

## STATE OF WISCONSIN CLAIMS BOARD

**The State of Wisconsin Claims Board held a meeting at the State Capitol Building in Madison, Wisconsin, on February 2, 2007, upon the following items, which were considered an decided without hearing:**

Consideration of a Petition for Rehearing dated January 17, 2007, in the matter of the attorneys' fees portion of the claim of Anthony Hicks, which was decided by the Claims Board on December 13, 2006.

Consideration of a request for partial payment of attorneys' fees while the decision on the Petition for Rehearing is pending.

### ***Background:***

This Petition for Rehearing arises from an innocent convict claim filed under §775.05, Wis. Stats. The claimant's original claim for compensation was filed on November 26, 1997. At that time, the claim was placed in abeyance pending the resolution of a lawsuit against the claimant's trial attorney until the lawsuit was settled in December 2004. Additional documentation was requested from the claimant and that information was submitted in November 2005. Pursuant to standard procedure, the claim was forwarded to the original prosecutor, who responded in support of the claim. The claim was scheduled for hearing before the Board on December 13, 2006. At that meeting the Board voted unanimously to pay the claimant \$25,000 compensation for his wrongful imprisonment, plus attorneys' fees in the reduced amount of \$53,030.86. (Reduced from the requested amount of \$106,061.71.)

On January 17, 2007, the clamant filed a Petition for Rehearing of the Claims Board Decision specifically relating to the matter of attorneys' fees. The claimant also submitted additional information supporting his claim for attorneys' fees. The claimant returned the original check and requested separate payment of the uncontested portion of the claim not relating to attorneys' fees and a new check was issued in the amount of \$25,000. Subsequently, the clamant also requested payment of the \$53,030.86 in attorneys' fees awarded by the December 2006 decision while the question of the remaining attorneys' fees was under consideration.

### ***The Board Concludes:***

The Board concludes that it shall vacate the portion of its December 13, 2006, decision relating to attorneys' fees for Mr. Hicks' claim and grant the claimant's Petition for Rehearing on the attorneys' fees portion of the claim.

The Board further concludes that the claim shall be referred to the Division of Hearings and Appeals for consideration by a Hearing Examiner of the attorneys' fees portion of the claim to issue a Proposed Decision for consideration by the Claims Board.

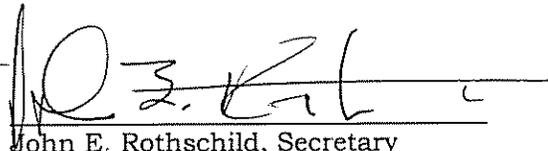
The Board further requests that when considering the issue of the award of attorneys' fees the Hearing Examiner address the following questions:

1. Does the limit on compensation to be paid by the board under § 775.05(4) include any amount to which the board finds the petitioner is entitled for attorneys fees, costs and disbursements?
2. Does § 227.485, Stats., § 814.245(5)(a)2, Stats., or any other statute limit the amount of attorneys' fees which may be granted under § 775.05, Stats?
3. Should the Petitioner be permitted to submit additional evidence or information related to attorneys' fees which was not presented with the original claim?

- 4. Does the fact that the Petitioner received a settlement from his original attorney in an amount which is unknown to the board affect the appropriate award of attorneys' fees?
- 5. Does the board have discretion to determine the appropriate attorneys' fees awarded?
- 6. If attorneys' fees should be awarded, what are the appropriate attorney's fees which should be awarded:
  - a. for the post conviction defense of the Petitioner?
  - b. for the preparation and presentation of the claim before the Claims Board?

Dated at Madison, Wisconsin this 14TH day of FEBRUARY, 2007.

  
Robert Hunter, Chair  
Representative of the Attorney General

  
John E. Rothschild, Secretary  
Representative of the Secretary of Administration

  
Nate Zolik  
Representative of the Governor

  
Jeffrey Stone  
Assembly Finance Committee

Senator Decker did not participate in this meeting.