an honorably discharged US Navy Veteran. He requests the statutory maximum reimbursement of \$25,000, plus an additional \$5,729,965 for related damages.

Based on a review of the facts surrounding the crime and claimant's petition for compensation, the Milwaukee County District Attorney's Office does not oppose this claim.

The Board defers decision of this claim to a later date in order for a hearing to be scheduled at which claimant and the Milwaukee County District Attorney's Office will be present to answer questions.

**4. Tracy B. Anderson** of Waupun, Wisconsin, claims \$265.29 for property allegedly lost by the Department of Corrections. Claimant is an inmate at Waupun Correctional Institution (WCI). In May 2018, he and his cellmate were transferred to segregation. Claimant states that Officer Leisure watched claimant pack his property into his footlocker and lock the padlock before he was transferred. Once in segregation, claimant was given the wrong shower shoes and contacted the WCI property department because he realized his property had been mixed up with that of his former cellmate. Claimant notes that he never would have traded shower shoes with his cellmate because they did not have the same shoe size. Claimant tried to resolve the property issue through the inmate complaint process, but his complaint was denied. Claimant notes that DOC staff did not follow DOC rules because the staff who packed his property did not fill out form DOC-67, which would have proved that claimant had the missing property in his possession when he was transferred. Claimant requests reimbursement for the missing property.

DOC recommends denial of this claim. DOC investigated claimant's complaint and found and returned claimant's bowl. However, the remainder of the claimed property is not found on claimant's original property inventory, and it could not be established that DOC staff was responsible for its loss. Claimant may have traded, given, sold, or bartered the property to another inmate prior to his transfer to segregation. Claimant has presented no evidence of staff negligence and this claim should be denied.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**5. Deleon Harland** of Waupun, Wisconsin, claims \$36.32 for unreimbursed value of property items lost by Department of Corrections staff. Claimant is an inmate at Waupun Correctional Institution (WCI). Claimant states that the clothing items were confiscated by a WCI officer, however, because the officer never filed a conduct report related to the incident, the clothing should have been returned to claimant. When claimant filed an inmate complaint to get his clothing returned, DOC staff could not find the items. DOC reimbursed claimant for

the depreciated value of the items but claimant feels he should be reimbursed for the full value of the property that DOC lost.

DOC believes claimant has been adequately compensated and that this claim should be denied. The value of claimant's lost clothing was determined based on claimant's receipts and Division of Adult Institutions policy 310.00.33, Inmate Property Depreciation Schedule. DOC reimbursed claimant \$105.78 for the lost items and does not believe he is entitled to any additional compensation.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**6. Mario A. Harris, Sr.** of Redgranite, Wisconsin, claims \$269.46 for the value of a typewriter, ribbons, and correction tape. Claimant is an inmate at Redgranite Correctional Institution. Claimant purchased the typewriter in August 2017. Claimant was transferred to segregation from April 16-21, 2018. When his typewriter was returned to him, it would not type. Claimant alleges that the typewriter worked fine prior to his transfer and points to statements from several other inmates who witnessed him using his typewriter before he was sent to segregation. Claimant filed a complaint against DOC officer Richter, who had packed his property when he was transferred. On April 26, 2018, claimant was sent back to segregation. He alleges that CO Richter brought claimant's typewriter to his segregation cell several days later and broke off a piece of the typewriter in front of claimant and other witnesses stating, "You're not getting it back now cause it's broke." Claimant points to cell searches conducted on April 9 and 16, 2018, which found no problem with his typewriter. He also notes that the typewriter would have again been inspected upon his transfer to segregation on April 16<sup>th</sup> and would not have been returned to him had it been broken or tampered with. Finally, claimant notes that although DOC alleges that he tampered with the machine, the department states that items were found inside the machine, in an area inaccessible unless the typewriter is taken apart. Claimant states that inmates do not have access the tools necessary to take apart a typewriter, so he could not have been responsible for this alleged tampering.

DOC recommends denial of this claim. A DOC Complaint Examiner determined that in addition to not working, the typewriter had been tampered with—one of the safety seals was partially removed and folded paper, a metal piece, and red plastic pieces were found inside the machine in area you cannot access without taking the machine apart. DOC states that claimant has presented no evidence that the typewriter was mishandled by DOC staff. He also has provided no evidence to support his allegation that CO Richter deliberately damaged the typewriter. DOC also notes that although claimant attempts to establish a timeline showing that the typewriter was damaged while under DOC staff control, the only thing his timeline establishes is that the tampering damage occurred while it was under claimant's control and not DOC's.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**7. Ralph Jurjens, III** of Portage, Wisconsin, claims \$310.32 for the value of a television allegedly damaged by Department of Corrections staff. Claimant purchased his TV in January 2015. From the beginning, he had problems with the buttons on the unit. He states that his father spent several months trying to resolve the problem with the vendor. Claimant eventually decided to return the TV before the 6-month warranty ran out. He states that on July 8, 2015, he gave the TV to Property Sergeant Willett, explained the problems he'd been having and that the TV was being returned to the vendor under the warranty. Sgt. Willett gave claimant a property receipt for the TV and noted no damage to the unit on the receipt. Claimant states that if the TV had been damaged when he turned it over, Sgt. Willett would have noted the damage on the receipt and confiscated the television as contraband. On July 20, 2015, property staff told claimant that the vendor invalidated the warranty because the claimant had dropped the TV and the screen was cracked. Claimant contacted various staff members to try

and determine how the television was damaged and who told the vendor he had dropped it. He eventually filed an action in small claims court but was told it was not the proper forum for relief. Claimant believes Sgt. Willett and other property staff had a ministerial duty to properly process and care for his property and that they clearly failed to do so. They failed to plug in and test the unit in front of claimant, which is a violation of DOC rules and told the vendor claimant had dropped the TV, which is untrue. Claimant believes that DOC staff sometimes deliberately damage inmate property in order to "screw with" inmates. In response to DOC's complaint that this incident happened 3.5 years ago, claimant points to the fact that inmates have limited access to the library in order to research and prepare claims and that he is well within the 6-year statute of limitations.

DOC recommends denial of this claim. DOC believes claimant has provided no evidence of staff neglect. DOC states that the fact Sgt. Willett did not notice the cracked screen upon receipt of the TV is not proof that he should have noticed it. For instance, the crack may only have been visible when the TV was on, or the unit may have been handed to him with the screen facing away from him. DOC states that there is no reason that property staff would not have reported accidentally damaging claimant's TV. DOC notes that claimant waited 3.5 years to bring this claim, which limits the department's ability to investigate. DOC points to the original investigation of this incident, which found no negligence on the part of DOC staff. DOC notes that claimant's belief that DOC staff deliberately damage inmate property "so the inmate gets screwed" is not evidence of staff misconduct or negligence.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**8. Phillip Keller** of Waupun, Wisconsin, claims \$54.94 for the cost of glasses allegedly lost by Department of Corrections staff. Claimant transferred from the Wisconsin Resource Center (WRC) to Waupun Correctional Institution (WCI) on July 31, 2018. Claimant alleges that he arrived at WCI with two pair of personal glasses, that he had both pair in his possession at WCI until he was moved to observation, and that when he returned to his regular cell and his property was returned to him he only received one pair of glasses. Claimant also alleges that the glasses were lost by WRC staff prior to his transfer to WCI and that only one pair came with him to WCI. Claimant filed a complaint at WCI about his lost glasses. In that complaint he alleged that he arrived at WCI with two pair of personal glasses and one pair of state glasses. WCI rejected his complaint. Claimant states that the glasses in the photographs provided by DOC are not his glasses and requests reimbursement for the allegedly lost pair of personal glasses.

DOC recommends denial of this claim. DOC states that when the claimant's property was inspected upon his transfer to WCI, one of his pairs of personal glasses was broken and was therefore designated as contraband and withheld from his property. DOC rules allow one glasses case per pair of glasses, however, an inexperienced officer did not pull the case for the broken pair out of claimant's property. DOC alleges that this error led another officer to incorrectly assume claimant had two pair of glasses in his property and note that number on a later property inventory. DOC has photos of the broken/contraband glasses showing the serial numbers and the vendor has confirmed that they are the glasses sold to claimant. DOC believes claimant is attempting to take advantage of paperwork errors made by inexperienced staff to get money from the state.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**9. Anthony M. Lee** of Green Bay, Wisconsin, claims \$189.95 for the cost of a television allegedly broken by staff at Green Bay Correctional Institution. Claimant alleges that on September 19, 2018, Officer Wells searched his cell. Claimant states that when he returned to the cell, he found his TV was sitting screen-down on his desk and that the screen was cracked. He alleges that he spoke to Officer Wells on September 24, 2018, and that she admitted that she had tripped over a cord and knocked the TV off the desk during the cell search. She

allegedly stated that she put the TV back on the desk but did not check the screen. Claimant states that Officer Wells and other Department of Corrections staff repeatedly told him they would "do something" about his TV but that he was eventually forced to destroy it. Claimant filed an inmate complaint about the damage to his television, but DOC rejected his complaint. Claimant requests reimbursement for his broken television.

DOC recommends denial of this claim. DOC notes that claimant first filed a complaint about his damaged TV in November 2018, alleging that the incident took place on October 10, 2018. DOC records showed that there was no search of claimant's cell and that Officer Wells was not even working on that date. Claimant filed another complaint in February 2019 alleging that the same incident actually took place on September 19, 2018. DOC records again showed there was no search of claimant's cell on that date and Officer Wells denies searching his cell or breaking his television. DOC believes claimant has provided no evidence that his TV was damaged by staff and recommends denial of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**10. Davon Thompson** of Waupun, Wisconsin, claims \$189.26 for a tablet as well as songs and a game stored on the tablet, which was allegedly damaged by Department of Corrections staff. Claimant is an inmate at Waupun Correctional Institution. He alleges that his tablet was not damaged when he was placed in segregation in January 2019. When he was released from segregation his tablet was not returned to him with his other property because the screen was cracked. Claimant filed an inmate complaint, but it was denied. Claimant alleges that DOC did not adequately investigate his complaint because they did not interview his cellmate, who could have told them the tablet was not broken prior to claimant's transfer to segregation. Claimant states that DOC never believes inmates and does not take their property complaints seriously. He requests reimbursement for the cost of the tablet and the songs and game stored on it which he was not able to retrieve.

DOC recommends denial of this claim. DOC points to the fact that the officer who packed up claimant's cell when he was sent to segregation clearly noted that the tablet was damaged on the Temporary Lockup Property Form and that a statement from claimant's cellmate would not have refuted that fact. DOC notes that it settled a prior property damage claim with claimant, in which there was evidence of staff negligence, and believes claimant is simply trying to take advantage of that prior settlement. DOC states that claimant has presented no evidence staff is responsible for the damage to his tablet and recommends denial of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**11. Larry Whittaker** of Green Bay, Wisconsin, claims \$156.98 for the cost of a television allegedly damaged by Department of Corrections staff. Claimant is an inmate at Green Bay Correctional Institution. In August 2018 he was injured in a basketball game and spent several weeks recovering in the Health Services Unit. While he was recovering, his property was packed up. When he was released to a new cell, his property was returned, and he immediately noticed that his TV was broken. He states that his TV was in perfect working condition prior to his injury. Claimant alleges that he verbally notified staff of the damage that same night and was told he needed to file an inmate complaint. Claimant states that he had to wait several days for an inmate complaint form because the unit was out of the forms. He believes DOC staff did not properly respond to his initial verbal complaint or properly investigate once he filed his complaint. He requests reimbursement for his damaged television.

DOC recommends denial of this claim. DOC notes that claimant waited a couple of days after receiving his TV to report the damage. DOC questioned staff working that night and they denied that he verbally informed them that his TV was returned damaged. DOC believes claimant has failed to provide any evidence that DOC staff is responsible for this damage and recommends denial of this claim.

The Board concludes the claim should be paid in the amount of \$156.98 based on equitable principles. The Board further concludes, under authority of Wis. Stat § 16.007(6m), payment should be made from the Department of Corrections appropriation Wis. Stat. § 20.410(1)(a).

**12. Andrew Whitcomb** of Waupun, Wisconsin, claims \$379.27 for the value of property allegedly lost by Department of Corrections staff. Claimant is an inmate at Waupun Correctional Institution. In June 2018, he was sent to segregation after a physical altercation with a DOC officer and the entire unit was placed on lockdown for 7-9 days. Claimant states that DOC staff was responsible for packing up his cell in a timely fashion and storing his property while he was in segregation. He alleges that 7-8 days after the altercation, DOC staff told him his property had “just” been packed up. Claimant believes it was irresponsible for DOC to wait 7-8 days to pack up his property. When he was released from segregation and his property was returned to him, claimant alleged multiple items were missing. Claimant believes that DOC staff may have intentionally “lost” the items in retaliation against him for the physical altercation with the officer. Claimant notes that other inmates were on lockdown during the time his property was left unattended, so they would not have been able to steal it. Finally, claimant believes DOC brought up his conduct record for the sole purpose of prejudicing the Claims Board against him. He requests reimbursement for his missing property.

DOC recommends denial of this claim. DOC denies that it took 7-8 days to pack claimant's property. DOC records indicate that his property was in fact packed the morning after the incident. DOC points to the Temporary Lockup Packing form, which shows that the allegedly lost items were not in claimant's property at the time his cell was packed up. DOC notes that claimant has a history of trading and possessing property items outside of approved channels and of altering property to create new items. DOC brings up this history because it is relevant to claimant's credibility in this claim. DOC believes it is likely that the allegedly missing property items were previously traded, stolen, otherwise disposed of prior to the June 2018 incident and recommends denial of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**13. Deron D. Love** of Waupun, Wisconsin, claims \$5,000.00 for property loss and damage allegedly caused by Waupun Correctional Institution staff over several years, as well as allegedly improper deductions taken from his inmate account. Claimant alleges many instances of Department of Corrections staff losing, damaging, or throwing away his property. He alleges that they do so to retaliate against him for filing complaints against them. He states that DOC staff lie and cover up for each other. He also alleges that DOC is improperly deducting 50% from the gift money sent by his family even though the court told them they are only allowed to take 25% from his wages. Claimant states that he has filed inmate complaints related to these issues, but that DOC never does anything. He requests \$2,500 reimbursement for his property and \$2,500 reimbursement for the deductions from his account.

DOC recommends denial of this claim. Despite multiple attempts by Claims Board staff to get additional documentation from claimant, his allegations of loss are vague and lack documentation to support any reasonable conclusion that DOC is responsible for the alleged losses. Claimant has also failed to provide evidence that he has exhausted his administrative remedies for these alleged losses. DOC notes that its Inmate Complaint Review System has processed 83 complaints from claimant in the past two years. DOC believes claimant has failed to provide evidence that supports his claim and therefore it should be denied.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**14. Charles Blunt, Sr.** of Black River Falls, Wisconsin, claims \$656.58 for restitution money allegedly taken illegally from claimant's inmate account. Claimant was sentenced in

January 1995 with a restitution amount "to be determined." In June 1996, the court ordered restitution in the amount of \$17,431.94. Claimant points to the fact that this order, eighteen months after his sentencing, is well past the 90-day limit set forth in Wis. Stat. § 971.04(g)(c). Claimant states that he was never notified of this restitution order. Claimant completed his sentence but was again incarcerated in 1999. In October 2000, his 1995 case was discharged. In 2016, after the installation of new accounting software, the Department of Corrections began to deduct restitution money from claimant's account for the 1995 case. Claimant filed a complaint with DOC that he received no notice of the restitution order and the case was discharged but DOC continued to deduct the money. Claimant filed a court action and the court vacated the restitution order in October 2017. Claimant tried to get the deductions refunded to his account, but DOC refused. Claimant believes DOC contacted the court and got it to erroneously change his discharge date to allow them to take money for the 1995 case. He believes DOC did this in retaliation for his filing a complaint against them. Claimant denies DOC's assertion that he was aware of the restitution order because of 1996 account deductions, because those deductions were for another case.

DOC recommends denial of this claim. DOC states that there was no negligence by DOC staff, which was following a valid court order at the time the deductions were made. The money taken from claimant's account had already been disbursed by DOC when the restitution order was vacated by the court and the court did not order DOC to reimburse claimant. DOC notes that claimant's argument that the department cannot deduct money related to discharged cases is incorrect. Wis. Stat. § 301.32(1), provides that the department may use inmate money "for the benefit of the prisoner" and the courts have found that withdrawing money to satisfy unpaid restitution is for an inmate's benefit even in the absence of a legal obligation to pay the restitution. DOC denies claimant's allegation that it asked the court to change the discharge date of the 1995 case and notes that the discharge date was not actually changed by the court. Finally, DOC states that the claimant must have been aware of the restitution for the 1995 case because in 1996, restitution was deducted from his account for the 1995 case.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**15. Alonzo J. Gray** of Black River Falls, Wisconsin, claims \$1,864.00 for restitution money allegedly taken illegally from his inmate account. Claimant was sentenced in 2001 with a restitution amount "to be determined." Claimant points to the fact that the judge specifically stated at sentencing, "If there is restitution owing, it's got to be brought to my attention within 90 days of today's date or I don't have the power to order restitution." Despite this 90-day limit, in May 2003, Department of Corrections Probation and Parole Agent Amity Roberts sent a memo to the District Attorney to get restitution imposed. Claimant believes Roberts conspired with the DA's Office to deprive claimant of due process and illegally impose restitution. In September 2003, the court ordered this restitution. Claimant alleges he was never notified of this order and remained unaware of the restitution until DOC installed a new accounting system in 2016 and began deducting the money from his account. Claimant filed a court challenge and the court vacated the restitution in July 2018. Claimant states that this restitution was illegally imposed, and requests refund of the money taken by DOC.

DOC recommends denial of this claim. DOC notes that Agent Roberts did not enter a restitution order for the claimant, the court did so. Her memo to the District Attorney states "... we are providing you will all of the relevant information gathered to date by the DOC in this case for whatever use you believe is appropriate." Agent Roberts did not "conspire" with the DA's office, but simply notified them that there were outstanding burial costs related to the case. In September 2003 the court issued a restitution order and DOC deducted restitution based on that order. By the time the court vacated the restitution order in July 2018, the full restitution amount had been deducted from claimant's account and disbursed to the victim. The court did not order DOC to refund the money and DOC policy DAI 309.45.02 does not require DOC to claw back restitution money from victims once it has been disbursed. There

was no negligence on the part of DOC staff in the collection and disbursement of this money and the claim should be denied.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**16. Robert L. Hamilton** of New Lisbon, Wisconsin, claims \$194.12 for refund of money deducted from his inmate account related to two convictions. Claimant states that the Department of Corrections deducted \$117.58 restitution for case no. 95CF1012 beginning in November 2016, but that he had already paid this restitution when he was released in December 1996. Claimant points to the fact that upon his release, the money in his account was given to his parole agent, who would have deducted any restitution still owed before giving him the remaining money and the fact that he received \$135.45 means his restitution must have been paid. He also states that case no. 95CF1012 was discharged in 2000, therefore the department had no authority to deduct restitution money for this case after that date, pursuant to *Markovic v. Litscher*. In the second instance, DOC deducted \$76.54 for restitution in case no. 96CF444. Claimant states that restitution was not ordered at sentencing, but in 1998 a DOC agent provided a restitution form to the court that falsely attested she had discussed the restitution amount with claimant and that he agreed to it. Claimant states that he was never informed of this restitution amount and was not present at the restitution hearing as he should have been. He also notes that the court never amended his original Judgment of Conviction with the restitution amount, therefore, DOC was bound by the original JOC which did not order restitution. Claimant filed a motion with the court and the restitution order was vacated. Claimant believes that in both of these cases DOC acted unlawfully, and requests reimbursement of the funds deducted from his account.

DOC recommends denial of this claim. Regarding case no. 95CF1012, DOC states that claimant had not previously paid this restitution and a check of his inmate account history show no prior payments related to this case. DOC also notes that although *Markovic* bars DOC from collecting on discharged cases from inmate *wages*, it does allow deductions from outside monies. Claimant earns no wages and these deductions were made from outside funds. Regarding case no. 96CF444, DOC states that no DOC employee misled or compelled the court to order restitution. DOC provided information to the court and the court decided to order restitution and impose that restitution as a separate order rather than amending claimant's original JOC. DOC states that in both of these cases, the department was acting pursuant to a valid court order when these amounts were deducted from claimant's account. The deducted funds were disbursed to claimant's victims and neither the court nor DOC rules require that the department retrieve this money from those victims.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

***The Board concludes:***

**That payment of the amount below to the identified claimant from the following statutory appropriation is justified under Wis. Stat. § 16.007(6)(b).**

Timothy Jahns	\$500.00	Wis. Stat. § 20.505(5)(ka)
Larry Whittaker	\$156.98	Wis. Stat. § 20.410(1)(a)

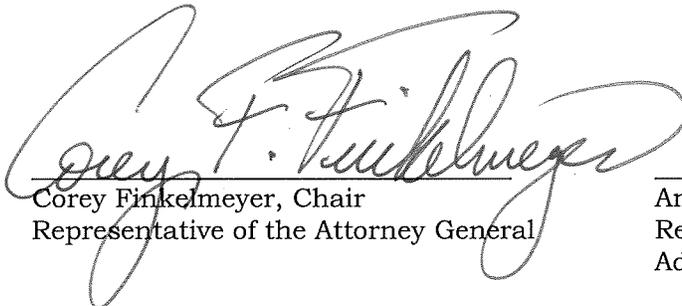
**That decision of the following claim is deferred until a later date:**

Derrick Sanders

**That the following identified claimants are denied:**

Kip & Nancy Peters  
Tracy B. Anderson  
Deleon Harland  
Mario A. Harris, Sr.  
Ralph Jurjens, III  
Phillip Keller  
Anthony M. Lee  
Davon Thompson  
Andrew Whitcomb  
Deron D. Love  
Charles Blunt, Sr.  
Alonzo J. Gray  
Robert L. Hamilton

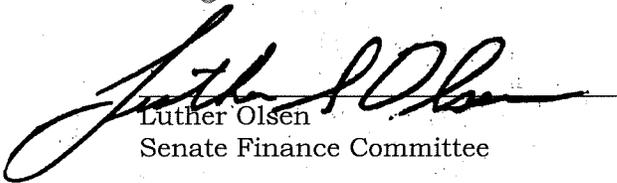
Dated at Madison, Wisconsin this 14th day of September, 2019



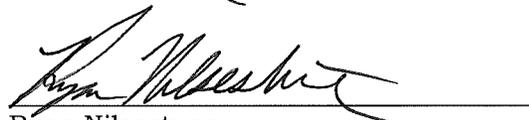
Corey Finkelmeyer, Chair  
Representative of the Attorney General



Amy Kasper, Secretary  
Representative of the Secretary of  
Administration



Luther Olsen  
Senate Finance Committee



Ryan Nilsestuen  
Representative of the Governor