

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings in the State Capitol, Room 417 North, Madison, Wisconsin on August 27, 1998, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Ringhand Meats & Beverages, Inc.	Agriculture, Trade & Consumer Protection	\$5,144.05
2. Marcia Klein	Health and Family Services	\$5,274.29
3. Green Tree Financial Services	Financial Institutions	\$20,532.00
4. Delmar L. Smith	Revenue	\$10,954.74
5. Tillman Mosley	Revenue	\$9,392.14
6. Eugene Parks	Revenue	\$49,659.70
7. Wisconsin Gas Company	Transportation	\$965.49
8. Wisconsin Gas Company	Transportation	\$1,590.07
9. Wisconsin Gas Company	Transportation	\$450.77

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
10. Cedar Grove Cheese, Inc.	Agriculture, Trade & Consumer Protection	\$711.61
11. National Farmers Organization	Agriculture, Trade & Consumer Protection	\$102.38
12. Gus W. Ernst	Natural Resources	\$2,754.00
13. Lichtfeld Plumbing, Inc.	Administration	\$172.00
14. Scott & Brenna Miles	University of Wisconsin	\$720.21
15. Barbara Mariann Rush	Health and Family Services	\$93.19
16. James D. Weichelt	Revenue	\$673.13

In addition, the following claim, presented at a previous hearing, was considered and decided:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
17. Deiss Sanitation	University of Wisconsin	\$33,305.00

In addition, the board discussed its long-standing policy of not holding hearings for stale-dated checks over six years old.

The Board Finds:

1. Ringhand Meats and Beverages, Inc., of Evansville, Wisconsin claims \$5,144.05 for the cost of refinishing the floor of the claimant's meat processing plant. The claimant alleges that the floors of the plant were finished in accordance with instructions from Arthur Ness of DATCP's Meat Safety Division. The claimant claims that Mr. Ness instructed the floor contractor to finish the floors to a smooth finish and that they are now extremely hazardous when wet, causing several people to slip and fall. The claimant buffed the floors in an attempt to roughen them but this was not successful. The claimant has received a \$5,000 estimate for shot blasting the floors to provide a rougher surface. He requests reimbursement for the cost of renting the buffer (\$144.05) and the cost of refinishing the floors (\$5,000). DATCP states that neither Mr. Ness nor any other state employee recommended that the floors in the plant be smooth. Department regulations require that the floor be impervious, not

smooth. Furthermore, Department regulations state that floors that become wet must have a non-slip surface. The claimant received written materials that included these specifications for floors. The floors were apparently finished according to the architect's specifications, which state, "Interior concrete slabs shall have a monolithic steel-trowelled finish". The architect's spec sheet for the plant was never submitted to the Department prior to construction. A DATCP inspector states that he overheard the floor contractor ask the claimant if the floor was smooth enough for him and that the claimant told the contractor to make another pass to make the floor smoother. The claimant has been in the business for approximately 30 years. He has two facilities and has remodeled an existing one. He received written information from the Department, including the floor specifications, in 1988 and again in 1996. 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.

2. Marcia Klein of Appleton, Wisconsin claims \$5,274.29 for reimbursement of attorney's fees and other expenses allegedly incurred because of an open records request. The claimant is employed at Wisconsin Resource Center (WRC). In July 1996 two patients at the center, who were detained there under Chapter 980 Stats., as sexually violent persons, made open records requests for copies of the claimant's personnel file. At that time, the state planned on releasing a portion of the file to the requesters. The claimant retained an attorney and sued the state to keep it from releasing the file. The two patients requesting the records had themselves added to the lawsuit as defendants. After receiving additional patient requests for the personnel files of various other employes, the state reversed its position regarding release of the file. The state refused to release any portion of the claimant's personnel file based on the "balancing test" exemption of the Public Records Law. The claimant argued that position as well, and also argued that the patients were "incarcerated persons" and therefore were not proper requesters under s. 19.32 (3). The Circuit Court agreed with the state's position. The two patients appealed. The Court of Appeals upheld the Circuit Court's decision, based on the state's "balancing test" argument, but rejected the claimant's argument that the patients were "incarcerated persons" under s. 19.32 (3). The claimant requests reimbursement for her attorney's fees, interest, lost wages, and travel expenses. DHFS states that from the time it reversed its position and denied access to the records (9/10/96) through the Court of Appeals decision (4/1/98), the claimant and DHFS took the same position; the only difference was their legal reasoning. Both courts adopted DHFS' legal reasoning and rejected the claimant's therefore her legal expenditures during this period did not contribute in any way to the ultimate resolution of the case. DHFS also points out that a portion of her claim is for expenses incurred in supporting legislation to exempt committed inpatients from the definition of "requester" under Public Records Law. DHFS supported this legislation and does not feel the state should pay expenses an employe incurs in backing legislation that is sponsored by the state to improve the employe's working conditions. Finally, DHFS feels the claim should not be paid because the legislature has specified those circumstances in which the State is required to pay private citizens' legal costs, and this situation is not among them. (See ss. 814.245 and 277.485, Stats.) 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 Claims Board appropriation s. 20.505 (4) (d), Stats. (*Member Lee not participating.*)

3. Green Tree Financial Servicing Corporation of St. Paul, Minnesota claims \$20,532.00 for refund of an alleged overpayment caused by an error in the claimant's 1997 Foreign Corporation Annual Report. The claimant states that it entered an incorrectly calculated apportionment factor showing 36 percent of its business for 1996 in Wisconsin when in fact only 1.39 percent of its business during that period was in Wisconsin. The claimant states that the majority of its business is done in states other than Wisconsin. To support this statement, the claimant points to its 1995 and 1996

Foreign Corporation Annual Reports, which show apportionment percentages for Wisconsin of .8799 and 1.273, respectively. The claimant believes that the documents that it has submitted prove that the apportionment factor on the originally filed report was incorrect and requests reimbursement of the fee overpayment caused by the error. DFI recommends denial of this claim because the Department has no way of verifying the accuracy of the information provided in the original report or in the articles of correction applying to the original report. In filing documents and annual reports and collecting the corresponding statutory fees, DFI performs a ministerial function and relies solely on the information set forth in such reports and documents. The source of that information is in the exclusive control of the corporation. The revenue generated from the collection of these fees ranges from approximately \$2 to \$4 million annually. It derives from reports and applications filed in the same circumstances as those attending the report on which the claimant seeks recovery. Accordingly, there is the potential of important future consequences in allowing a claim of this nature. To support its recommendation for denial, DFI points to a 1981 informal opinion of the Attorney General relating to a similar 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.

4. Delmar L. Smith of Madison, Wisconsin claims \$10,954.74+ for refund of overpayment of income taxes for the years 1991-1993. In March 1996 the Department of Revenue began garnishing the claimant's paycheck for payment of assessments for the above years. The claimant admits that he did not timely file income tax returns for these years and accepts that late fees and interest should be added as a penalty. However, the claimant feels that \$6,370.26 in interest penalties and fees, which he has paid, is sufficient punishment for him not filing his taxes on time. The claimant believes that the state keeping \$10,954.74 in overpayment is unjust and requests reimbursement of that amount. DOR recommends denial of this claim. The claimant failed to timely file his 1991, 1992 and 1993 income tax returns. Estimated income tax assessments for 1991 and 1992 were issued on October 17, 1994. An estimated assessment for 1993 was issued on November 4, 1996. All three returns were filed in February 1997. Section 71.75(5), Stats., prohibits DOR from refunding the money that was applied to the 1991 and 1992 assessments, since no refund was claimed within the prescribed two-year time period. Since the 1993 return was filed within the prescribed two-year, all payments applied to the 1993 estimate were credited to the actual liability leaving a delinquent balance due as of April 23, 1998, of \$2,112.35. 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. 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. (*Member Simonson dissenting.*)

5. Tillman Mosley of Dayton, Ohio claims \$9,392.14 for refund of overpayment of income taxes for the years 1991-1992. The Department of Revenue issued an estimated assessment for these two years in the amount of \$17,000. In January 1997 DOR began garnishing the claimant's wages in the amount of \$1,000 per month. The total amount taken by DOR was \$10,577.16. After the claimant submitted his 1991 and 1992 income taxes, he discovered that he had overpaid in the amount of \$9,392.14. The claimant believes that the estimated assessment was based on a fictitious number. The claimant also states that, based on the monthly statements he received from DOR, which stated that an overpayment would be refunded, he believed that the state would refund him any overpayment. DOR states that the claimant has a history of not filing his tax returns in a timely manner and that five of his last seven tax returns were filed anywhere from a year to five years late. DOR issued an estimated income tax assessment for the 1991 and 1992 taxes on November 21, 1994. The claimant

filed the 1991 taxes on November 14, 1995, upon which a call was made to him to inform him that a 1992 return was also required to adjust DOR's assessment. The claimant allegedly informed the revenue agent that he would file the 1992 return right away. The 1992 return was not filed until March 6, 1998. DOR has documented as many as 12 contacts with the claimant from April 4, 1995 through March 6, 1998, concerning the filing of these taxes. Section 71.75 (5), Stats., prohibits the Department from refunding any overpayment 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. (*Member Simonson dissenting.*)

6. Eugene Parks of Madison, Wisconsin claims \$49,659.70 for refund of overpayment of income taxes for the years 1987 through 1996. The claimant believes that the assessments issued by the Department of Revenue were excessive and not reasonable as required under section 71.74, Stats. When he filed his taxes in December 1997, the claimant discovered that the total amount of tax he actually owed for the years in question was \$2,624. The claimant believes that the huge discrepancy between what he actually owed and the amount garnished by DOR proves that the DOR's assessments were excessive and arbitrary. The claimant further alleges that DOR is denying his refunds based on an excessively narrow reading of s. 71.75 (2), Stats., and that he is due a refund under the doctrine of equitable recoupment. He believes that there is nothing in s. 71.75 (2), Stats., that prevents DOR from crediting his account in the amount by which prior assessments exceed liabilities. He requests that \$911.75 of his outstanding balance be credited to his outstanding sales tax liability and that the remaining \$48,747.95 either be refunded to him or applied to future tax liabilities. DOR states that despite persistent contact, the claimant failed to file income tax returns for the years 1987-1996 until December 5, 1997. In the interim, DOR issued estimated income tax assessments against the claimant for the years 1987 through 1994. The claimant did not contest these estimated assessments and they became final and conclusive and went delinquent. DOR issued wage certifications against the claimant. DOR states that it is prohibited from providing the claimant a refund or credit towards future years (which in substance is nothing more than another way of granting a refund) by the statute of limitations. Section 71.75, Stats., does not provide the claimant with any right to obtain a credit towards his future liabilities. DOR believes that the doctrine of equitable recoupment has no application to this situation. Equitable recoupment is not a cause of action, it is a defense to a presently pending assessment against the claimant that is not yet final and conclusive. However, DOR does not have an assessment presently pending against the claimant, so the claimant is without a refund claim under the doctrine of equitable recoupment. Furthermore, DOR states that equity only attaches to those who appear with "clean hands". The claimant failed to timely file income tax returns for 10 years in repeated violation of s. 71.83 (2) (a) 1, Stats., which is a crime. The DOR believes the claimant should not be provided equity for conduct that constitutes a crime. The Department issued estimated assessments against the claimant according to its best judgement. The claimant could have contested the assessments or timely filed his income tax returns and paid the amount of tax he self-reported. He chose not to. 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 Simonson dissenting.*)

7. Wisconsin Gas Company of Milwaukee, Wisconsin claims \$965.49 for gas loss and repair cost for its damaged gas line. The claimant alleges that on or before April 17, 1996, the Department of Transportation cut through the claimant's gas line while installing a road sign near Caledonia, Wisconsin. The claimant believes that DOT failed to take reasonable action and call to have the

location of the underground gas mains and service lines marked in accordance with Wisconsin Statutes s. 182.0175. The claimant requests \$531.00 for labor, \$105.24 for equipment and materials, and \$329.25 for gas loss, for a total claim of \$965.49. DOT states that in 1987 it held a series of meetings with various utilities to discuss permit fees and locate services. A compromise agreement was reached that DOT would waive permit fees and make every effort to request locate services prior to digging, in exchange for which the utilities would hold DOT harmless for damage to their facilities. This agreement has been policy since 1989. This agreement indemnifies DOT for any unintentional damage to utility lines during DOT's normal course of business. This includes "damage to any property, lines or facilities placed by or on behalf of the applicant, pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way in the past or present". The indemnification language appears on every application/permit to bury utility lines on a DOT right of way. DOT makes every effort to call Diggers Hotline whenever possible and practical, however, DOT's primary duty is to install traffic signs in a timely manner. In this instance, DOT personnel were installing traffic signs on STH-10, when a Waupaca County Sheriffs Officer requested that they move an existing sign a few feet off of STH-10 to allow room for the County snowplow to adequately plow snow without striking the sign. The sign crew chief made a discretionary decision that the sign could be moved a few feet without a problem. There was no willful intention on the part of DOT to damage the gas main. The claimant knowingly entered an agreement to indemnify and hold the state harmless and repeatedly reaffirmed that agreement by endorsing the permit applications. They should not now be allowed to claim that the state should pay for these damages. The Board concludes the claim should be paid in the amount of \$965.49 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 (3) (eq), Stats.

8. Wisconsin Gas Company of Milwaukee, Wisconsin claims \$1,590.07 for gas loss and repair cost for the claimant's damaged gas line. The claimant alleges that on or before November 4, 1997, the Department of Transportation damaged the claimant's gas main while installing a stop sign near Sparta, Wisconsin. The claimant believes that DOT failed to take reasonable action and call to have the location of the underground gas mains and service lines marked in accordance with Wisconsin Statutes s. 182.0175. The claimant also alleges that the original locate marks had been removed through the addition of topsoil and possibly by a sidewalk, and that DOT had been put on notice that it would need to order new locate marks before performing any work in that area, but failed to do so. The claimant requests \$517.00 for labor, \$568.73 for equipment and materials, and \$504.34 for gas loss, for a total claim of \$1,590.07. DOT states that in 1987 it held a series of meetings with various utilities to discuss permit fees and locate services. A compromise agreement was reached that DOT would waive permit fees and make every effort to request locate services prior to digging, in exchange for which the utilities would hold DOT harmless for damage to their facilities. This agreement has been policy since 1989. This agreement indemnifies DOT for any unintentional damage to utility lines during DOT's normal course of business. This includes "damage to any property, lines or facilities placed by or on behalf of the applicant, pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way in the past or present". The indemnification language appears on every application/permit to bury utility lines on a DOT right of way. DOT makes every effort to call Diggers Hotline whenever possible and practical, however, DOT's primary duty is to install traffic signs in a timely manner. In this instance, Diggers Hotline was called and the area was marked. The marking flags stopped approximately 40 to 50 feet from the intersection where the sign post hole was dug. At the time of the incident, there were various contractors in the area performing other types of construction and landscaping, who may have inadvertently disturbed the marking flags. The claimant claims to have advised someone on the state crew to call for new markers, however, DOT personnel had no knowledge of any problem with the

markers. It is possible that the information had been given to one of the contractors working in the area. DOT felt safe in digging due to the distance between the markers and the digging site. There was no willful intention on the part of DOT to damage the gas main. The claimant knowingly entered an agreement to indemnify and hold the state harmless and repeatedly reaffirmed that agreement by endorsing the permit applications. They should not now be allowed to claim that the state should pay for these damages. 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.

9. Wisconsin Gas Company of Milwaukee, Wisconsin claims \$450.77 for gas loss and repair cost for the claimant's damaged gas line. The claimant alleges that on or before August 20, 1997, the Department of Transportation damaged the claimant's gas line while installing a road sign near Downing, Wisconsin. The claimant believes that DOT failed to take reasonable action and call to have the location of the underground gas mains and service lines marked in accordance with Wisconsin Statutes s. 182.0175. The claimant requests \$153.00 for labor, \$293.70 for equipment and materials, and \$4.07 for gas loss, for a total claim of \$450.77. DOT states that in 1987 it held a series of meetings with various utilities to discuss permit fees and locate services. A compromise agreement was reached that DOT would waive permit fees and make every effort to request locate services prior to digging, in exchange for which the utilities would hold DOT harmless for damage to their facilities. This agreement has been policy since 1989. This agreement indemnifies DOT for any unintentional damage to utility lines during DOT's normal course of business. This includes "damage to any property, lines or facilities placed by or on behalf of the applicant, pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way in the past or present". The indemnification language appears on every application/permit to bury utility lines on a DOT right of way. DOT makes every effort to call Diggers Hotline whenever possible and practical, however, DOT's primary duty is to install traffic signs in a timely manner. In this instance, DOT was doing some final touch up work for the signing of a recently completed construction project. A decision was made to move a signpost from behind a guy wire in order to make the sign more visible. The moved pole was placed at a maximum of 24 feet 4 inches from the center line of STH-170. The claimant's permit called for the gas line to be placed 27 feet from the center line of STH-170. The gas line had been placed at least 3 feet closer to the center of the road than it was permitted to be. There was no willful intention on the part of DOT to damage the gas main. The claimant knowingly entered an agreement to indemnify and hold the state harmless and repeatedly reaffirmed that agreement by endorsing the permit applications. They should not now be allowed to claim that the state should pay for these damages. The Board concludes the claim should be paid in the amount of \$450.77 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 (3) (eq), Stats.

10. Cedar Grove Cheese, Inc. of Plain, Wisconsin claims \$711.61 for damage to equipment at the claimant's dairy plant during an inspection by a Department of Agriculture, Trade & Consumer Protection Inspector on January 14, 1998. The claimant requests reimbursement for the cost of repairing the equipment in the amount of \$711.61. DATCP does not contest payment of this claim. DATCP's inspector has admitted that he caused the damages and an inspection of the incident by the inspector's field supervisor has confirmed the claimant's allegations. DATCP therefore acknowledges limited liability for the costs incurred by the claimant to fix the equipment. The Board concludes the claim should be paid in the amount of \$711.61 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation s. 20.115 (1) (a), Stats.

11. National Farmers Organization of Fond du Lac, Wisconsin claims \$102.38 for the cost to repair copy machine that was allegedly damaged by Department of Agriculture, Trade & Consumer Protection inspectors on January 7, 1998. During the inspection, one of the inspectors placed a gallon of liquid sanitizer on the glass of the copy machine, in order to make a photocopy of the label on the bottle. Some sanitizer leaked from the bottle and damaged the machine. DATCP does not contest payment of this claim. The DATCP inspector admits placing the bottle of sanitizer on the machine to photocopy the label. DATCP therefore acknowledges limited liability for the costs incurred by the claimant to fix the machine. The Board concludes the claim should be paid in the amount of \$102.38 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation s. 20.115 (1) (a), Stats.

12. Gus W. Ernst of Plymouth, Wisconsin claims \$2,754.00 for a relocation incentive award (RIA) related to his job transfer. As a result of the Department of Natural Resources' reorganization, the claimant was displaced out of his job as a Conservation Warden Supervisor 2. The claimant accepted a voluntary demotion to a Conservation Warden Supervisor 1 position in Plymouth, WI. Prior to accepting the position, the claimant contacted the Southeast Region Human Resources Manager, who told him that he would receive the RIA if he accepted the position. The claimant double-checked this information with his immediate supervisor, who also told him he would receive the RIA if he accepted the Supervisor 1 position. The claimant states that the receipt of this award was a factor in his family's eventual decision to accept the position and relocate to Plymouth, WI in September 1997. In December 1997, the claimant was informed that he would not receive the RIA because RIAs are granted only to employees who relocate as a result of promotion or transfer, not demotion. The claimant requests payment of the \$2,754.00 RIA that he was told he would receive. DNR recommends payment of this claim. There is no dispute that the claimant was told he would receive the RIA and DNR believes that he accepted the new position with that understanding. The claimant is without fault in this matter. Because of statutory restrictions, DNR is without authority to make the RIA payment in the absence of an award by the Claims Board. The Board concludes the claim should be paid in the amount of \$2,754.00 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. The Board also strongly urges the DNR to instruct all of its employees on the statutes and policies relating to relocation incentive awards, so as to avoid future misunderstandings of this type.

13. Lichtfeld Plumbing, Inc. of Madison, Wisconsin claims \$172.00 for unpaid labor time allegedly incurred because a state employee told the claimant's employees to stop work on a plumbing job at the Hill Farms State Office Building. The claimant was the low bidder for a plumbing proposal that included changing 6" water meters to 4" water meters. The claimant states that they were given flanges provided by the city to use on the job, however, when the claimant's employees arrived on site they discovered that the flanges did not match the new 4" meter and could not be used. The plumbers called the office and the claimant proceeded to try and locate flanges that would work for the job. Several hours later, the claimant called back to the job site and was allegedly told by Stan Lynch, a Department of Administration employee, that he had told the plumbers to stop working. The claimant states that this was done without its knowledge or approval and requests reimbursement for two hours lost labor time in the amount of \$172 plus interest. DOA states that Mr. Lynch did not pull the plumbers off the job, but only told them to call their office regarding the dispute that had arisen over the flanges. This occurred after Mr. Lynch had already spoken with the claimant, who had indicated that the state would be charged extra because the city-provided flanges could not be used. Several other telephone conversations occurred between the claimant and DOA personnel, which resulted in an

agreement that the claimant would not charge the state for the cost of having to use other flanges and would complete the job at the originally quoted price. DOA also states that the claimant was never told that it had to use the flanges provided by the city. The state offered no direction as to how the meter change should be accomplished, rather, design of the plumbing job was left to the expertise of the vendor. The claimant has been paid in full for the plumbing job and should not receive any additional compensation. 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. (*Member Main not participating.*)

14. Scott and Brenna Miles of Santa Monica, California claim \$720.21 for the cost of concert tickets and uninsured medical expenses allegedly incurred due to an accident at the University of Wisconsin. The claimants were attending a concert at Camp Randall on June 25, 1997. Brenna Miles tripped on something on a step in the aisle and fell. Her ankle swelled up and she had to go to the emergency room for treatment. The claimants had health insurance coverage for the initial treatment, but not for the rehabilitation costs, which total \$615.21. They also request reimbursement for the cost of the concert tickets (\$105), since they missed the entire concert due to the accident. The UW recommends denial of this claim. Ms. Miles slipped on an unknown object while walking down the stairs. The UW feels there was no negligence on the part of a state employee and that there appears to be 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.

15. Barbara Mariann Rush of Middleton, Wisconsin claims \$93.19 for vehicle damage allegedly caused by an accident on the grounds of Mendota Mental Health Institute, where the claimant is employed. On December 10, 1997, the claimant was on her way to work, driving very slowly because of snowy weather conditions. She states that the road had just been plowed, but that the plow had missed an area of the road and that this area was covered with loose snow. When she hit this area, the claimant's vehicle slid into the curb and her wheel cover was damaged. The claimant believes that snow removal personnel were negligent in missing this area of the road and requests reimbursement for her damages. She further states that she is a senior citizen on a fixed income and that it would be extremely difficult for her to absorb this cost. Her insurance deductible is \$250. DHFS recommends that this claim be denied. Mendota Mental Health Institute has specific snow removal procedures. While every effort is made to remove snow from all roadways before employees arrive for work, the reality of a Wisconsin winter doesn't always allow for this. Drivers must take responsibility for maintaining control their vehicle. DHFS does not believe there was negligence on the part of its employees or that the claim should be paid based on equitable principles. 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.

16. James D. Weichelt of New Berlin, Wisconsin claims \$673.13 for interest paid as a result of delinquent income tax. The claimant states that in 1996 he lived and worked in Illinois but maintained his Wisconsin driver's license, which, unbeknownst to him, kept him from being established as an Illinois resident for tax purposes. The claimant's employer withheld taxes for the State of Illinois in the amount of \$1,227, considerably less than what would have been withheld for Wisconsin taxes. The claimant hired an accountant to prepare his 1996 taxes. The accountant filed a Wisconsin tax return on the claimant's behalf, claiming credit for the tax already paid to Illinois. The accountant told the claimant that Wisconsin and Illinois would work out the difference and that Wisconsin would send

him a bill. The claimant states that he did not receive any bill from Wisconsin and contacted his accountant, who told him that the bill would come. The Department of Revenue did not send a bill until June 1997 and the bill was sent to the claimant's old address, his parent's house. The claimant's parents were out of town for the summer and he therefore did not receive the bill until August 1997. The claimant contacted his accountant and demanded that he straighten things out. The accountant then sent an amended tax return to the State of Illinois in order to get back the taxes that had been withheld. The claimant did not have the money to pay the delinquent Wisconsin taxes and was forced to wait until February 17, 1998, when he finally received the tax refund from Illinois. The claimant requests that he be reimbursed the \$673.13 interest on his delinquent Wisconsin taxes, since the error was no fault of his own. DOR recommends denial of this claim. This claim involves a tax return that was prepared incorrectly by the claimant's accountant. The claimant's 1996 tax return was filed as a full-year resident of Wisconsin, claiming credit for taxes paid to the State of Illinois on the income earned in Illinois. Since a reciprocal agreement exists between Wisconsin and Illinois, all income of a Wisconsin resident is taxable in Wisconsin and DOR disallowed tax credit paid to Illinois. The claimant should pursue his claim against the accountant who incorrectly prepared his tax return. 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.

17. Deiss Sanitation of River Falls, Wisconsin claims \$33,305.00 for attorney fees and reimbursement of two-thirds of a lawsuit settlement related to the claimant's work for University of Wisconsin-River Falls. The claimant was a contract waste hauler for UWRF from 1979 through 1985. During that period of time, the claimant deposited waste, including waste generated at UWRF, in the Junker Landfill. The Junker Landfill was subsequently found by the DNR to contain hazardous substances that were being released into the environment. Remedial clean up of the site was required. The Junker Landfill Trust assumed responsibility for the remediation activities. The Trust then commenced action against the claimant under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6972(a), for costs associated with the clean-up. The claimant settled this litigation by the payment of \$40,000 to the Junker Landfill Trust. The claimant alleges that he was never informed that UWRF was exempt from paying a portion of the remediation costs and states that he would never have settled the way he did if he had known UWRF was not required to pay. He believes that he is an innocent party, who was hauling the UW's waste to a site approved by the DNR, and that it is unfair for the burden of the clean-up costs to fall on his small business. The claimant requests reimbursement of the portion of the settlement that he attributes to the waste generated by UWRF. This amount is calculated at \$30,000, or three-quarters of the total, which the claimant contends reflects the percentage of his total waste generated by UWRF. The claimant also requests reimbursement of three-quarters of his attorneys fees, for a total claim of \$33,305.00. The UW recommends denial of this claim. The state and the UW cannot be sued in either state or federal court without their consent, and that consent has not been given with respect to the RCRA litigation that underlies this claim. In effect, neither the state nor the UW can be compelled to participate in the remedial clean-up efforts undertaken by the Junker Landfill Trust, and thus cannot be compelled to pay costs incurred by the claimant in connection with the clean-up. The Board believes that a claim against the UW should have been made at the time of the settlement. Because of the settlement, the Board does not have sufficient facts to determine the role of the UW in this situation. Therefore, 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. (*Member Albers dissenting.*)

The Board concludes:

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

Ringhand Meats & Beverages, Inc.	Green Tree Financial Services Corp
Delmar L. Smith	Tillman Mosley
Eugene Parks	Wisconsin Gas Company (claim #8)
Lichtfeld Plumbing, Inc.	Scott and Brenna Miles
Barbara Mariann Rush	James D. Weichelt
Deiss Sanitation	

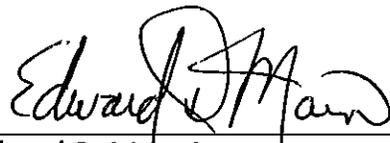
2. Payment of the following amounts to the following claimants is justified under s. 16.007, Stats:

Marcia Klein	\$2,500.00
Wisconsin Gas Company (claim #7)	\$965.49
Wisconsin Gas Company (claim #9)	\$450.77
Cedar Grove Cheese, Inc.	\$711.61
National Farmers Organization	\$102.38
Gus W. Ernst	\$2,754.00

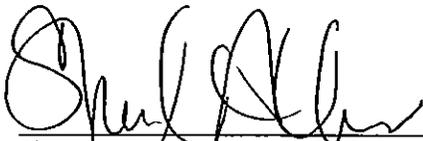
3. The board concludes that its long-standing policy of not holding hearings for stale-dated checks over six years old should remain in effect.

Dated at Madison, Wisconsin this 10 th day of September 1998.


 Alan Lee, Chair
 Representative of the Attorney General


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


 Dale Schultz
 Senate Finance Committee


 Sheryl Albers
 Assembly Finance Committee


 Stewart Simonson
 Representative of the Governor