

## 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 January 26, 2001, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Braeger Chevrolet	Department of Transportation	\$2,700.00
2. H. Joseph Slater	Department of Revenue	\$4,607.12
3. Thomas F. Bailey	Department of Revenue	\$21,900.00
4. Anthony Gray	Department of Revenue	\$7,318.24
5. Brian J. Friedman	University of Wisconsin	\$420.55
6. Burton A. Weisbrod	University of Wisconsin and Department of Employee Trust Funds	\$119,767.00
7. S.R. Spitz	University of Wisconsin	\$23,377.14
8. Jeral Khachi	Department of Workforce Development	\$33,625.00

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
9. Jay M. Johnson	Department of Natural Resources	\$118.29
10. Kim Bown	Department of Corrections	\$120.00
11. Alvernest Kennedy	Department of Revenue	\$565.00
12. Sandra C. Eselby	Department of Health and Family Services	\$613.32
13. David J. Devney	Department of Administration	\$350.00
14. Christopher J. Kratcha	Department of Natural Resources	\$1,086.75

In addition, the following claim, which was considered at a previous meeting, was considered and decided without hearing:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
15. Eleanor A. White	Department of Revenue	\$10,280.00

### The Board Finds:

1. Braeger Chevrolet of Milwaukee, WI claims \$2,700.00 for damages allegedly related to an incorrect WI vehicle title. The claimant acquired a 1993 GMC Suburban as a trade in vehicle for \$12,000. The claimant then sold that vehicle at a wholesale auction and received \$11,700 for the vehicle, after fees. The wholesaler who purchased the vehicle ran a check and discovered that the vehicle had a previous IL title marked as salvage. The claimant had to buy back the vehicle and get a proper WI title with salvage indicated. The claimant was then only able to sell the vehicle for \$9,000, incurring a loss of \$2,700.

The DOT recommends payment of this claim. Miguel Estrada purchased the 1993 GMC on 6/16/98, with an IL salvage title. Mr. Estrada subsequently applied for a WI title and did not note on his application that the vehicle should be titled as salvage. However, the DOT states that the title processor should have noticed the salvage brand on the IL title and carried it forward to the WI title. The DOT believes that Pennie Wix, the DOT employee who processed the title, was negligent for not carrying forward the salvage brand.

The Board concludes the claim should be paid in the amount of \$2,700.00 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.

2. H. Joseph Slater of Lake City, MN claims \$4,607.12 for income tax refunds for the years 1992, 1994 and 1995, which were withheld by the DOR to satisfy assessments for the years 1977-1985. The claimant states that he late filed his 1977-1985 returns in 1995. The claimant has a copy of a certified mail receipt dated 11/26/95 for 12 pages sent to E. Munson at the DOR. The claimant also has a copy of the signed, certified mail return receipt, showing that the returns were received by the DOR and a letter from E. Munson at the DOR dated several days after receipt of the certified mail, stating "(w)e have received your late filed 1977 through 1988 Wisconsin income tax returns." Despite this acknowledgement, the DOR withheld the claimant's 1992, 1994 and 1995 income tax returns to satisfy allegedly delinquent assessments for the years 1977-1985. The claimant states that he contacted the DOR and offered them the above evidence that he had indeed filed the returns in question. The claimant states that in March 2000, he received a letter from the DOR stating that the returns had never been received and that E. Munson "inadvertently listed having received late filed returns for tax years 1977 through 1988 when, in fact he meant 1986 through 1992." The claimant believes that this statement, issued by another auditor five years after Mr. Munson clearly stated he had received the returns, has no credible basis in fact.

DOR records show that the claimant has not filed 1977-1981 income tax returns. The DOR alleges that the claimant was incorrectly informed by E. Munson that DOR had received the 1977-1981 returns. The DOR states that it informed the claimant of the error in its March 2000 letter and that his refunds were held to satisfy the delinquent assessments for these years. DOR states that it has also issued an estimated assessment for 1996 that is now delinquent.

Based on additional DOR testimony at hearing, the Board concludes the claim should be paid in the reduced amount of \$1,702.50 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Revenue appropriation s. 20.566 (1)(a), Stats.

3. Thomas F. Bailey of Milwaukee, WI claims \$21,955.29+ for refund of an assessment made by the DOR. The claimant alleges that in 1989 the DOR took the position that civil service pension benefits for National Guard technicians were tax exempt. The DOR published this position in a newsletter, which it distributed to federal retirees in 1989. In 1995, the DOR reversed its position and mailed assessments to over 400 National Guard technicians for back taxes on pension benefits from 1989 to 1995, plus 12% interest. In August 1995, the claimant received an assessment for \$20,644.37 tax and interest on his pension for the years 1989-1993. The claimant paid DOR \$21,955.29 (the original assessment plus interest) in November 1995. The claimant states that shortly after the DOR's position reversal, over 400 retired National Guard Technicians protested and objected to the DOR's action. The claimant states that this protest was so clear and unequivocal that then Revenue Secretary Bugher held meetings with representatives of the Retired National Guard community to address the issue. The claimant believes that Secretary Bugher was put on notice that the Retired National Guard community as a whole objected to and protested this action. A "test case" was presented to the Wisconsin Tax Appeals Commission, which upheld DOR's position. WTAC's decision was appealed in Dane County Circuit Court in November 1999. The court affirmed that the pensions were taxable but found that some of the petitioners had relied on DOR's advice to their detriment and ruled that DOR was estopped from seeking assessments against those individuals for tax years 1989 and after. The claimant states that he contacted the DOR but was told that he did not qualify for refund of the taxes because he had not appealed the original assessment issued in 1995. The claimant believes that it is unconscionable for the DOR to refuse to refund his money and that it was grossly unfair of DOR to issue backdated assessments to begin with, when the retired technicians had relied on DOR's 1989 statement that their pensions were tax exempt. The claimant believes that it is clear that all the retired National Guard Technicians protested this overwhelming financial burden when it was placed upon them and that this protest was clearly conveyed to both Secretary Bugher and the State Legislature by leaders of the Retired National Guard community.

The DOR recommends denial of this claim. A notice of appeal rights accompanied the assessment sent to the claimant in August 1995. No notice of appeal or letter of objection was filed when the claimant paid the assessment. The last date the claimant could have timely filed a claim for refund of the assessment was January 19, 1996. In February 2000, the DOR offered a settlement to the named litigants in the WTAC appeal (the "test case"). The terms of the settlement provided that for the years 1989-1995 the DOR would withdraw assessments and pay timely, properly appealed refund claims. In March 2000, the DOR began to offer the same settlement to other individuals in similar situations as the named litigants, provided that the individuals had timely pending appeals or timely refund claims. Since the claimant did not appeal the original assessment for 1989-1993, DOR has no authority to issue the refund he is requesting and it is DOR's position that the assessment is final and conclusive.

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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. However, Representative Albers and Senator Shibilski have indicated that, despite the Board's decision, they will be introducing legislation that will provide for payment of this claim and other like claims.

4. Anthony Gray of Madison, WI claims \$7,318.24 for refund of monies garnished from his wages to satisfy estimated income tax assessments for 1994-1996. The claimant states that he did not live in WI until 1995 and that he therefore believes the 1994 assessment to be illegal. The claimant's wages were garnished from 7/99 through 8/00. The claimant states that these estimated assessments were incorrect and that he was actually due tax refunds for 1995 and 1996. The claimant further alleges that he was not properly notified of the assessments by certified mail. The claimant states that he was never told that funds would not be returned to him if the assessments were found to be unjustified. The claimant also believes that the two-year statute of limitation has not actually elapsed. The claimant points to the fact that his wages were not certified until 7/13/99. He feels that the two-year time limit should begin on that date, which would extend the deadline until 7/13/01. The claimant does not believe that the two-year statute of limitations applies to his case at all. He states that, according to the notice he received, the two-year limit applies to assessments that are paid in full without objection. He alleges that he did not pay these assessments voluntarily and that the total amount was never collected in full. Finally, the claimant states that he was involved in a serious car accident on 8/17/00, which caused him to miss an appointment with his accountant and has also caused him great financial difficulty.

The DOR states that it originally contacted the claimant after receiving from his employer a copy of his Wisconsin withholding exemption certificate in which he claimed 14 exemptions. The certificate was signed by the claimant and his current address was given. According to DOR records, a DOR auditor wrote the claimant in 7/97, requesting verification of his 14 exemptions. No reply was received. The DOR states that in 9/97, the auditor notified both the claimant and his employer by mail that the DOR was voiding the exemption claim based on the claimant's failure to respond. No reply was received. The DOR states that in December 1997, the auditor sent a letter to the claimant requesting filing of 1994-1996 income tax returns. No reply was received. Another request was sent in 2/98, without reply. The DOR alleges that all of the above correspondence was sent directly to the same address at which the claimant currently resides. DOR records further indicate that in 5/98, the DOR issued estimated assessments for the delinquent tax years. In 7/98, DOR sent the claimant a request to file 1994-1997 income tax returns. The claimant called DOR and indicated that he was not a resident in 1994. He promised to file the required returns by 11/1/98. DOR records indicate that from 9/98-4/99, the claimant periodically contacted DOR and requested three extensions to file the returns, which he promised to do by 4/30/99. On 6/18/99 DOR initiated certification of the claimant's wages. The promised returns were filed on 8/24/00. The DOR states that there is no requirement that the claimant be served by certified mail. The DOR believes that all evidence indicates that he received the correspondence and assessments, since his address has not changed since the DOR first contacted him.

in 1997 and the claimant has made no allegations that he moved or was absent for extended periods of 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

5. Brian J. Friedman of Madison, WI claims \$420.55 for dental injuries allegedly caused by the actions of a UW-Madison Police Officer. The claimant alleges that in 1975, while he was walking on N. Lake Steet, he was detained by a UW Police Officer and taken to the UW Police office on Mills Street. He alleges that he was questioned at gunpoint and pushed by an officer, which caused him to fall and chip a tooth. He requests reimbursement for his dental bills allegedly incurred because of this injury.

The UW is unable to locate any records showing that the claimant was involved with the UW-Madison Police in the year in question. Furthermore, the claimant has presented no information documenting the cause of the dental work that the claimant underwent in 1988, over 10 years after the alleged injury. Because of these reasons and given the length of time that has passed since the alleged injury, the UW does not support 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

6. Burton A. Weisbrod of Glencoe, IL claims \$119,767.00 for the value of sick leave credits allegedly lost due to an error by the UW. The claimant was a professor at the UW-Madison. The claimant was on a leave of absence from 8/27/90 through 5/26/91 (the spring semester). He was enrolled in a state insurance plan until 7/31/90, and was covered by other insurance while he was on leave. At the end of his leave, he submitted a letter to the UW indicating that he would be retiring on 6/30/91. He alleges that the UW erred and notified ETF that his retirement date was 5/26/91 (the last day of the spring semester). The UW admitted this error in their letter to the claimant dated 4/2/97. The claimant states that he contacted ETF in June of 1991, regarding his retirement annuity. He states that ETF never discussed the issue of sick leave credits with him because, based on the incorrect information provided by the UW, they believed that he was already retired. In order to convert his sick leave balance to insurance premium credits, the claimant would have had to be insured under a state plan at the time of his retirement. The claimant states that if ETF had informed him of this requirement, there would have still been time to re-enroll with his state insurance before his retirement date of June 30. It is the claimant's understanding that ETF routinely requests sick leave balances from the employing agency of a retiring employee and discusses the sick leave conversion policy with employees when they call to discuss their retirement. The claimant believes that that it was because of the UW's error that ETF never requested his sick leave balance and did not discuss the sick leave conversion policy with him. He states that, had he known about the option to convert his sick leave, he would have reinstated his state insurance in order to meet the requirements of the conversion rules. The claimant states that his sick leave would have been worth \$119,767 towards health insurance premiums and he requests payment of that amount.

The University of Wisconsin System recommends payment of this claim from funds of the Department of Employee Trust Funds. At the conclusion of his leave of absence, the claimant was eligible to return to employment with the UW and to re-enroll with a state health insurance provider prior to his retirement. Had he done so, he would have become eligible for the sick leave conversion program. The UW believes that when he sought pre-retirement advice from ETF, he was not properly counseled about the availability of the sick leave conversion benefit, or the requirements necessary to be eligible for it. The UW believes that the claimant was not properly advised about the sick leave benefit by ETF. The sick leave conversion program is funded by payments made to ETF by state agencies and thus the funds to support this claimant's benefit have already been paid to ETF.

Finally, the UW states that the claimant's decision to retire was made, at least in part, to assist the UW and his action did result in relieving his department of a budget contingency. Given the circumstances, the UW believes it would be inappropriate to penalize the claimant by denying him the sick leave conversion benefit.

The Board concludes the claim should be paid in the reduced amount of \$5,000.00 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. The Board further concludes that this payment is not considered full and final settlement of this claim should the claimant wish to pursue further avenues of relief.

7. S.R. and James Spitz of Clam Lake, WI claim \$23,377.14 for medical bills, disability, pain and suffering and loss of companionship allegedly related to an accident while Frances Spitz was a patient at UW Hospital. The claimants allege that in March 1996 Frances Spitz slipped and fell in a hallway after wandering unattended from her bed. The fall resulted in a broken hip, which required surgery and extensive follow up care. The claimants state that Ms. Spitz has a history of being unsteady on her feet as well as a history of and wandering. The claimants state that the University of Wisconsin Hospital staff was aware of Ms. Spitz's history because she had wandered on at least six previous admissions. The claimants also state that UW Hospital had them sign two releases authorizing them to restrain Ms. Spitz for her own protection because the UW was aware that she had a tendency to wander off. The claimant states that because of her history, Mrs. Spitz's bed rails were required to be in the "up" position, so that she could not get out of bed while unattended. The claimants believe that UW Hospital personnel were negligent by not putting up her bed rails. The claimants attempted to file a lawsuit against the University of Wisconsin Hospital, but were unable to obtain the names of the hospital staff on duty, because the accident happened during a shift change. Because the claimants did not name a specific state employee, their Notice of Claim was denied by the Attorney General's Office. The claimants have submitted medical bills totaling \$23,377.14 for Ms. Spitz's medical care. They also request awards for pain and suffering, permanent disability and loss of companionship in the amount of \$350,000.

A Notice of Claim filed in this matter in 1977 was investigated by the Department of Justice, which denied the claim based on failure to comply with s. 893.82(3), Stats., and lack of any basis for a finding of liability on the part of any state employee. The UW recommends denial of this claim since there is nothing in the circumstances presented that indicate there was negligence on the part of a state employee and there is no equitable basis for 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

8. Jeral Khachi of Turlock, CA claims \$33,625.00 for expenses allegedly related to his incarceration on a charge of failure to pay child support. The claimant lives in CA. His ex-wife, the custodial parent, resides in WI. The claimant states that at the time he was detained, he was gainfully employed and was making payments to his ex-wife. The claimant was picked up in May 1999 in CA and was incarcerated for over 20 days. The claimant states that he contacted his sister and had her obtain copies of the money orders sent to his ex-wife as proof that he had been making payments. The claimant states that this documentation was submitted to the Outagamie County Child Support Agency and the District Attorney's Office four days after his arrest. The claimant states that the day he was arrested was his first day at a new job, which he lost because of the arrest. The claimant was extradited to WI and incarcerated for four months before the charges were dropped. The claimant states that the DWD should have contacted him first to clear up the error before resorting to arresting him. He requests reimbursement as follows: 103 days lost work time-\$16,480. 43 days lost overtime-\$12,900. Towing and impounding of his vehicle on the day of his arrest-\$110. Air fare, bus fare and

lodging for traveling to and from WI for hearings-\$1347.46, \$170 and \$467.84. State of WI extradition fees-\$2000. Public Defender fees-\$150.

DWD alleges that the claimant's ex-wife never informed the Outagamie County Child Support Agency that the claimant was making sporadic payments by money order directly to her. The DWD's computer system showed a large arrearage and the claimant's ex-wife signed an affidavit that the claimant had not been paying child support. Based on that affidavit, the case was referred to the DA's office for criminal prosecution. The claimant was picked up in May 1999 and arraigned in July 1999. He requested a trial, which was scheduled for August 24, 1999. The child support agency subsequently received verification that the claimant had been making direct payments. The criminal nonsupport provisions of the statutes require failure to pay for at least one continuous 120-day period. Because the claimant had not failed to pay for 120-days, the charges were dropped and the case dismissed. The DWD believes that there was no mistake in handling this case based on the information it received and that the state should not be held responsible for the claimant's expenses.

The Board believes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and that this claim is not one for which the state is legally liable, however, the Board concludes that the claim should be paid in the reduced amount of \$2,000.00 based on equitable principles. The further Board concludes, under authority of s. 16.007 (6m), Stats., that payment should be made from the Department of Workforce Development appropriation s. 20.445 (3)(a), Stats. The Board further suggests that the claimant pursue a claim against Outagamie County.

9. Jay M. Johnson of Baraboo, WI claims \$118.29 for the cost of one tire. The claimant is employed as a park facilities repair worker at Devil's Lake State Park. On June 1, 2000, there were severe flooding conditions at the park. The claimant states that because of the extremely high water, which would have flooded out a regular vehicle, he used his truck to transport park rangers to areas where park users needed assistance. The claimant states that while performing this service, he ran over a sharp rock that had washed into the roadway. The rock tore a 4-inch hole in his tire, which had to be replaced. He does not have insurance coverage for this damage and requests reimbursement for the cost of one replacement tire.

The DNR states that the claimant's truck was being used during this emergency situation because a comparable state-owned vehicle was not available. The claimant's supervisor was with him at the time. Under these circumstances, the DNR believes that the claimant's truck was being used for a legitimate state purpose. Furthermore, the DNR does not believe that the claimant was in any way negligent in this situation. The DNR states that the claimant informed his supervisor that the tire which was replaced had approximately 20,000 miles on it at the time it was damaged. Therefore, the DNR recommends payment of this claim in the reduced amount of \$96.37

The Board concludes the claim should be paid in the amount of \$118.29 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the from Department of Natural Resources appropriation s. 20.370 (1)(mu), Stats.

10. Kim Bown of Beloit, WI claims \$120.00 for vehicle damage allegedly related to her employment as a Probation and Parole Agent for the DOC. The claimant states that she used a state owned vehicle to perform home visits on September 18 and 19, 2000. While she was out on these home visits, her personal vehicle was parked in the parking lot at her office. The claimant states that when she returned on the morning of September 19, she discovered that the windshield on her personal vehicle was smashed. The claimant's insurance covered \$380.71 of the damage and she requests reimbursement for her \$120 deductible.

The DOC believes that the claimant incurred these expenses only because of her employment as a Probation and Parole Agent. The DOC believes that the residents in the neighborhood where she left her car more likely than not knew that the owner of the car was a law enforcement agent and that her vehicle was intentionally damaged. The DOC does not believe that Probation and Parole Agents should bear the financial burden of expenses that they incur solely and directly because they work

with criminals for the benefit of the people of this state. The DOC believes that requiring agents to pay these expenses would be unfair and would undermine agent morale.

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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Alvernest Kennedy of Milwaukee, WI claims \$2,799.00 for return of tax refunds intercepted to satisfy estimated assessments for business taxes from 1990 to 1995. The claimant states that he opened a business in 1990. He applied for a seller's permit but claims that he never used the permit and closed the business shortly after it opened. The claimant alleges that he was never told that he had to contact the DOR to discontinue his seller's permit. He states that he filed bankruptcy in 1997 and requests return of his income tax refunds intercepted by DOR.

The Department states that it filed estimated assessments against the claimant because he failed to file any business taxes from the years 1990 to 1995. The assessments became delinquent and the DOR intercepted the claimant's personal income tax refunds for 1995 through 1998 and his sales tax rebate check in January of 2000. The DOR states that it was not until February 1, 2000 that the claimant informed them that he had no liability because the business had never operated. The DOR alleges that when the claimant registered with the state and received his seller's permit, he was informed of his obligation to file a timely return even if there was no tax to report. The DOR states that the sales and use tax return contains a similar notice. Finally, the DOR points to the fact that the seller's permit indicates that the permit should be returned to the DOR if the seller permanently discontinues sales of taxable property and services. The claimant did not follow any of these requirements. The DOR states that section 71.75(5), Stats., prohibits them from refunding the amount collected on the original assessments because the claimant did not claim a refund within the prescribed two-year period. The DOR further states that the claimant's \$565 1999 income tax refund was withheld to satisfy a debt owed by the claimant to the Department of Workforce Development, not for payment of any DOR assessments.

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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

12. Sandra C. Eselby of Oshkosh, WI claims \$613.32 for reimbursement of a Medicaid deductible, which she allegedly paid because of a DHFS error. The claimant is permanently disabled as a result of a stroke and requires 24-hour care. The claimant states that she was found eligible for Medical Assistance for a few months until she began receiving Social Security Disability benefits. In June 1999, she applied for M.A. benefits, specifically for a Community Options Program-Waiver (COP-waiver) with a Sheboygan County social worker. The claimant states that over a month passed and she did not hear from Sheboygan County so she contacted them again because of her great need for health care assistance. The claimant states that she completed an application for SSI related MA on July 23, 1999, with a Sheboygan County Economic Support worker (ESS worker). The claimant alleges that the ESS worker was not aware of the claimant's COP-waiver application. At a later hearing, the ESS worker admitted that she did not detect the COP-waiver application even though she should have. Because of this error, the ESS worker told the claimant that she would need to prepay a Medicaid deductible in the amount of \$613.23 or she would not be covered. The claimant paid the deductible on July 30, 1999. On August 9, 1999, the DHFS Division of Supportive Living informed Sheboygan County that the claimant was eligible for the COP-waiver benefits retroactive to her July 23, 1999 application. Furthermore, DHFS stated that because of the claimant's low income, she had no COP-waiver cost share and would not have to prepay any money to the state or county in order to qualify for MA benefits. In January 2000, the Division of Hearings and Appeals found that, although an error was made, the deductible payment could not be refunded to the claimant because there was no legal mechanism through which to do so.

The Department of Health and Family Services recommends payment of this claim. The DHFS agrees with the facts as presented in the claimant's statement of circumstances. This forum appears to be the only way to reimburse the claimant for her loss and the Department believes that she should be paid on equitable grounds.

The Board concludes the claim should be paid in the amount of \$612.32 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Health and Family Services appropriation s. 20.435 (6)(a), Stats. The Board further suggests that the Department of Health and Family Services should, to whatever extent possible, attempt to recover this money from Sheboygan County.

13. David J. Devney of Madison, WI claims \$350.00 for damage to suit allegedly incurred when he slipped and fell outside the DPI on April 11, 2000. The claimant states that he was entering the building at 10:00 AM, carrying a 30 pound printer for installation at DPI, when he slipped on ice and snow that was on the walk. The claimant alleges that the area had not been salted or sanded after early morning snow. The claimant states that he jarred his shoulder, cut his knee and bruised his elbow. He states that he tore a three-inch hole in the knee of his pants. He claims that he has contacted several companies in an attempt to have the suit repaired, however, he was told that the hole was too large to fix. The claimant also states that this particular suit is no longer being made in the same color, so it is not possible to find new pants to match the jacket. The claimant paid \$299 for the suit in 1998 and requests \$350 to account for a current higher replacement cost. The claimant believes that the building maintenance crew was negligent for not clearing the walk.

This incident was investigated on the date of occurrence. Although snow was not removed prior to the claimant's entrance into the building, the DOA believes that the claimant should have been aware of the slippery conditions. DOA believes that the claimant's decision to carry a boxed printer into the building through the snow contributed to his fall as it obscured his vision and ability to balance while walking into the building. DOA also states that there are two parking stalls available for the public to use for drop off, which are located in the parking level beneath the building. The claimant has not indicated that he tried to use these or that they were full and unusable. There were no other reports of slips or falls on this date for the Central Madison Complex.

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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

14. Christopher J. Kratcha of Marshfield, WI claims \$1,086.75 reimbursement for stolen personal items not covered by his insurance policy. The claimant is employed by the DNR as a Conservation Warden trainee. The claimant states that he is required to travel around the state to attend various training sessions as part of his job duties. The claimant states that in August 2000 he was scheduled to attend a weeklong training session in Sturgeon Bay. The claimant states that he drove a state owned vehicle to his brother's home in Menasha the night before the training, in order to avoid a long drive to Sturgeon Bay the morning the training session began. The claimant alleges that, because he is in training and is frequently away from home for extended periods of time, he brings with him a number of personal items. The claimant states that his personal items were stolen from the state owned vehicle while it was parked in Menasha. The claimant requests reimbursement for items not covered by his insurance: 76 compact discs with a replacement value of \$1,086.75.

The DNR understands that the Claims Board does not ordinarily award payment for personal items lost by state employees, however the DNR believes there are special circumstances in this case. The DNR states that Conservation Warden trainees are required to live away from their homes for extended periods of time during their year-long initial training period. The DNR believes that it is therefore not unreasonable for trainees to travel with personal items not normally included in business travel. The DNR notes that the items were stolen without forced entry into the state patrol truck. According to the police report, the claimant locked both doors but left a window on the truck open

approximately one inch. The DNR believes that the claimant therefore contributed to the loss and recommends payment of 50% of the claim: \$544.00.

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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

15. Eleanor A. White of Stoughton, WI claims \$10,280.00 for refund of an assessment made by the DOR. The claimant alleges that in 1989 the DOR took the position that civil service pension benefits for National Guard technicians were tax exempt. The DOR published this position in a newsletter, which it distributed to federal retirees in 1989. In 1995, the DOR reversed its position and mailed assessments to over 400 National Guard technicians for back taxes on pension benefits from 1989 to 1995, plus 12% interest. In February 1996, the claimant received an assessment for \$10,280 tax and interest on her husband's pension for the years 1989-1994. She paid the assessment in full. She states that she then began getting notifications about an attorney, Mr. Eugene Duffy, who was representing the National Guardsmen and fighting the DOR position reversal and backdated assessments. The newsletters and updates indicated the Mr. Duffy was representing all retired National Guard technicians. A "test case" was presented to the Wisconsin Tax Appeals Commission, which upheld DOR's position. WTAC's decision was appealed in Dane County Circuit Court in November 1999. The court affirmed that the pensions were taxable but found that some of the petitioners had relied on DOR's advice to their detriment and ruled that DOR was estopped from seeking assessments against those individuals for tax years 1989 and after. The claimant states that in early 2000, she received a notice from the DOR notifying her of a National Guard Technician Settlement. She contacted the DOR but was told that she did not qualify for refund of the 1989-1994 taxes, as provided for in the settlement, because she had not appealed the original assessment issued in 1996. The claimant believes that it is unconscionable for the DOR to refuse to refund her money and that it was grossly unfair of DOR to issue backdated assessments to begin with, when the retired technicians had relied on DOR's 1989 statement that their pensions were tax exempt. Because she received newsletters updating her on the legal fight with DOR she believed that she was included in any resulting victory and had no reason to believe that her failure to originally appeal the assessment would cause her disqualification from the settlement agreement.

The DOR recommends denial of this claim. A notice of appeal rights accompanied the assessment sent to the claimant in February 1996. No notice of appeal or letter of objection was filed when the claimant paid the assessment. The last date the claimant could have timely filed a claim for refund of the assessment was February 26, 1998. In February 2000, the DOR offered a settlement to the named litigants in the WTAC appeal (the "test case"). The terms of the settlement provided that for the years 1989-1995 the DOR would withdraw assessments and pay timely, properly appealed refund claims. In March 2000, the DOR began to offer the same settlement to other individuals in similar situations as the named litigants, provided that the individuals had timely pending appeals or timely refund claims. The DOR did send a \$183.04 settlement to the claimant for the year 1995, since that year was open to refund under the statutes at the time of first contact. Since the claimant did not appeal the original assessment for 1989-1994, DOR has no authority to issue the refund she is requesting and it is DOR's position that the assessment is final and conclusive.

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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. However, Representative Albers and Senator Shibilski have indicated that, despite the Board's decision, they will be introducing legislation that will provide for payment of this claim and other like claims.

The Board concludes:

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

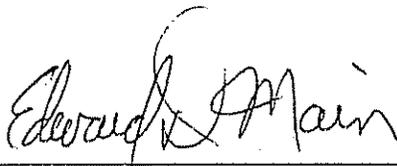
- Thomas F. Bailey
- Anthony Gray
- Brian J. Friedman
- S.R. and James Spitz
- Kim Bown
- Alvernest Kennedy
- David J. Devney
- Christopher J. Kratcha
- Eleanor A. White

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

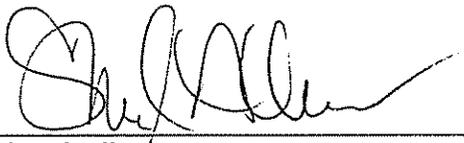
Braeger Chevrolet	\$2,700.00
H. Joseph Slater	\$1,702.50
Burton A. Weisbrod	\$5,000.00
Jeral Khachi	\$2,000.00
Jay M. Johnson	\$118.29
Sandra C. Eselby	\$613.32

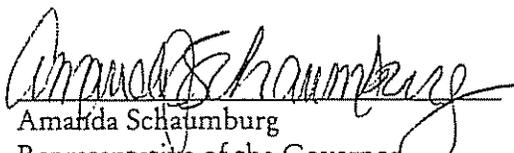
Dated at Madison, Wisconsin this 12<sup>TH</sup> day of February 2001.

  
 Alan Lee, Chair  
 Representative of the Attorney General

  
 Edward D. Main, Secretary  
 Representative of the Secretary of Administration

  
 Kevin Shibilski  
 Senate Finance Committee

  
 Sheryl Albers  
 Assembly Finance Committee

  
 Amanda Schaumburg  
 Representative of the Governor