

STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on April 28, 2010, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Workforce Resource, Inc.	Workforce Development & Administration	\$120,833.12
2. Chaunte Ott	Innocent Convict (§ 775.05, Stats.)	\$25,000.00
3. Paul Penkalski	University of Wisconsin System	\$134,149.68
4. Evelio Duarte Vestar	Innocent Convict (§ 775.05, Stats.)	\$25,000,000.00

The following claims were considered and decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
5. H & J Companies, Inc.	Financial Institutions	\$1,654.00
6. Papu Corporation	Transportation	\$3,000,000.00
7. Kevin Ziegert	Corrections	\$129.95
8. William F. Markwardt Trust	Revenue	\$3,430.00
9. Martin & Julia Zielinski	Revenue	\$7,420.00

The Board Finds:

1. **Workforce Resource, Inc.** of Menomonie, Wisconsin claims \$120,833.12 for damages relating to an alleged breach of a lease. The claimant, WRI, has partnered with the state to operate employment programs in western Wisconsin for more than 25 years. The claimant states that in 2004, DWD was looking to consolidate office space at a location near River Falls. WRI states that DWD proposed that the claimant serve as the master lease holder and then sublet space to DWD. WRI relied on the positive work relationship it had with DWD in the past and also on staff assurances that the state had a "rock solid commitment" to the terms of the sublease agreement. Based on these assurances, WRI executed the master lease agreement and proceeded to coordinate the build-out of the facility to DWD's specifications. DWD moved into the premises and began to make rent payments. DWD payments were smaller than agreed upon because DWD indicated it no longer needed to use 200 square feet of the space. WRI repeatedly requested that DWD sign a written sublease agreement and submitted multiple draft agreements to DWD and DOA for signature. The parties worked to revise the draft in the ensuing months. WRI states that WRI and DWD reached an agreement on the final terms of the sublease, which was submitted to DOA for approval. WRI states that DOA provided final approval of the sublease in August 2007. Despite this approval, DOA staff neglected to get the sublease signed, however even without a signed lease, both WRI and DWD honored their obligations under the sublease agreement. Although DWD continued to make reduced rental payments, WRI alleges that state staff did eventually concede that DWD was liable for the higher rent payment, encompassing the entire space that had been prepared to DWD's specifications. WRI believes that all evidence points to the fact that there was an unsigned agreement between the parties. WRI states that DOA/DWD breached this unsigned agreement when DWD vacated the premises in June 2008. The claimant states that although § 704.01(1), Wis. Stats., requires that a lease longer than one year must be in written form, Wis. Stat. § 706.04, provides an exception that an unsigned lease agreement is enforceable "provided all of the elements of the transaction are clearly and satisfactorily proved and...the deficiency of the conveyance may be supplied by reformation in equity." WRI requests reimbursement for the full rental payments for the 37 months remaining on the lease after DWD vacated, as well as \$421.90/mo for the 21 months DWD made reduced rental payments in violation of the agreement.

Both DWD and DOA recommend denial of this claim. DWD notes that it has no authority to lease property without the approval of DOA and therefore believes there is no basis for any claim against DWD. DOA and DWD both deny that they persuaded WRI to enter into a master lease for the River Falls facility. DWD notes that discussions between the department and WRI relating to another facility in Rice Lake, Wisconsin, included the possibility of WRI taking on a master lease; however those discussions have no bearing on the negotiations for the River Falls facility. In fact, the lengthy emails and discussions presented by WRI as evidence for their claim actually point to the fact that the parties did not reach an agreement relating to the River Falls facility and one of the main disagreements between the parties was the rental amount. WRI's acceptance of the reduced rental payments from DWD and the absence of a signed agreement constituted acceptance of a month to month tenancy, which the state was forced to terminate in June 2008 for budgetary reasons.

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. *(Member Renlund not participating.)*

2. Chaunte Ott of Oak Creek, Wisconsin claims \$25,000.00 compensation for Innocent Convict pursuant to § 775.05, Wis. Stats. The claimant spent nearly 13 years in prison after being convicted of the August 1994 murder of 16 year old Jessica Payne. Payne's body was found outside a vacant house in Milwaukee with her throat slashed and evidence of sexual assault. Police arrested and interrogated Richard Gwin and Sam Hadaway in relation to the murder and both men alleged the claimant was involved in the homicide. The claimant was arrested and charged with 1st degree intentional homicide. Both Gwin and Hadaway testified against the claimant at trial. The defense argued that Gwin and Hadaway's testimony was inconsistent and compromised by the favorable treatment they received from the State. In addition, DNA testing on the semen found at the scene was inconclusive and, despite the violent nature of the crime, there was no physical evidence linking the claimant to the crime scene. However, the claimant was convicted and sentenced to life in prison.

In 2002, the Wisconsin Innocence Project requested new DNA testing of the semen found at the Payne crime scene. The new testing technology excluded the claimant as the source of the semen. (The testing also excluded Hadaway and Gwyn.) The new DNA profile did not match any profile in national DNA databanks. In July 2007, the State informed the Innocent Project that this unknown DNA profile had been found on the victims of two other unsolved homicides within a few blocks of the Payne murder. Both of these homicides had occurred while the claimant was incarcerated.

In October 2007, the claimant filed a motion for a new trial based on the new DNA evidence. The motion was denied. The claimant appealed. In addition to the new DNA results, he submitted an affidavit signed by Hadaway recanting his trial testimony. Hadaway stated that he had been pressured by police to implicate the claimant. Hadaway's sister also stated that Hadaway had told her numerous times that he had lied at trial due to police pressure. Furthermore, the State's other witness, Gwin, had also recanted his testimony prior to his death several years after Payne's murder. Gwin's sister stated that Gwin had told her that police put severe pressure on him during the investigation and that he had to lie in order to go home. Based on the new DNA evidence and questions regarding the credibility of Gwin and Hadaway's testimony, the Court of Appeals reversed the Circuit Court and granted the claimant a new trial. The claimant was released in January 2009 and all charges were dismissed in June 2009.

In September 2009, the Milwaukee County Police Department announced that they had matched the DNA profile from 9 unsolved murders on Milwaukee's north side, including that of Jessica Payne, to a man named Walter Ellis. Mr. Ellis has been charged with the murders of seven of these victims, although he has yet to be charged with the Payne murder.

The claimant believes he has provided clear and convincing evidence of his innocence. The physical evidence at the crime scene implicates Mr. Ellis, not the claimant, indeed, there is no physical evidence linking the claimant to the crime. Furthermore, two of the State's key witnesses against the claimant have recanted their testimony. Finally, the claimant did not in any way contribute to his conviction but has steadfastly maintained his innocence.

The Milwaukee County District Attorney's Office has no response to this claim at this time. The Payne homicide investigation is ongoing and litigation associated with this matter is active and pending.

The Board concludes that there is clear and convincing evidence the claimant was innocent of the crime for which he was convicted. The Board further concluded, under authority of § 775.05, Stats., the claim should be paid in the amount of \$25,000.00, and that payment should be made from the Claims Board appropriation § 20.505(4)(d), Stats. (*Member Means dissenting.*)

3. Paul Penkalski of Madison, Wisconsin claims \$134,149.68 for damages allegedly relating to the 2004 and 2005 revocations of the claimant's Wisconsin Union membership, and related actions by UW-Madison employees. The claimant states that in 2004, his Wisconsin Union membership was revoked without any warning, contrary to Wisconsin Union policies. The claimant alleges that this revocation constituted a breach of contract. The claimant states that the revocation severely damaged his reputation with his potential graduate advisor at UW, fellow members of the Hoofers Sailing Club, and a woman with whom he had a personal relationship. The claimant states that he was forced to spend many hours working to get his membership reinstated. The claimant's Union membership was reinstated two months later, with an acknowledgement by UW that the revocation "did not fully comply with the Union's internal policies for such a sanction." The claimant states that he was continually abused by UW employees who denied him access to public meetings and buildings and issued numerous citations against him. He states that his Union membership was illegally revoked a 2nd time in 2005. The claimant states that fighting this alleged abuse by UW has caused him severe mental distress. He requests reimbursement for the many hours he alleges he has been forced to spend fighting the harassing and illegal actions by UW employees.

UW strongly believes this claim is without merit and should be denied. UW alleges that the claimant has a long history of behavioral problems in and around the university, many of which predate the incidents relating to this claim. UW states that the revocation of the claimant's Union membership in 2004 was related to a phone conversation the claimant had with UW parking staff. UW states that the claimant called the UW-Madison Parking and Transportation Office to dispute a parking ticket and at some point during the conversation told the UW employee "I would rather shoot you than pay the ticket." UW considered this to be a serious threat and it issued a citation and revoked the claimant's Union membership. UW notes that the claimant has already litigated this matter in Small Claims Court and the court dismissed the case, granting judgment in favor of the UW employee. UW states that it has devoted substantial resources to the claimant's many, many frivolous claims against various UW employees. UW also notes that the claimant's actions have led to anxiety on the part of UW-Madison students and staff, to the point where several individuals have restraining orders in effect against him. UW believes that the allegations made by the claimant in his claim are without merit and are simply a continuation of his campaign of harassment against UW-Madison and Union employees. UW believes there is no equitable or legal basis for payment 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.

4. Evelio Duarte-Vestar of Madison, Wisconsin claims \$25,000,000.00 for compensation as an innocent convict pursuant to § 775.05, Stats. The claimant alleges that in March 1987, February 1993 and December 1993, he was convicted and sentenced for crimes with which he was never charged. The claimant alleges that the criminal complaints do not show the crimes for which he was convicted, specifically: Felony Possession of Cocaine (Case No. 86-CF-0671), Domestic Abuse, "Restraining order & injunctions" and Criminal Trespass (92-CM-3242), and Aggravated Battery (92-CM-3242 and 93-CM-1307). The claimant requests reimbursement for false incarceration.

The Dane County District Attorney's Office recommends denial of this claim. The DA's Office states that the claimant was convicted by jury verdicts and properly sentenced in these cases. The DA's Office believes the claimant has not made even a colorable claim of innocence 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.

5. H & J Companies, Inc. of Alma, Wisconsin claims \$1,654.00 for overpayment of a 2009 Foreign Corporation Report fee. The claimant filed its 2009 Foreign Corporation Annual Report and paid the filing fee of \$1,734. The claimant states that it later discovered that its previous accountant had misreported the amount of liabilities and capital on the claimant's financial statements. Based on this error, the 2009 Foreign Corporation Annual Report showed an increase in the claimant's capital of \$551,387, and the \$1,734 filing fee was based on this reported increase. The claimant states that there actually was no increase in capital and it filed Articles of Corrections with DFI reflecting the corrected amount of liabilities and capital. The corrected report would result in a filing fee of only \$80. The claimant is requesting refund of the amount of fee overpaid.

DFI recommends denial of this claim. DFI points to the fact that the claimant has exclusive control of the records upon which the report's figures are based. DFI states that it has no way to verify the accuracy of any of the information provided by the claimant, either in the original report or in the Articles of Correction. DFI notes that the Annual Report Form gives notice to filers that "The filer is solely responsible for the accuracy of the information provided. Please double check your entries before continuing." DFI further points to the fact that there was no error on the part of any state employee or agency. Finally, DFI notes that the Claims Board has a longstanding history of denying claims of this nature.

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. Papu Corporation of Pleasant Prairie, Wisconsin claims \$3,000,000.00 for alleged fair market value of business. The claimant operated a truck stop/convenience store on Hwy C in Kenosha County from 1992 until May 2009. DOT acquired the claimant's property (Parcel #3) as part of a highway improvement project. The claimant alleges that DOT had an obligation to make available to the claimant a "comparable replacement business (property)" pursuant to § 32.05(8), Stats. The claimant states that in May 2009, DOT closed off portions of the I94/CTH C providing access to the claimant's truck stop business. The claimant states that DOT took this action without first making available a comparable replacement property to the claimant, essentially putting the claimant out of business. The claimant demands payment of \$3,000,000, which is a real estate appraiser's assessment of the fair market value of the business as of May 2009.

DOT recommends denial of this claim. DOT believes the claimant's allegations have no merit and that the department fulfilled its statutory obligations related to this dispute. DOT states that it properly acquired the claimant's property in July 2008, as part of a highway improvement project. DOT then leased the property back to the claimant, which lease terminated in December 2008 "unless extended by mutual agreement." DOT points to the fact that the claimant has provided no evidence of any lease extension. Therefore, the claimant's complaint that DOT closed off access to the claimant's business in May 2009 takes place more than five months after the claimant's lease on the property had expired. DOT states that it did assist the claimant in finding a new site for its business. DOT points to the claimant's unsuccessful lawsuit in Kenosha County as further evidence that the claim has no merit.

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. Kevin Ziegert of Hortonville, WI claims \$129.95 for costs incurred relating to an error in DOC's electronic monitoring system. On March 3, 2009, the claimant was arrested in relation to an outstanding October 2008 warrant that should no longer have been in the system. The October 2008 warrant related to a work release error while the claimant was under electronic monitoring. That error was corrected, however, DOC staff failed to remove the warrant from the system. The old warrant showed up when an office ran random license plate checks at a gas station where the claimant stopped in 2009. The claimant was arrested and

incurred a \$112.88 towing charge for his vehicle. His mother had to take 1.25 hours off of work to pick him up from jail and go get his car. He therefore also requests reimbursement for \$17.07 wages and mileage compensation for her 51 mile trip.

DOC recommends payment of this claim. The claimant incurred costs relating to an incorrect entry in the department's electronic monitoring system, when DOC staff failed to cancel a warrant in the system. The department has no objection to payment of the claimant's costs relating to towing and mileage fees, in the amount of \$129.95.

The Board concludes the claim should be paid in the reduced amount of \$112.88 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation § 20.410(1)(b), Stats.

8. The William F. Markwardt Trust of Appleton, Wisconsin claims \$3,430.00 for refund of overpayment of estate taxes caused by a decimal point error in the reported value of stock. William Markwardt died in July 2007. His estate taxes were timely filed by his trustee, reporting a tax due of \$34,457, which the estate paid. DOR accepted the return and issued a Certificate Determining Estate Tax on October 3, 2008. Pursuant to § 72.30(4), Wis. Stats., this determination of tax is final unless appealed to the Circuit Court within six months of the date the certificate is issued. After receiving the certificate, the estate trustee filed Final Fiduciary Income Tax Returns. Subsequent to filing those returns, the stock value error was discovered. The estate and income tax returns had correctly reported 132.9489 shares of stock valued at \$54.05 per share. However, there was a data input error which incorrectly valued the stock at \$540.50 per share. The correct total value of the stock at the time of death was \$7,186, however, because of the calculation error; the returns show a total value of \$71,860. The trustee filed amended income tax returns to correct the error; however there is no statutory process by which the estate taxes can be amended once six months has passed from the date of the Certificate Determining Estate Tax. The claimant believes that there is an equitable argument for refund of the overpayment and notes that it could have, but did not, attempt to obtain a large taxable loss for income taxes based on the error found in the estate tax return.

DOR recommends denial of this claim. Section 72.30(4), Wis. Stats., provides that DOR's Certificate Determining Estate Tax is final unless an interested person applies to the Circuit Court within six months of the date the certificate is issued. DOR further notes that this language is included on the certificate. The claimant did not appeal to the Circuit Court prior to the April 3, 2009, six month deadline; therefore the department's determination of tax is final.

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. Martin and Julia Zielinski of Oak Creek, Wisconsin claim \$7,420.00 for income tax refunds denied by DOR because the taxes were filed more than four years after the original due date. The claimants state that they had many personal issues which led to their not filing timely tax returns, including flooding, serious health problems, and legal disputes with the federal government. The claimants believed that as long as they had a refund coming and did not owe taxes, they could file the returns at their convenience and receive their refunds. The claimants point to the fact that nowhere on any tax form does it state that tax refunds must be claimed within four years. The claimants also state that they had numerous contacts with DOR prior to filing and were told that there was no penalty for filing late taxes if the taxpayer was due a refund. The claimants state that DOR never informed them that tax refunds had to be claimed within four years. The claimants filed 22 years of back taxes in 2008. Three of those returns showed a tax due and 19 returns showed a refund due. Fifteen refunds claimed on returns from 1981 to 2003 were denied based on the four year statute of limitations, § 71.75(2) and (6), Wis. Stats. The claimants cannot believe that they can be penalized by a law about which they were never notified. The claimants believe that DOR failed in its basic duty by not informing them of the 4 year limit to claim their refunds. The claimants further allege that DOR was extremely unhelpful when the claimants contacted the department to obtain assistance recreating their records prior to filing their taxes. The claimants believe DOR

was deceitful in its dealings with them and that taxpayers cannot be penalized for laws about which they are not aware. They request return of the refunds denied under the statute of limitations.

DOR recommends denial of this claim. The department states that the claimants chose not to file tax returns, as required by law, for 22 years. DOR records indicate that in May 2009, the claimants voluntarily filed 22 income tax returns ranging from 1981 to 2007. Fifteen refunds were denied due to the four year statute of limitations. DOR states that, in an effort to be equitable, the department reduced the total tax amount due for the years 1987, 1991 and 1992 from \$3,473.76 to \$0. Pursuant to § 71.75(2) and (6), Wis. Stats., the department is prohibited from refunding any overpayment for a return filed more than four years after the original due date. DOR notes that directions on tax forms inform taxpayers that the return is due by April 15th of the following year. DOR further notes that there is no indication in any instructions that returns may be filed at the taxpayer's convenience.

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 the following claims are denied:

Workforce Resource, Inc.
Paul Penkalski
Evelio Duarte-Vestar
H & J Companies, Inc.

Papu Corporation
William F. Markwardt Trust
Martin and Julia Zielinski

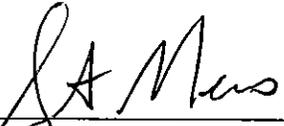
That payment of the below amounts to the identified claimants from the following statutory appropriations is justified under § 16.007, Stats:

Kevin Ziegert \$112.18 § 20.410(1)(b), Stats.

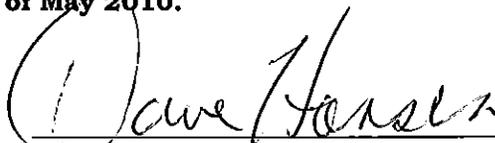
That payment of the below amounts to the identified claimants from the following statutory appropriations is justified under § 775.05, Stats:

Chaunte Ott \$25,000.00 § 20.505(4)(d), Stats.

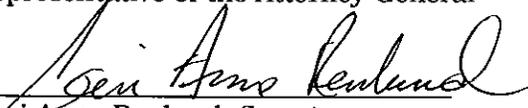
Dated at Madison, Wisconsin this 14 day of May 2010.



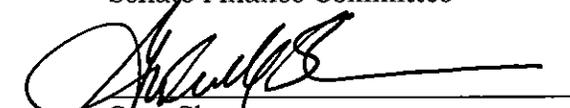
Steve Means, Chair
Representative of the Attorney General



Dave Hansen
Senate Finance Committee



Cari-Anne Renlund, Secretary
Representative of the Secretary
of Administration



Gary Sherman
Assembly Finance Committee



Susan Crawford
Representative of the Governor