

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings in the State Capitol, Room 416 North, Madison, Wisconsin on December 9, 1998, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. William & Cynthia Haack	Natural Resources	\$5,413.75
2. Paul G. Roehrig	Natural Resources	\$11,903.03
3. Lonie Wise	Corrections	\$500.00
4. William Niebuhr	Revenue	\$7,947.85
5. Mary Sawatske	Revenue	\$1,623.81
6. Thomas Wall	Revenue	\$2,546.62
7. Marcus Gumz	Natural Resources	\$103,512,500

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
8. Cletus Alsteen	Natural Resources	\$185.00
9. Dale Breggemen	Corrections	\$250.00
10. John P. Cejka	Corrections	\$1,140.07
11. David L. Canedy	Corrections	\$375.25
12. Steven E. Janecek	Revenue	\$7,497.83
13. Michael D. Vogtman	Revenue	\$2,926.77
14. Ronald D. Retrum	University of Wisconsin	\$229.40
15. Laurence Marton	University of Wisconsin	\$6,109,044.10

In addition, the following claims, presented at a previous hearing, were considered and decided:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
16. Jan Nowlen & Richard Martin	Revenue	\$9,556.69
17. Alan & Marlene Sieker	Agriculture, Trade & Consumer Protection	\$12,600.00

The Board Finds:

1. William and Cynthia Haack of Mt. Horeb, Wisconsin claim \$5,413.75 for the value of an injured horse and veterinary bills. The DNR has an easement privilege on the claimants' land. The claimants state that they have been trying to get the Department to fix and complete the fencing along the easement for two years. They claim that the fence is in a general state of disrepair and that a portion of the fence came down several years ago when a large tree on the DNR easement fell over. They state that barbed wire from the DNR fence was strewn about in the pasture near the tree, but that they were unaware of this because the wire was hidden in the tall marsh grasses. They allege that in 1997, one of their horses got tangled in the barbed wire from the DNR fence and was seriously injured. Because of its injuries, the horse is not able to bear weight and can never be ridden and it is also doubtful that the animal will be able to be bred. The horse is a rare, Rocky Mountain breed and was valued at \$4,000 at the time of her injury. The claimants state that, contrary to the DNR's assertions,

they never relocated any of their fencing; that their horse was injured in barbed wire from the downed DNR fence, not by the temporary wire mesh fence referred to in the DNR response, which the claimants erected after the horse's injury. They further state that the DNR fencing was not installed "several" years ago, but 32 years ago, after the easement was granted. The claimants allege that despite their repeated complaints to the DNR, the entire easement has not been maintained. The claimants further allege that in October 1998 local DNR employes contacted them and stated that they may have been wrong about the fence. DNR personnel came to the claimants' farm and inspected the area where the horse was injured. They agreed to fix the fence in that area and also took measurements of the unfenced area so that the fence could be completed. The claimants believe the DNR was negligent in not maintaining the easement in general and the fencing in particular. The DNR recommends denial of this claim. The DNR believes that the claimants relocated their fencing so that it no longer connected with the DNR fence and that prior to pasturing the horse in that area, someone other than the Department installed a temporary wire mesh fence to connect the claimants' relocated fence with the DNR fence. According to the Department's information, the horse became entangled in that portion of the fence, which was presumably erected by the claimants. The Department regrets the unfortunate accident, however it does not believe that Department personnel were negligent or that the claim should be paid on equitable grounds. 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 Department of Natural Resources appropriation s. 20.370 (4)(mu), Stats.

2. Paul G. Roehrig of New Glarus, Wisconsin claims \$11,903.03 for payment of attorney's fees related to a defamation lawsuit. In December 1996, Conservation Wardens from the DNR arrived at the claimant's home with a search warrant. The DNR had received a phone tip from Kevin Ward, who stated that he had personally observed the claimant engage in illegal hunting activity. The search produced no evidence to support Mr. Ward's allegations and no charges were filed against the claimant. The claimant states that he filed the lawsuit against Mr. Ward because his business reputation in the community was damaged by the poaching rumors. The suit was settled and Mr. Ward signed a statement that he was mistaken about his allegations. The claimant states he did not request attorney's fees from Mr. Ward in the settlement because it was clear that Ward had no financial means to pay them. The claimant believes that the DNR did not conduct a timely and thorough follow-up investigation, which would have helped clear his name and protect his business reputation. The claimant states that there were a number of inconsistencies in Mr. Ward's accusations, which would have been uncovered by simply questioning the individuals with whom he claimed to be. The claimant further states that DNR Wardens were rude both during and after the search, despite his cooperation. The Department of Natural Resources recommends denial of this claim. The Department notes that at their May 14, 1998 meeting, the Claims Board denied Mr. Ward's claim for reimbursement of his attorney's fees related to this same lawsuit. In response to Mr. Ward's hotline tip, Conservation Warden Jill Schartner interviewed Mr. Ward, who appeared to her to be credible. She then conferred with her supervisor, contacted the Green County District Attorney's Office and obtained a search warrant from the Green County Circuit Court. Therefore, it appears that both the District Attorney and the Court also believed that it was reasonable to conduct a search based on Mr. Ward's statements. The search of the claimant's property failed to reveal corroborating evidence upon which to base a prosecution, therefore, the DNR believes that the claimant had no need to incur expenses to defend himself against prosecution. All of the claimant's expenses were incurred after the search and appear to be in connection with his civil action filed against Mr. Ward. The claimant chose not to pursue that action and agreed to its dismissal without payment of costs or damages, therefore, the DNR does not believe the state should be held responsible for those costs. 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 Department of Natural Resources appropriation s. 20.370 (3)(mu), Stats. Furthermore, the Board encourages the Department of Natural Resources to send a letter to the claimant reassuring him that he is no longer a suspect in this incident, that the Department regrets not coming to that conclusion sooner and that the Department appreciates the claimant's cooperation. The Board also strongly urges the Department to consider changes in the chain of command for wardens and improve warden training in the proper methods of conducting timely and appropriate follow-up investigations.

3. Lonie L. Wise of Columbus, Wisconsin claims \$500.00 for vehicle damage related to an accident on October 27, 1998. The claimant is employed by the Department of Corrections. Her duties include sign installation and require her to travel extensively. The claimant was working on an exterior sign installation, when the installation crew had problems removing the old sign faces. They needed piano wire to slide behind the old sign to remove it but they did not have any on site. The claimant was leaving for training in Cincinnati the next morning, so in order to expedite completion of the sign installation, she returned to Madison to purchase piano wire. While she was stopped at an intersection she was rear-ended. The claimant states that the other driver motioned for her to pull over but that when she did so, he sped away and she was not able to get his license plate number. The claimant states that she used to drive an assigned state vehicle, a Ford Aerostar extended van, however, this vehicle was rear-wheel drive and extremely difficult to handle in windy or winter conditions. She alleges that she asked for a front-wheel drive vehicle, but was told that she could not turn in the Aerostar until she had put more miles on it. She alleges that due to safety concerns, she began driving her own personal vehicle. The claimant requests reimbursement for her insurance deductible. The Department of Corrections recommends denial of this claim. Although the claimant's truck was being used to drive to a store to purchase material to complete a state work project, the DOC believes that this connection with the Department's business is too remote to justify requiring them to reimburse the claimant. The Department does not believe the damages that the claimant suffered in this incident are directly related to her employment. The Board concludes the claim should be paid in the reduced amount of \$250.00 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. William R. Niebuhr of Kenosha, Wisconsin claims \$7,947.85 for refund of overpayment of 1992, 1993, 1994 and 1995 income taxes. The claimant states that he was suffering from undiagnosed, severe clinical depression, which caused him to neglect many of his responsibilities both at work and at home. The claimant alleges that it was this condition that caused him to neglect filing his income taxes. He states that his depression caused him to avoid opening his mail, which is why he did not respond to letters from the Department of Revenue. The DOR began garnishing his wages in 1995. In May 1997, the claimant was diagnosed with severe clinical depression and began treatment. The claimant filed his 1992-1995 income taxes on January 8, 1998. The claimant requests refund of his \$7,947.85 overpayment due to the unusual medical circumstances that led him to neglect his taxes. The Department of Revenue denied the claimant's request for refund because of the two-year statute of limitations provided in section 71.75(5), Stats. However, the DOR is providing the facts of the case to the Claims Board, should they decide that there are mitigating circumstances related to the claimant's health. On November 21, 1994, the DOR issued an estimated assessment for \$6,914.00 to the claimant for failing to file his 1992 income tax return. On April 11, 1995, a notice of hearing was sent to the claimant, who contacted the DOR by telephone and promised to file the return. On November 17, 1995, a wage attachment was issued to the claimant's employer for 15% of his gross wages. On August 26, 1996, the DOR issued an estimated assessment for \$7,518.00 to the claimant for failing to file his 1993 income tax return. On February 5, 1997, the wage attachment was increased to 25% to include

the 1993 assessment. On April 2, 1997, the claimant contacted the DOR to discuss his tax problems. DOR states that he was told that no release of the wage action would be made until his returns were filed and that the two-year statute of limitations was up for his 1992 return. On May 15, 1997, the claimant again contacted the Department and requested federal tax forms, which were mailed to him. On September 14, 1997, the DOR issued an estimated assessment for \$14,326.00 for failing to file 1994 and 1995 returns. On January 12, 1998, the Department received the claimant's 1992 through 1996 income tax returns. All of the late returns showed refunds. The Department released its wage attachment and began issuing refunds to the claimant as allowed by statute. A total of \$7,738.49 could not be refunded to the claimant because of the two-year statute of limitations. 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 Claims Board appropriation s. 20.505 (4)(d), Stats.

5. Mary Sawatske of Mukwonago, Wisconsin claims \$2,877.96 for refund of overpayment of 1992 income taxes. The claimant states that she did file a 1992 income tax return but that her records were lost in a house fire. She was contacted by the DOR in 1995 requesting the return. The claimant did not have records to confirm her employer and wages in 1992. She claims she contacted the IRS, only to be told that they were also unable to retrieve those records. In 1995, the DOR began garnishing her wages. In the fall of 1997, she consulted an accountant, Ms. Gonwa, who contacted the DOR and asked that they pull the claimant's 1991 and 1993 returns, to help determine where the claimant worked in 1992. In January 1998 Ms. Gonwa again contacted the DOR to request copies of the claimant's 1991 and 1993 tax returns. The DOR agent stated that he would order the files. Ms. Gonwa claims that she contacted the DOR agent several times and was told he did not yet have the files. In March, the claimant states that she contacted the agent, only to be told that he had closed out the file. Ms. Gonwa contacted the agent and asked why he had not sent the requested returns and he allegedly told her that he had called the claimant and given her the information. Ms. Gonwa again requested the information but the agent said he no longer had the files. She states that she asked him why he had not sent the information to her, since she had power of attorney and that he had no answer. Ms. Gonwa contacted the claimant, who stated that the agent had never contacted her with the requested information. Ms. Gonwa was finally able to get the claimant's gross wages for 1992 from the Social Security Administration. The filed return resulted in no tax liability. Ms. Gonwa states that the revenue supervisor, Linda Zepezauer, contacted her and suggested that the claimant file a claim with the Claims Board and that she felt that the DOR agent might not have handled the situation correctly. Ms. Gonwa also states that Ms. Zepezauer apologized for the agent's rudeness and stated that she felt that the claimant should get her money back due to the circumstances. The Department of Revenue recommends denial of this claim. For the tax year 1991, the claimant filed as married filing separately. She incurred a delinquent tax liability of \$623.34. She was unresponsive to the DOR's attempts to resolve this delinquency. In 1992, the claimant's husband filed an income tax return as married filing separately; however, the Department states that the claimant did not file a 1992 return. In 1995, the DOR issued an estimated assessment and began garnishing the claimant's wages for both her 1992 estimated liability and her 1991 liability. The DOR claims that their first contact with the claimant was when her accountant contacted the DOR agent in November 1997, which was already past the two-year statute of limitations imposed by section 71.75(5), Stats. The revenue agent states that he informed Ms. Gonwa of the two-year statute of limitations during this conversation. The revenue agent claims he retrieved the requested information and that he conveyed it directly to the claimant in response to a phone call from her. The claimant filed her 1992 tax return in March 1998. The DOR's records indicate that the claimant's overpayment totaled \$1,623.81. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes 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. Thomas J. Wall of Fox Lake, Illinois claims \$2,546.62 for refund of overpayment of taxes caused by his failure to submit an income tax return based on the sale of Wisconsin property in 1991. (The claimant had no 1991 wages in Wisconsin.) The claimant states that he was seriously ill beginning in March 1992 and was completely disabled and unable to work for several years. Because he was ill and in and out of various hospitals, he overlooked filing the form. The claimant alleges that the first contact he had with the Department of Revenue was in the form of a copy of a letter dated 9/12/97 instructing his employer to begin garnishing his wages. This letter was not sent to the claimant's home address, but instead to a California address where his wife had previously resided during a temporary consulting assignment. The claimant states that as soon as he received the notice he began taking action to gather together the information he needed to submit the return. This was completed on January 17, 1998. The total amount withheld from the claimant between September 12, 1997, and January 17, 1998, was \$2,625. The actual amount of taxes due the state was \$78.38. In view of the fact that serious illness was a contributing factor to his failure to file the return in a timely manner, the claimant requests a refund of his overpayment of \$2,546.62. The Department of Revenue recommends denial of this claim. The claimant failed to file an income tax return for 1991, based on the sale of Wisconsin property. An estimated assessment was issued on February 20, 1995. The amount collected through wage certification in 1997 and 1998 was \$2,625.00. The actual return was submitted in January 1998. Section 71.75(5), Stats., prohibits the DOR from refunding the overpayment since no refund was claimed within the prescribed two-year statute of limitations. The Board concludes the claim should be paid in the reduced amount of \$1,300.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Claims Board appropriation s. 20.505 (4)(d), Stats.

7. Marcus Gumz of Baraboo, Wisconsin claims \$103,512,500.00 for damages related to alleged harassment by employees of the Department of Natural Resources dating back to 1962. The claimant alleges numerous incidents since 1962. Among his allegations: that the DNR pressured him for permission to canoe in the drainage ditches on his farm; that the DNR flooded his land by authorizing the opening of a dam; that wardens came on to his farm, intimidated his family and assaulted him, causing severe shock and trauma; that wardens illegally removed spray contents from his crop dusting plane; and that the DNR's actions caused his lenders to foreclose on his farm. The claimant also states that on March 3, 1981, eleven armed DNR wardens came onto his farm. He claims that the agents assaulted him, arrested him with an illegal warrant, denied him bail for 2 hours, and gave him coffee and water that made him ill. The claimant states that he almost died from whatever the wardens gave him to drink and that his health has never fully recovered. He also alleges that this incident triggered the rapid deterioration of his wife's health and led to her death in 1988. He requests reimbursement for his damages as follows: Various damages related to actions of state and local governments and damage to credit rating and reputation: \$99,500,000. Loss of spouse: \$750,000. Medical bills and pain and suffering of spouse: \$10,000. Taking of funds generated from sale of Swampland Act property: \$2,500. Failure of the DNR to punish or reprimand its employees: \$2,250,000. Violation of civil liberties of spouse: \$1,000,000. The Department of Natural Resources recommends denial of this claim. This claim alleges various acts of harassment by a number of individuals but allegedly arises chiefly from an incident on March 3, 1981. This incident involved the arrest of the claimant for repeatedly violating a statute that requires a permit for dredging a navigable stream and for criminal damage to property. The DNR states that it had issued a citation for the illegal dredging, which the claimant refused to accept via certified mail. The Sauk Co. D.A. obtained an arrest warrant. The DNR claims that because the claimant had made previous threats against DNR

personnel, they believed he might be armed and made arrangements to have a sufficient number of employes available. Two wardens attempted to serve the claimant with the warrant but he allegedly refused to come out of the house. Two more wardens were called onto the property to deal with an employe that was allegedly in the process of illegal dredging. Shortly after that, the DNR claims that the claimant exited the house and twice drove his vehicle at a high rate of speed into a DNR vehicle occupied by two wardens. Six additional wardens were called onto the property and the claimant was finally arrested. The DNR believes it showed a gradual, measured response to the actions of the claimant and that the response was reasonable and appropriate under the circumstances. The claimant has filed a number of lawsuits related to the March 1981 incident as well as other incidents. The courts have repeatedly found that the alleged acts of harassment are not actionable and that payment of damages to the claimant is not warranted. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes 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. (*Member Albers not participating. Member Schultz dissenting.*)

8. Cletus Alsteen of Ripon, Wisconsin claims \$185.00 for cost of replacing eyeglasses that were allegedly lost during a training exercise. The claimant is a DNR warden who participated in required training in the operation of personal watercraft. During the training, the claimant was required to operate the craft at high speed and quickly turn to simulate avoiding a collision. The claimant states that during this maneuver he was thrown from the craft and his glasses were lost when he became submerged, despite the fact that he had safety straps on the glasses. He further states that attempts to recover his glasses were not successful. The DNR recommends payment of this claim on equitable grounds. The loss occurred while the claimant was engaged in required training and the DNR does not find any negligence on his part in this incident. The claimant submitted a request for reimbursement with the DNR, however, he is a represented employee and the WSEU contract covering wardens does not cover eyeglasses which are lost. The contract does cover glasses that are damaged beyond repair, but DER takes the position that reimbursement for lost items is a separate bargainable item, which is not covered under the contract. For this reason, the DNR cannot provide reimbursement without authorization by the Claims Board. The Board concludes the claim should be paid in the amount of \$185.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370 (3)(mu), Stats.

9. Dale Breggeman of De Forest, Wisconsin claims \$250.00 for reimbursement of his insurance deductible for damage to his vehicle. The claimant was out of the office for three days attending meetings in central Wisconsin. During this time his personal vehicle was left parked in the Wisconsin Correctional Center System's parking lot. The hood of the claimant's car was apparently struck by a baseball from the nearby baseball diamond. The claimant understands that other DOC employes have been reimbursed for damages to their personal vehicles and he believes that in fairness, he should also be reimbursed. The Department recommends denial of this claim. It is not unusual for cars parked near a baseball diamond to occasionally be struck by foul balls and there is no indication that the damage was intentional. Although the claimant's vehicle was parked on Department property, the DOC and the state do not act as insurers when damages occur to an employe's car while it is parked at work. The DOC believes the connection with state business is too remote to justify requiring the DOC to reimburse the claimant for the cost of repairing his hood, especially when the state was not negligent. The Department does not believe the damages suffered are directly related to the claimant's employment and that the DOC should not be required to act as an insurer for its employes. The Board concludes there has been an insufficient showing of negligence on the part of the state, its

officers, agents or employes 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.

10. John P. Cejka of Prairie du Chien, Wisconsin claims \$1,140.07 for damages to vehicles and property stored in his garage. On July 29, 1997, an inmate escaped from the Prairie du Chien Correctional Institution. The escapee allegedly broke into the claimant's home by forcing the locked garage door. The inmate allegedly damaged both vehicles in the garage, scratching them, tearing up the seats and breaking windows. The claimant requests reimbursement in the amount of \$1140.07 (\$500 car insurance deductible, \$250 homeowner's insurance deductible, \$279.35 uninsured vehicle repairs and \$110.72 one day's lost wages). The DOC believes payment of this claim should be granted. It is clear that the escapee broke into the claimant's garage and used his son's baseball bat to cause damage to the vehicles. The DOC feels equity requires this claim be affirmed and would not object to reimbursing the claimant out of its appropriation. The Board concludes the claim should be paid in the amount of \$1,140.07 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.

11. David L. Canedy of Sturtevant, Wisconsin claims \$375.25 for cost to repair and replace property allegedly damaged by Department of Corrections employes. The claimant, an inmate at Racine Correctional Institution, states that during a search of his cell in December 1997, correctional officers damaged his television and several model cars that he had made. He claims that DOC agreed to send his TV to a factory authorized dealer to be repaired, but later went back on the agreement by only offering to have the TV fixed at an unauthorized dealer. The claimant did not want the work done by an unauthorized dealer, so he sent the TV to a repair shop of his choosing. He argues that regardless of whether or not he had a receipt, the repair would not have been covered by the warranty because the damage was caused by neglect and the warranty states: "this limited warranty does not cover any damage caused by accident, neglect or misuse." The claimant requests \$63.50 for repairing the TV, \$270.00 for the value of the models and 160 hours of labor to make them, \$10.25 for shipping, and \$31.50 for various replacement parts for the models. The Department of Corrections recommends denial of this claim. The institution attempted to have the television serviced using a preferred repair shop. The claimant refused; insisting instead that the TV be sent to a factory authorized repair shop. However, the claimant did not have the original receipt showing that the television was still under warranty. The DOC believes the claimant's own actions waive any claim regarding the television. The DOC states that the claimant's models were returned to him to finish and send out but that he returned the models to the institution, which in turn returned them back to the claimant. Thus, the DOC states that his claim regarding his model cars lacks merit and should be dismissed. Finally, the Department believes that section 16.007, Wis. Stats., is inapplicable to inmates. Section 801.02(7) requires that inmates exhaust their administrative remedies before resorting to the courts. Although a claim under s. 16.007 is an administrative remedy, the DOC alleges it is outside the scope of the type of administrative remedies that the Legislature contemplated. The DOC believes that the only administrative remedies available to inmates are those "administrative remedies that the department of corrections had promulgated by rule." Wis. Stat. s. 801.02(7). The Department states that the enactment of the Prison Litigation Reform Act, 1997 Wis. Act 133, exemplifies the Legislature's intolerance with inmate litigation. The DOC believes that the Legislature did not intend to shift the burden of inmate litigation from the circuit courts to the Department of Administration. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes 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. Steven E. Janecek of Green Bay, Wisconsin claims \$7,497.83 for refund of overpayment of 1992 income taxes. The claimant went through a divorce in 1991 and states that, because of the divorce, his mental state was such that he neglected a number of his normal responsibilities, including filing his 1992 income taxes in a timely manner. The DOR filed an estimated assessment of \$5,081 against the claimant's delinquent 1992 taxes. He paid \$7,522.83 including tax, penalties and interest on April 22, 1996. When the claimant filed his 1992 taxes, it was determined that his actual tax liability was \$25. The claimant believes that DOR arbitrarily, capriciously and knowingly established an estimated liability so ridiculously high that it defies logic and imagination. He states that there was ample historical evidence available from his prior returns and other records to allow DOR to make a reasonable estimate of tax. The claimant feels that the estimated assessment was actually a hidden and unauthorized penalty, which he unknowingly paid with great financial hardship. The Department of Revenue recommends denial of this claim. This claim involves a taxpayer with an extensive delinquent tax history, who has not filed a timely income tax return for the past six years. In June 1992, the claimant filed a joint 1991 income tax return with taxable income of \$40,000. The DOR estimated 1992 income as \$60,000 in an estimated assessment dated November 7, 1994. The 1992 income tax return was filed on August 13, 1997. Section 71.75(5) Wis. Stats., prohibits the DOR from refunding the amount that was collected on the original assessment since no refund was claimed within the prescribed two-year period. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes 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.

13. Michael D. Vogtman of Milwaukee, Wisconsin claims \$2,926.77 for refund of overpayment of taxes based on his failure to file a 1992 income tax return. In 1988, the claimant was injured in a car accident, which was not his fault. The claimant states that since that time he has suffered from severe back/neck pain and major depression. He was granted disability by the Social Security Administration in February 1995. The SSA found that the claimant had "not performed any substantial gainful activity since October 1, 1988" and that his "impairments which are considered to be 'severe' under the Social Security Act are alcohol abuse and a myofascial pain disorder." The claimant states that, due to his disability, he was unable to prepare 1992 tax returns. He applied for a refund of his overpayment but was denied based on the 2-year statute of limitations provided in section 71.75(5), Wis. Stats. The Department of Revenue does not object to a partial refund if the Claims Board finds the claimant's disability to be a contributing factor in his failure to file a 1992 income tax return. However, if an award is made, the DOR recommends that the claimant's \$2926.77 overpayment be reduced by the amount of his 1988, 1991, and 1995 income tax owed (\$446.26, \$280.58 and \$70.50) for a total refund claim of \$2129.43. The Board concludes the claim should be paid in the reduced amount of \$2,129.43 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Claims Board appropriation s. 20.505 (4)(d), Stats.

14. Ronald D. Retrum of Barneveld, Wisconsin claims \$229.40 for tire damage allegedly caused by ash from the University of Wisconsin heating plant. In December 1996 and January 1997, certain townships near Madison used ash from the UW-Madison heating plant as a substitute for road salt. This ash was made available free of charge to the municipalities. It appears that some of the ash during this time period contained sharp metal fragments, apparently the residue of incomplete burning of tires for fuel. A number of people in the area experienced tire damage due to these metal fragments slowly working their way into the tires. When the problem first became apparent, the University of Wisconsin paid 59 claims directly, without Claims Board action. The UW set a cut off date of May 15, 1997, and denied claims for damages incurred after that date. The claimant requests reimbursement for the cost of repairing and replacing several tires on his vehicle. The University of Wisconsin recommends denial of this claim. The UW had no notice of any problems with the ash until notified

by the townships in January 1997. At that point, corrective action was taken to avoid further problems. Ordinarily, such circumstances would not warrant the payment of claims for tire damage. Nevertheless, although it was not negligent, the UW believed that equitable principles supported the payment of some claims for tire damage occurring in connection with use of the ash. Reimbursements were made in 1997 for a number of these claims. The present claim, however, was not filed until nearly a year after the time period in which the original claims were paid and the UW states that the actual time of the damage is uncertain. The UW believes that responsibility for the continued use of any stockpiled ash, or for road sweeping necessary to clear remaining ash, is at the municipal level. The UW believes that these factors, together with the remoteness in time between the first applications of the ash and this claim, essentially eliminate any 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 employes 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. Laurence J. Marton of Madison, Wisconsin claims \$6,109,044.10 for current and projected salary losses related to an alleged contract violation by the University of Wisconsin. In 1994, the claimant was asked to resign as Dean of the UW Medical School. At that time, his compensation consisted of an annual "base" salary, together with an annual salary "supplement" paid through the Department of Pathology's clinical practice plan. The claimant alleges that he negotiated a contract with the UW, which stated that after stepping down as Dean, he would continue to receive the base salary and salary supplement, but that these amounts would be reduced at specific times to 82 percent of their former level. The claimant states that the contract also specified that he would be entitled to subsequent faculty salary increases; that the UW would pay him for an additional two months during the summer while he reestablished his research work; and that the UW would provide him with laboratory space, office space, staffing and equipment support for his research. The claimant states that it was understood by all parties that, while the salary supplement would continue to be paid through the Pathology Department's clinical practice plan, the level of the supplement was not to be affected by any future reductions in supplement payments under new clinical practice arrangements that were being discussed at that time. The claimant alleges that the UW has refused to pay substantial portions of his salary supplement, failed to give him appropriate percentage increases in base and/or supplemental salary and failed to provide him with adequate research facilities and assistance, which has resulted in additional losses. The University of Wisconsin recommends that this claim be denied. The claimant has raised related issues in other proceedings. He filed two claims for unpaid wages with the Department of Workforce Development Equal Rights Division, both of which were denied. The UW alleges that the arrangements made in connection with the claimant's resignation as Dean of the Medical School do not constitute a contract as the claimant contends. The UW states that the understanding was simply that the claimant would be allowed to return to a faculty position in the Medical School, subject to the rules and policies governing such faculty positions, and with the benefits associated with such positions. The UW argues that the claimant has been paid all salaries and salary supplements due him as a faculty member and has been provided the support services associated with his faculty status. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes 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.

16. Jan A. Nowlen and Richard A. Martin of Muscoda, Wisconsin claim \$9,556.69 Claim for refund of money garnished for payment of an estimated assessment for 1991 and 1992 personal income taxes. The Department of Revenue issued an estimated assessment for these years in April 1994. Claimant Nowlen's wages were certified during 1994 and 1995 and the returns were filed in September 1996. The Department recommends denial of this claim. This case involves failure to file personal income tax

returns for the years 1991 and 1992. Section 71.75 (5), Stats., prohibits the DOR from refunding the amount that was applied to the original assessment, since no refund was claimed within the prescribed two-year time period. 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 Claims Board appropriation s. 20.505 (4)(d), Stats.

17. Alan & Marlene Sieker of Manitowoc, Wisconsin claim \$12,600.00 for increased indemnity value for 14 elk that were destroyed because they tested as reactors for tuberculosis. The destruction of the animals was performed in conjunction with the Department of Agriculture, Trade & Consumer Protection. The claimants received a statutorily mandated indemnity from the state to cover part of the value of the animals. Less than two months after the animals were destroyed, the state indemnity amount was raised substantially by legislation. The claimants cooperated fully with DATCP in destroying the animals. They feel that they are bearing a substantial burden for a benefit accruing to the entire state. The total appraised value of the destroyed animals was \$71,200 and the claimants have only recovered \$18,900 in state and federal indemnities. The claimants request that the Board award them the difference between the state indemnity already paid and that which would have been allowed pursuant to the terms of the revised statute, namely \$900 per animal, for a total claim of \$12,600. The Department of Agriculture, Trade & Consumer Protection recommends payment of this claim. In June 1996 Wisconsin enacted 1995 Wisconsin Act 450, which changed the maximum allowable indemnity payment for animals condemned and slaughtered under the bovine tuberculosis program from \$600 to \$1500. The act was published July 8, 1996. The act created a delayed effective date for provisions related to indemnity changes, in that it specified that the change would take effect "on the first day of the 16th month beginning after publication." Therefore, the change from \$600 to \$1500 was effective November 1, 1997. The claimants' animals were condemned and slaughtered in September 1997 as part of the bovine TB control program. The Board recommends that the claim be paid in the amount of \$12,600.00 based on equitable principles.

The Board concludes:

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

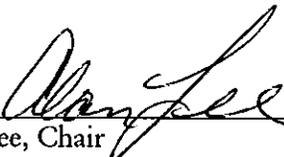
Mary Sawatske	Marcus Gumz
Dale Breggeman	David L. Canedy
Steven E. Janecek	Ronald D. Retrum
Laurence Marton	

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

William & Cynthia Haack	\$5,000.00
Paul G. Roehrig	\$5,000.00
Lonie Wise	\$250.00
William Niebuhr	\$5,000.00
Thomas Wall	\$1,300.00
Cletus Alsteen	\$185.00
John P. Cejka	\$1,140.07
Michael D. Vogtman	\$2,129.43
Jan Nowlen & Richard Martin	\$5,000.00

3. The Board recommends payment of \$12,600.00 to Alan & Marlene Sieker for 14 destroyed elk.

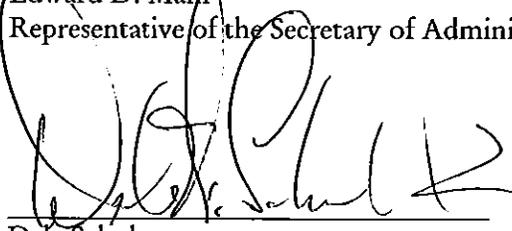
Dated at Madison, Wisconsin this 17th day of December 1998.



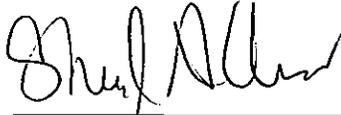
Alan Lee, Chair
Representative of the Attorney General



Edward D. Main
Representative of the Secretary of Administration



Dale Schultz
Senate Finance Committee



Sheryl Albers
Assembly Finance Committee