

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings in the State Capitol, Grand Army of the Republic Memorial Hall, Madison, Wisconsin, on April 25, 2002, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Jennifer McFarland	Administration	\$270.00
2. John L. Stebbins	University of Wisconsin	\$12,536.80
3. Al Glish	Corrections	\$2,955.46
4. James D. Minniecheske	Corrections	\$1,543.61
5. Michael & Helen Grimmenga	Revenue	\$14,387.23
6. Carl Renikow	Revenue	\$6,295.00
7. Waukesha School District	Revenue and Public Instruction	\$803,149.00

In addition, the following claims were considered and decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
8. Queen Wigham	Transportation	\$2,068.00
9. Andry Rasmussen & Sons, Inc.	Commerce	\$4,703.00
10. Karyn Behrens	Revenue	\$4,532.00
11. Brenda Brown	Revenue	\$3,738.26
12. Donald J. Titoni	Revenue	\$236.30
13. Jin-Yi Cai	University of Wisconsin	\$600.00
14. Gregory G. Dieckman	Military Affairs	\$500.00
15. Amy J. Georgeson	Military Affairs	\$500.00
16. Daniel Gonnering	Military Affairs	\$500.00
17. James Sampson	Military Affairs	\$100.00
18. James Sampson	Military Affairs	\$100.00
19. Mary Snider	Military Affairs	\$50.00
20. Patrick Walsh	Military Affairs	\$100.00
21. Luis A. Nieves	Corrections	\$855.46
22. Patricia Richards	Corrections	\$200.45
23. Jerry V. Smith	Administration	\$131.87
24. Joseph Steier, Jr. & Margaret Lindstrom	Natural Resources	\$1,027.85
25. T & N Transfer, Inc.	Transportation	\$846.00

The Board Finds:

1. Jennifer McFarland of Verona, Wisconsin claims \$270.00 for reimbursement of her insurance deductible and other expenses related to damage to her car. The claimant parked her vehicle on N. Carroll Street on July 31, 2001. When she returned to her car, she found that a tree branch had fallen on the vehicle, crushing the roof and part of the bike rack, and shattering the windshield and front passenger side window. According to Capitol Square Tree Condition Report, the tree was marked to be "watched" by an arborist eighteen months prior to this incident. The claimant states that it took three and a half weeks to repair the vehicle, during which time, she had a co-worker drive her to work. She requests reimbursement of her \$250 insurance deductible plus the \$20 that she paid to the co-worker for gas money.

DOA recommends denial of this claim. DOA does not believe that there was any negligence on the part of the state. The tree in this incident was being watched, but had not been targeted for removal by an arborist. The tree was scheduled to be pruned this spring and that pruning has been completed. DOA states that there was no stormy or windy weather on the day of the accident. DOA also points to the fact that the claimant would have had incurred gas expenses to get to work in her own vehicle even if her car had not been damaged, therefore, there is no reason she should be reimbursed for the gas money she gave her co-worker.

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 Rothschild not participating*)

2. John (Jack) L. Stebbins of Milwaukee, Wisconsin claims \$12,536.80 plus interest for wages and benefits allegedly lost because of an employment grievance filed by the claimant. Claimant states that he has been an LTE (40%) with the UW Computer Services Division since 1979. He states that in January 1996 he filed a grievance against his immediate supervisor and requested that he be reassigned to another supervisor. Claimant alleges that he was assigned to a new office with a new title but that there was not enough work for him to do in this new position. He claims that he requested additional work from July through December 1996 and was repeatedly told to be patient. Claimant states that in December 1996 he complained to Assistant Vice Chancellor Erika Sander and Provost/Vice Chancellor Ken Watters. He alleges that he was told to be patient until a new bureau director took office in July 1997. He states that he was restored to his former position in July 1997 and alleges that he was promised by Ms. Sander that he would receive compensation for his lost back pay in the form of a higher future salary. He claims that from 1998 through 2001 he was assured that the back pay issue was being worked on and would eventually be resolved. In July 2001 he met with the new Provost, John Wanat, who referred him to the bureau director, Joe Douglas. Claimant states that Mr. Douglas showed him a 1997 memo received by Douglas in 1997, which indicated that the claimant had been told by Watters and Sander that he would not receive back pay. The claimant denies ever being told this by Ms. Sander and Mr. Watters but alleges that he was continually led to believe that the back pay issue would be resolved in his favor. Claimant states that, at the UW's suggestion, he did try to find additional part-time work in 1996 but that he was unsuccessful in obtaining hours equivalent to the work he allegedly lost. The claimant believes that he was effectively "fired" because of the grievance he filed against his supervisor.

The UW recommends denial of this claim. The UW states that the claimant requested the transfer and agreed to the change in his duties as part of his grievance settlement. The UW alleges that during a 1997 meeting with Ms. Sander and Mr. Watters, the claimant was clearly told that back pay was not possible because of his employment status as an LTE. The UW states that the claimant is working under a fundamentally flawed assumption that he has some entitlement to a certain level of employment for a specified period of time. The UW states that the claimant, as an LTE, has no fixed employment contract and no right to receive any specific number of hours of employment in any given time period. The UW denies that there was every any commitment by the UW to grant back pay to the claimant. The UW states that Ms. Sander did feel some sympathy for the claimant but that Mr. Watters made it clear that the claimant would not receive back pay.

The Board concludes the claim should be paid in the reduced amount of \$4,200.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285 (1)(a), Stats.

3. Al Glish of Crivitz, Wisconsin claims \$2,955.46 for unpaid restitution owed to him by a probationer, Heather Luedke, at the time of her discharge from probation. In September 1992, Ms. Luedke and others engaged in a variety of criminal activities, including stealing a van from the claimant's auto sales business. Ms. Luedke was convicted of Criminal Trespass to Dwelling and

Criminal Damage to Property and ordered to pay restitution to the claimant and others. The claimant alleges that the Probation and Parole Agent in charge of Ms. Luedke later discharged her from supervision without ensuring that a civil judgment was put in place for the unpaid restitution. The claimant states that he has exhausted all other known sources of remedy but that he has been unable to collect restitution. The claimant states that he has collected only \$12.87 in restitution from Ms. Luedke.

DOC recommends denial of this claim. DOC states that in July 1997 Ms. Luedke's Probation and Parole Agent requested that the court enter a judgment for restitution in the form of a memorandum to the court requesting that Ms. Luedke be removed from probation and that the court enter a civil judgment for restitution. DOC states that the court completed and signed the petition but that the court failed to mark any boxes indicating the court's findings and order. DOC states that they did not submit an amended order, as requested by the court, because at that time Ms. Luedke had already been released from probation for 18 months and DOC was no longer in the position of requiring her to make payments.

The Board concludes the claim should be paid in the reduced amount of \$2,500.00 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 s. 20.410 (1)(a), Stats.

4. James D. Minniecheske of Tigerton Dells, Wisconsin claims \$1,543.61 plus interest for return of restitution money taken by DOC. The claimant was ordered to pay restitution after being convicted of a crime. He challenged the restitution order and the Circuit Court amended the judgment of conviction to remove the restitution order but did not order reimbursement of the money that had been collected from the claimant during and after his incarceration. The Circuit Court decision was upheld by the Court of Appeals and Wisconsin Supreme Court. The claimant notes that the Appeals Court stated, "we agree with Minniecheske that there must be a remedy that can enable him to successfully recover the money the State improperly seized... he could file a claim with the state claims board, which is specifically authorized to remedy claims such as those Minniecheske asserts." The claimant states that the delay in bring this claim before the Claims Board was caused only by the claimant waiting until all appeals had been exhausted in court. The claimant states that he filed the claim several months after learning of the Supreme Court's action. He does not believe that two months is an unreasonable delay in bringing a claim. The claimant requests return of the \$1,543.61 in restitution that was improperly taken from him and also requests payment of 12% interest dating from July 1, 1996.

DOC recommends denial of this claim. DOC points to the fact that the Appeals Court did not order the State or Claims Board to pay the claimant, but only suggested the Claims Board as a potential avenue for recovery. DOC believes that there has been an unreasonable delay in bringing this claim before the board, as the Court of Appeals issued its decision over three years ago. DOC states that the Supreme Court denied review of the case in 1999, not several months ago, as alleged by the clamant. DOC also believes that granting this claim would constitute unjust enrichment because the money collected from the claimant was paid to the Fred Cox, the party to whom the claimant was ordered to pay the restitution. DOC simply acted as a conduit for the restitution between the claimant and the victim of his crime; the money was not paid to DOC. DOC states that the claimant paid only \$2,312.21 of the \$27,719 that he was ordered to pay Mr. Cox. DOC believes that since the money was never had by the state, DOC is not a debtor in this situation, and the state therefore does not consent to suit pursuant to s. 775.01, Stats. DOC believes that the doctrine of Sovereign Immunity bars payment of this claim. DOC also states that, in addition to the outstanding restitution still owed to Mr. Cox, the claimant also owes approximately \$1,900 in restitution to the Village of Tigerton and that any payment made by the board should be applied to the claimant's outstanding restitution balances. Finally, DOC states that the claimant has provided no support for his request for payment of 12% interest.

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. Michael and Helen Grimmenga of Watertown, Wisconsin claim \$14,387.23 for return of monies garnished from their wages to satisfy a delinquent tax assessment. The claimants state that Helen Grimmenga's employer, Community Action Coalition, incorrectly overstated her earnings for the 1991 tax year. The claimants further state that Helen, who handled the taxes, struggled with illness for several years and eventually became completely disabled in 2000. They claim that their original tax records were damaged by flooding in their basement, so they needed to re-do all of their taxes and request additional copies of their W-2 forms, which took a considerable amount of time. They allege that they have attempted to settle the dispute with DOR but that DOR lost their returns and information several times. They request return of the money overpaid and barred from refund by the two-year statute of limitations.

DOR recommends denial of this claim. DOR states that this claim involves not only an audit of the claimants' 1991 return, based on the above-mentioned employer error, but also questions regarding Schedule C expenses for 1992 returns, and failure to file 1993 and 1994 returns. DOR states that the claimants did not reply either to the letters sent in June 1995 and October 1995, or to the estimated assessment sent in February 1996. DOR records indicate that certification of the claimants' wages began in April 1997, after the claimants failed to respond or to appear at an informal hearing. DOR states that the claimants filed for amnesty in August 1998 and at that time filed their 1993 and 1994 tax returns and cleared up the 1991 error. DOR states that the 1992 portion of the assessment remained outstanding and that certification therefore was continued until October 1998, when the delinquent account was adjusted. DOR states that after adjustment of the account the claimants received refunds of \$1,779.63 (Michael) and \$1,269.06 (Helen) and that they also received a refund of \$1,018.77 under the 1998 amnesty program (representing the money collected during the amnesty application period). DOR states that the total amount collected from both claimants and closed to refund is \$14,387.23. Finally, DOR points to the fact that the claimants agreed to relinquish any right to further petition for review of the liability when they applied for amnesty in 1998. DOR states that the limitations under the amnesty program supercede the two-year statute of limitations.

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 Albers dissenting.*)

6. Carl Renikow of Wausaukee, Wisconsin claims \$6,295.00 for refund of overpayment of taxes. The claimant admits that he did not file his 1996 taxes on time. He states that his son was born 6 weeks early, spent one month in ICU, and that that the resulting medical care left the claimant with large medical bills not covered by his insurance. He alleges that he thought it would not be a problem filing the returns late, since he knew that he would not owe any taxes, but instead would be getting a tax refund. He is not requesting payment of any refunds, only of the amount overpaid through garnishment of his wages. He states that he never realized that he would have to fight to get the overpayment back and believes that he should be reimbursed for the overpayment, since he never owed any taxes for 1996.

DOR recommends denial of this claim. DOR issued an estimated assessment for the claimant's 1996 taxes in December 1998. DOR records indicate that the claimant filed the return in January 2001. DOR records also show that between February 1999 and the time the return was filed, the department had numerous contacts with the claimant, levied his bank account, intercepted refunds and certified his wages and that all of DOR's notices were sent to the claimant's correct address. DOR states that the two-year statutory deadline for requesting a refund was December 7, 2000, and that the claimant did not file the returns until January 25, 2001. DOR states that s. 71.75(5), Stats., prohibits

them from refunding the amount collected on the original assessment, since no refund was claimed within the two-year period prescribed by the statute.

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. Waukesha School District of Waukesha, Wisconsin claims \$803,149.00 for adjustment in school aid for the years 1995 through 1998. In November 2000, Ameritech prevailed in a claim against the City of Pewaukee for the return of taxes paid in 1995–1998. The claimant's portion of that liability was \$1,050,605. The claimant had to pay back this amount to the City of Pewaukee and, to cover the expense, had to levy an additional tax against the district's taxpayers. The claimant has determined that its equalized valuation would have been changed for the years affected by this litigation. The claimant points to the fact that there is a statutory procedure for retrieving lost school aids, however, the statute applies only to manufacturing property. The claimant believes that the language of the statute is too limiting and that, in fairness, the claimant's should be afforded the same remedy. The claimant's calculations show that it would have been eligible for an additional \$803,149 in state aid from the DOR and requests reimbursement in that amount.

DPI recommends payment of this claim. DPI believes that the district is without blame in this situation and should be held harmless and reimbursed by the state. DPI's calculations differ slightly from those of the claimant and show that the claimant would have received \$803,105.00. However, DPI requests that any payment not be made from the school aid fund, because such payment would reduce the aid available to other school districts.

DOR recommends denial of this claim. DOR states that it has no statutory authority to pay the requested school aid adjustment. DOR also states that DPI does not have the statutory authority to make an adjustment in the district's school aid in this situation without statutory changes by the legislature. DOR states that it is common practice that property should be construed as taxable under the statutes, therefore, the DOR assessor was following proper guidelines when assessing Ameritech's property, despite the fact that the assessor's determination was later overturned by the court. DOR believes that it has performed its duties under the statute and that, because of the statutory impediments, 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. (*Members Albers, Rothschild, Taylor, and Lee dissenting.*)

8. Queen Wigham of Milwaukee, Wisconsin claims \$2,068.00 for medical bills related to an accident allegedly caused by conditions at a road construction project in the City of Milwaukee. The claimant alleges that a road construction project in her neighborhood was poorly managed, placed residents at the neighborhood at risk and caused them great stress and mental anguish. She alleges that because of the project, sidewalks and driveways were removed, leaving the claimant and her son trapped in their home. She alleges that residents on the street were placed in danger because emergency vehicles would not have been able to come down the street because the road was torn up on both sides. She states that on October 11, 2000, she slipped and fell because of the muddy conditions and lack of sidewalks. The claimant believes that this project was shoddily handled because of the neighborhood and does not believe that road projects in other neighborhoods would have been conducted in this fashion. She requests reimbursement for the medical bills she incurred because of her fall.

DOT recommends that this claim be denied. DOT states that this was a federally funded, City of Milwaukee project and that the role of the state was to ensure that the correct federal/state process was followed. DOT states that the City of Milwaukee designed the construction specifications and oversaw the work of their contractor and that the state was not involved until after the construction

was complete. DOT states that the city sent out proper notices to the residents of the street, held appropriate public hearings, and addressed safety issues. Records indicate that the city responded to safety concerns by including special provisions related to removal of sidewalks and driveways in the project contract. DOT records indicate that in December 2000 the claimant wrote to the DOT District 2 Highway office demanding \$250,000 for the pain and suffering of herself, her son and her neighbors. At the same time, she was participating in a suit against the City of Milwaukee in the amount of \$125,000 (that claim was denied by the City). Subsequently, the claimant pursued a claim against the project contractor, Milwaukee General. Milwaukee General settled that claim and paid \$2,000 to the claimant for her medical bills from October 2000 through January 2001. DOT points to the fact that the bills the claimant has submitted appear to be the same bills for which she has already been compensated by Milwaukee General. DOT does not believe there is any negligence on the part of the state and, since the claimant has already been reimbursed for her medical bills, no equitable reason to pay 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.

9. **Andry Rasmussen & Sons, Inc.**, of Drummond, Wisconsin claims \$4,703.00 for grant funds awarded for replacement of a septic system under s. 145.245, Stats. The claimant is a plumbing and heating business located in Cable, WI. The claimant states that in June 1996, Gary Marousek (dba Gary's Fireside) applied for grant funds for replacement of his septic system. The claimant states that it installed the new system for Mr. Marousek in July 1996 at a cost of \$15,521.30. The claimant alleges that Mr. Marousek received a grant check from the state in September 1997, in the amount of \$4,703.00 but that Mr. Marousek never paid this amount, or any other amount due for the system, to the claimant. The claimant states that the Department of Commerce collected the grant award from Mr. Marousek by way of a small claims judgment against him because he failed to use the funds for the purpose for which they were provided. However, the claimant states that rather than using the reclaimed grant money to reimburse the claimant for a portion of its costs installing Mr. Marousek's system, the state retained the funds. The claimant believes that it is wrong for the Department to reclaim those funds for the state rather than using the funds for partial payment of the claimant's costs incurred in installing the new septic system.

Commerce has no objection to the payment of this claim. The Department understands the equitable arguments made by the claimant and the claimant's belief in the general purpose of the grant funds. However, Commerce believes that it is prohibited from making payments to persons not specifically identified as eligible for payment of funds under s. 145.245, Stats. This statute appears to apply to "owners" of property and does not appear to apply to service providers, such as the claimant.

The Board concludes the claim should be paid in the amount of \$4,703.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Commerce appropriation s. 20.143 (3)(de), Stats.

10. **Karyn Behrens** of Presque Isle, Wisconsin claims \$4,532.00 for Homestead Tax Credits for the years 1996 through 1998. The claimant states that she filed her taxes late for those years because she was suffering from severe depression and post-traumatic stress disorder related to recovered memories of child abuse. The claimant alleges that she was barely able to deal with day to day tasks such as laundry, dishes, and household paperwork, much less handle her taxes, because of debilitating mental health issues. When the claimant did file her taxes, she received a letter from DOR denying the Homestead Tax Credits unless she submitted additional information. The claimant admits that she missed the deadlines set by DOR for getting the information to them both because of her severe illness and also because her former landlord had moved and it took her some time to track him down again. Because she missed the deadlines, DOR denied her Homestead Credits. The claimant states that she later spoke with an accountant, who recommended re-filing the taxes. He stated that the three-year

statute of limitations had not expired for those tax years and thought that she might be able to then get her Homestead Credits back. The claimant states that she re-filed the 1996-1998 taxes but that DOR then requested the same information that they she had previously submitted for her Homestead claims. The claimant alleges that she sent the information to DOR three times (once by Certified Mail with confirmation of receipt) and that they still denied receiving the information and denied her Homestead Credits. The claimant believes that there are extenuating circumstances because of her severe mental illness, difficulty in finding her landlord, and DOR's errors. She requests payment of her Homestead Credits for 1996-1998, plus interest.

DOR recommends denial of this claim. The claimant did file a written appeal to DOR's July 2001 notice denying her 1996 Homestead Credit pending submission of additional information. However, DOR states that the claimant did not submit the additional information prior to the deadline. DOR records indicated that they denied her 1996 credit in November 2001. DOR states that the denial notice notified the claimant that she had 60 days to file an appeal, but that she did not do so. DOR records also indicated that the claimant did not appeal either the initial denial notice or the final denial notice for her 1997 and 1998 Homestead Credits. DOR points to the fact that s. 71.88 (1)(a) and (b), Stats., provides avenues for taxpayer appeals and states that denials that are not appealed by the taxpayer become "final and conclusive." Regarding the claimant's request for interest, DOR points to s. 71.55 (4), Stats., which states that no interest is allowed on any Homestead Credit payment.

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 Albers dissenting.*)

11. Brenda Brown of Milwaukee, Wisconsin claims \$3,738.26 for return of Homestead tax credits intercepted by DOR to satisfy a delinquent tax assessment. The claimant states that she did not work in 1992 and therefore was not required to file an income tax return for that year and did not owe any taxes. She alleges that she never received the letter that DOR claims to have sent in October 1993. Finally, the claimant states that she suffers from mental illness and has very poor eyesight. She requests return of the money taken by DOR.

DOR recommends denial of this claim. DOR records indicate that the agency received an incomplete 1992 income tax return from the claimant on October 20, 1993. DOR claims that it sent the income tax form back to the claimant, along with a letter requesting additional information. DOR states that the form sent back to the claimant contained a 10/20/93 DOR date stamp. In addition, DOR states that between October 1993 and April 2001, there was much activity regarding the claimant's account and that all notices and correspondence were sent to the claimant's current address. DOR records indicate that various bankruptcy proceedings involving the claimant halted DOR's collection efforts periodically, but that DOR did intercept the claimant's 1997 through 2000 Homestead Tax Credits and applied them towards her delinquent account. DOR points to the fact that when the claimant finally submitted her completed 1992 return in April 2001, she did so using an exact copy of the original form returned to her in 1993, showing the DOR date stamp. DOR believes this confirms that, contrary to the claimant's assertions, she did indeed receive the October 1993 letter.

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.

12. Donald J. Titoni of Lake Geneva, Wisconsin claims \$236.30 for return of tax refunds withheld to satisfy an outstanding assessment. The claimant alleges that he made no earnings in 1994 and 1995 and therefore was not required to pay taxes. He states that DOR later came after him for not filing taxes for those years and intercepted his 2000 federal and state tax refunds. He requests return of those refunds.

DOR recommends denial of this claim. DOR states that it issued an estimate assessment in September 1997 based upon the claimant's failure to file 1994 and 1995 tax returns. DOR records indicate that the estimated assessment was sent to the claimant's current address and was not returned as undeliverable. DOR alleges that the claimant did not respond either to the assessment notice or to the subsequent hearing notice sent in June 1998. DOR states that the hearing notice was returned by the post office as undeliverable and that DOR was unable to locate another address for the claimant. DOR turned the account over to OSI Collections services in February 2000. OSI records indicate that the claimant contacted them in April 2000 but did not resolve the account. DOR claims that the claimant contacted them in May 2000 and was told what he needed to do to resolve his account. DOR states that the missing returns had not yet been filed by February 2001, so DOR applied the claimant's 2000 state refund to the delinquent account. In March 2001, the DOR notified the claimant that they would also be seizing his 2000 federal refund. DOR records indicate that the claimant contacted DOR on March 13, 2000 and was again told that he needed to file 1994 and 1995 returns. DOR states that it did not hear from the claimant again until January 2002, when he contacted them to discuss his account again. DOR records indicate that the claimant finally provided the information needed to resolve his account at this time. DOR states that the claimant did not appeal the assessment within 60 days, as required by section 71.88, Stats., and that he did not file a claim for refund of any overpayments within 2 years of the assessment, as required by section 71.75(5), Stats.

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. **Jin-Yi Cai** of Madison, Wisconsin claims \$600.00 for replacement of a wooden desk allegedly damaged by movers. The claimant is employed by the University of Wisconsin. He claims that when university hired movers moved his office to another floor, the broke his 72" wooden desk beyond repair. The desk belonged to the claimant personally and he states that it was in excellent condition prior to the move. He was present at the incident and believes that the movers pulled too hard on the legs and did not empty all of the contents, which caused the desk to collapse. He requests \$600 for the cost of replacing his broken desk with one of similar size and style.

The UW recommends payment of this claim in the reduced amount of \$100, based on equitable principles. The UW states that the desk was being moved in connection with the relocation of the claimant's office and that the desk was the personal property of the claimant. The UW states that the UW instructed staff to empty all desks, cabinets and other furniture items prior to the move and that the claimant apparently failed to do so. The UW states that the movers have indicated that the desk was in poor condition before they tried to move it. The UW believes that, based on the condition of the desk and its depreciated value, payment of no more than \$100 should be made to the claimant for the damage sustained.

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. **Gregory G. Dieckman** of Sparta, Wisconsin claims \$500.00 for vehicle damage caused by a hailstorm. Claimant is employed at Camp Douglas. His car was parked on the base during work hours when a hailstorm struck the area, which included golf ball sized hail that damaged his vehicle. Claimant requests reimbursement for his insurance deductible in the amount of \$500.

DMA recommends denial of this claim. DMA feels that there is no state responsibility for damage caused by an act of nature over which it has no control. DMA is concerned about the precedent that would be set by payment of claims for damages caused by acts of nature. DMA also states that they have no available state funds with which to pay the claims related to this storm, neither can it use any federal funds to cover the damages. DMA realizes that it is the usual policy of

the Claims Board to charge the agency for payment of claims and states that it is in no position to absorb any non-budgeted expenses at this time.

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. Amy J. Georgeson of Camp Douglas, Wisconsin claims \$500.00 for vehicle damage caused by a hailstorm. Claimant is employed at Camp Douglas. Her car was parked on the base during work hours when a hailstorm struck the area, which included golf ball sized hail that damaged her vehicle. Claimant requests reimbursement for her insurance deductible in the amount of \$500.

DMA recommends denial of this claim. DMA feels that there is no state responsibility for damage caused by an act of nature over which it has no control. DMA is concerned about the precedent that would be set by payment of claims for damages caused by acts of nature. DMA also states that they have no available state funds with which to pay the claims related to this storm, neither can it use any federal funds to cover the damages. DMA realizes that it is the usual policy of the Claims Board to charge the agency for payment of claims and states that it is in no position to absorb any non-budgeted expenses at this time.

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. Daniel Gonnering of New Lisbon, Wisconsin claims \$500.00 for vehicle damaged caused by a hailstorm. Claimant is employed at Camp Douglas. His car was parked on the base during work hours when a hailstorm struck the area, which included golf ball sized hail that damaged his vehicle. Claimant requests reimbursement for his insurance deductible in the amount of \$500.

DMA recommends denial of this claim. DMA feels that there is no state responsibility for damage caused by an act of nature over which it has no control. DMA is concerned about the precedent that would be set by payment of claims for damages caused by acts of nature. DMA also states that they have no available state funds with which to pay the claims related to this storm, neither can it use any federal funds to cover the damages. DMA realizes that it is the usual policy of the Claims Board to charge the agency for payment of claims and states that it is in no position to absorb any non-budgeted expenses at this time.

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.

17-18. James Sampson of Camp Douglas, Wisconsin claims \$100.00 each for two vehicles damaged by a hailstorm. Claimant is employed at Camp Douglas. Both his and his wife's cars were parked on the base during work hours when a hailstorm struck the area, which included golf ball sized hail that damaged his vehicles. Claimant requests reimbursement for his insurance deductibles in the amount of \$100 per vehicle.

DMA recommends denial of this claim. DMA feels that there is no state responsibility for damage caused by an act of nature over which it has no control. DMA is concerned about the precedent that would be set by payment of claims for damages caused by acts of nature. DMA also states that they have no available state funds with which to pay the claims related to this storm, neither can it use any federal funds to cover the damages. DMA realizes that it is the usual policy of the Claims Board to charge the agency for payment of claims and states that it is in no position to absorb any non-budgeted expenses at this time.

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.

19. Mary Snider of Tomah, Wisconsin claims \$50.00 for vehicle damage caused by a hailstorm. Claimant is employed at Camp Douglas. Her car was parked on the base during work hours when a hailstorm struck the area, which included golf ball sized hail that damaged her vehicle. Claimant requests reimbursement for her insurance deductible in the amount of \$50.

DMA recommends denial of this claim. DMA feels that there is no state responsibility for damage caused by an act of nature over which it has no control. DMA is concerned about the precedent that would be set by payment of claims for damages caused by acts of nature. DMA also states that they have no available state funds with which to pay the claims related to this storm, neither can it use any federal funds to cover the damages. DMA realizes that it is the usual policy of the Claims Board to charge the agency for payment of claims and states that it is in no position to absorb any non-budgeted expenses at this time.

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.

20. Patrick Walsh of Elroy, Wisconsin claims \$100.00 for vehicle damage caused by a hailstorm. Claimant is employed at Camp Douglas. His car was parked on the base during work hours when a hailstorm struck the area, which included golf ball sized hail that damaged his vehicle. Claimant requests reimbursement for his insurance deductible in the amount of \$100.

DMA recommends denial of this claim. DMA feels that there is no state responsibility for damage caused by an act of nature over which it has no control. DMA is concerned about the precedent that would be set by payment of claims for damages caused by acts of nature. DMA also states that they have no available state funds with which to pay the claims related to this storm, neither can it use any federal funds to cover the damages. DMA realizes that it is the usual policy of the Claims Board to charge the agency for payment of claims and states that it is in no position to absorb any non-budgeted expenses at this time.

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.

21. Luis A. Nieves of Winnebago, Wisconsin claims \$855.46 for return of money taken for restitution by DOC. The claimant was an inmate at Supermax Correctional Institution in August 2001 when he fashioned a weapon out of the stem of his eyeglasses and injured himself with that weapon. The claimant alleges that he was mentally unstable at the time and that DOC did not provide him with adequate mental health services. The claimant was charged restitution by DOC for the cost of transporting him to UW hospital and his treatment there. The claimant states that this restitution is contrary to Wisconsin Administrative Code 316 (sic). He claims that only a judge can order this type of restitution. He further claims that his injuries could have been treated at the institution and did not warrant transport to UW hospital. He also alleges that no specially trained personnel were used during his transport. The claimant requests return of the \$855.46 that was taken from his account.

DOC recommends denial of this claim. The claimant's injuries were self-inflicted and his own actions caused DOC to incur additional expenses. DOC states that health services personnel at the prison assessed the claimant's injury and determined that he should be transported to the UW Hospital. DOC states that, because of the claimant's previous conduct, he had to be transported wearing an electronic monitoring device that required accompaniment by specially trained staff. DOC claims that it also incurred damages for the cost of the claimant's emergency room care and replacement of his glasses. DOC states that restitution was ordered pursuant to DOC 303.84(1)(k), Wis. Adm. Code because of the claimant's violation of the rules set forth in DOC 303.35, .45 and .58.,

Wis. Adm. Code. Finally, DOC points to the fact that these expenses were caused by the claimant's own actions 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.

22. Patricia Richards of Racine, Wisconsin claims \$200.45 for damages to an automobile parked at Kenosha Correctional Center. The claimant states that the rear windshield of her father's vehicle was smashed by a resident of the neighborhood. She states that she borrowed the car to get to work and that on January 24, 2002, when she returned to the vehicle, she discovered that someone had thrown a large piece of concrete through the rear window. She states that surveillance video of the parking lot shows a young man walking into the area, throwing the rock through the window and then running off. The claimant states that the day prior to this incident, several windows at the center were broken by a vandal. She states that she has paid for repairs to her father's vehicle and has no insurance coverage for this damage. She requests reimbursement of the cost of the repairs.

DOC recommends denial of this claim. DOC believes that the damage to the vehicle was a result of random vandalism. DOC states that the vehicle was not in DOC's care, custody or control and that the claimant does not allege negligence by any DOC agent, officer or employee. Finally, DOC does not believe that there are any equitable grounds to pay this claim. Vandalism is an unfortunate occurrence, which, due to its commonality, requires that individuals protect themselves by obtaining insurance. DOC recommends that the claimant pursue this claim with her insurer.

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.

23. Jerry V. Smith of Madison, Wisconsin claims \$131.87 for damage to his vehicle allegedly incurred in the DOR parking lot. The claimant, a DOR employee, states that there was an unmarked and uncapped rebar sticking up from the grass directly behind a parking stall in the DOR lot. Claimant claims that the rebar scratched his vehicle when he backed into the parking space. Claimant states that he applied for a parking permit over a year before the DOR building was completed and that he never received a copy of an application. He states that he was never informed that he should not back into parking stalls and that there are no signs in the parking lot stating the "no backing" policy. Claimant believes that the lack of signs violates Adm 1.04, Wis. Adm. Code, which requires DOA to post signs regulating parking at state office buildings. Claimant states that since this incident, all the rebar in the parking lot has been capped with a rubber orange cover. He further alleges that DOA was negligent in using rebar to mark for snowplows, when most companies use a rubber-coated antennae which would not damage vehicles. Claimant does not have insurance coverage for his damages and requests reimbursement of the cost to repair his vehicle.

DOA, which regulates the parking lot at the DOR building, recommends denial of this claim. DOA alleges that users of state building parking lots are encouraged not to back into stalls. DOA further claims that this information is stated on the back of the Parking Permit Application. DOA states that O'Brien Trucking, Inc., put the rebar alongside the curbs of the stalls in order to assist them when snowplowing.

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 Rothschild not participating.)*

24. Joseph Steier, Jr. and Margaret Lindstrom of Oconto, Wisconsin claims \$1,027.85 for damage to truck and batteries allegedly caused by DNR employees. The claimants land was being used by the DNR to store rocks for a project at a nearby stream. The claimants state that on August 8,

2001, claimant Lindstrom witnessed DNR personnel damage their truck by hitting the vehicle with a large boulder. Claimant Lindstrom states that she went out to inspect the damage and found that three batteries stored near the truck had also been run over and damaged. The claimants state that they were told that day by DNR personnel that DNR would cover the damages and that someone would contact them within several weeks. Claimants allege that no DNR employee ever contacted them and that they began calling and leaving messages at the DNR station in Oconto Falls. Claimants state that it took over three months before they finally got a response from DNR. Claimants state that State Risk Management denied payment of their claim in January 2002. They request \$800 for repair of their truck and \$227.85 for replacement of the damaged batteries.

DNR recommends partial payment of this claim. DNR acknowledges that while loading a boulder, a DNR employee dropped it onto the ground, where it hit the claimants' truck. However, DNR does not support reimbursement for the damaged batteries. DNR claims that claimant Lindstrom gave a statement to a DNR employee, which indicated that the batteries had been run over by Jim Francis, a private contractor working on the project. DNR states that damage to the batteries was unrelated to the dropped boulder and not the fault of any DNR employees. DNR recommends payment of \$768.78, the low bid for the truck repairs. Finally, DNR points to the fact that they could have recommended subtracting the cost of painting the vehicle's right front quarter panel, since it was unpainted at the time of the incident. However, DNR will not do so in recognition of the claimants' cooperation in allowing the state to use their land for this project. DNR recommends that payment of \$768.78 be made from s. 20.370(4)(ma), Stats.

The Board concludes the claim should be paid in the amount of \$1,027.85 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370 (4)(ma), Stats.

25. T & N Transfer, Inc., of Cobb, Wisconsin claims \$846.00 for damages allegedly incurred because of an error by DOT personnel. The claimant's employee, a semi driver, was stopped for a routine inspection in Iowa. The Iowa police officer checked the driver's license and was informed by the Wisconsin DOT that it was suspended. Based on this information, the officer took the driver "out of service." The claimant states that it had to incur additional expenses to send two drivers to Iowa, one to finish the delivery and one to bring the out of service driver back to Wisconsin. Because of the delay to finish the job, the claimant also lost another delivery job in the amount of \$450. Shortly after the incident, the claimant received a fax from DOT admitting that the driver's operating privileges had been suspended in error and apologizing for any inconvenience. The claimant requests reimbursement of the costs incurred because of the DOT error.

DOT recommends payment of this claim in the reduced amount of \$726.00. DOT has found negligence on the part of a DOT employee for failing to reinstate the driver's operating privileges in 1997. DOT states that it has verified with the claimant that they did not pay the \$120 in lost wages to the suspended driver and therefore recommends that the claim be reduced to \$726.00.

The Board concludes the claim should be paid in the amount of \$846.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation s. 20.395 (5)(cq), Stats.

The Board concludes:

1. The claims of the following claimants should be denied:

Jennifer McFarland
James Minniecheske
Michael and Helen Grimmenga
Carl Renikow

Waukesha School District
 Queen Wigham
 Karyn Behrens
 Brenda Brown
 Donald J. Titoni
 Jin-Yi Cai
 Gregory Dieckman
 Amy J. Georgeson
 Daniel Gonnering
 James Sampson (2 claims)
 Mary Snider
 Patrick Walsh
 Luis A. Nieves
 Patricia Richards
 Jerry V. Smith

2. Payment of the following amounts to the following claimants from the following appropriations is justified under s. 16.007, Stats:

John L. Stebbins	\$4,200.00	20.285 (1)(a)
Al Glish	\$2,500.00	20.410 (1)(a)
Andry Rasmussen & Sons, Inc.	\$4,703.00	20.143 (3)(de)
Joseph Steier Jr. & Margaret Lindstrom	\$1,027.85	20.370 (4)(ma)
T & N Transfer, Inc.	\$846.00	20.395 (5)(cq)

Dated at Madison, Wisconsin this 15th day of May 2002.



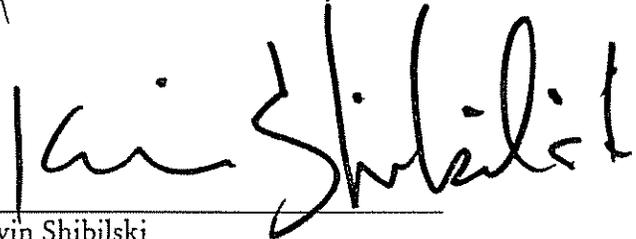
Alan Lee, Chair
 Representative of the Attorney General



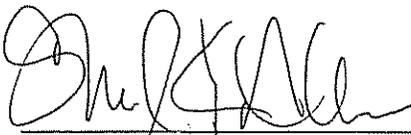
John E. Rothschild, Secretary
 Representative of the Secretary of Administration



Chad Taylor
 Representative of the Governor



Kevin Shibilski
 Senate Finance Committee



Sheryl Albers
 Assembly Finance Committee