

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings in the State Capitol, North Hearing Room, Madison, Wisconsin on February 19, 1998, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Russell L. Gray	Department of Revenue	\$900.00
2. Scott Air Charter	Department of Revenue	\$5,223.01
3. Mark & Barbara Lucius	University of Wisconsin	\$7,984.93
4. Ronald J. Anderson	University of Wisconsin	\$155.40
5. Candi Boley	University of Wisconsin	\$300.00
6. Warren Burger	University of Wisconsin	\$90.40
7. Bonnie Gerner	University of Wisconsin	\$280.59
8. Gary & Carol Larsen	University of Wisconsin	\$265.71
9. Mareen Reeson	University of Wisconsin	\$372.32
10. Bill Resop	University of Wisconsin	\$107.06
11. Carlton P. Severson	University of Wisconsin	\$58.03
12. John L. Syftestad	University of Wisconsin	\$83.52
13. Kenneth Wittenwyler	University of Wisconsin	\$21.00
14. Robert & Alice Yaeger	University of Wisconsin	\$126.22

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
15. Douglas W. Brown	University of Wisconsin	\$171.33
16. Amy Freed	Department of Regulation & Licensing	\$62.25
17. Glacier State Distribution	Department of Transportation	\$31,010.00
18. Kelly Lang	Department of Transportation	\$1,627.44
19. William Medina	Department of Corrections	\$50.00
20. Veronica Miller	Wisconsin State Fair Park	\$1,354.64
21. Jack P. Peters	Department of Natural Resources	\$20.05

The Board Finds:

1. Russell L. Gray of Endeavor, Wisconsin claims \$900.00 for a Homestead credit claim, which was allegedly wrongfully denied by the Department of Revenue. The claimant timely filed a 1994 Homestead Credit Claim. The Department audited the claim and requested affidavits of residency, a letter from the claimant's landlord, and cancelled rent checks. The claimant alleges that during this audit, the auditor claimed that the claimant's landlord had told the auditor that the claimant did not live at the claimed homestead. The claimant asserts that the landlord by affidavit has denied such a conversation and confirmed the claimant's residence. The claimant's Homestead claim was denied by the Department on the basis that the claimant did not provide sufficient information to support the claim. This decision was appealed to the Department. The claimant alleges that the Department intentionally concealed the correct appeal deadline, thereby causing the claimant to file the appeal two days late. The claimant further alleges that the Department told him that it would waive any

jurisdictional problems if the appeal was filed late and that the Department had no authority to waive the late filing of an appeal. The Tax Commission upheld the Department's decision denying the appeal. The Department recommends denial of this claim. The Board concludes the claim should be paid in the reduced amount of \$450.00 based on equitable principles. At the hearing, the claimant indicated that he needed the money to pay his child support. In order to insure that the money is used for this purpose, the Board concludes that the check should be payable to both the claimant and the Dane County Clerk of Courts. 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.

2. Scott Air Charter, Inc., of Milwaukee, Wisconsin claims \$5,223.01 for refund of sales tax paid in error to the Department of Revenue because of a mutual mistake. The Department conducted a field audit of the claimant for the period 1987 through 1991. The audit resulted in an assessment of sales tax not charged by the claimant for sales to Leeson Electric Corporation. The claimant appealed the Department's assessment. During the appeal process, Leeson informed the claimant that it had previously paid use tax to the Department, which constituted a portion of the amount of sales tax being assessed against the claimant (\$5,223.01). The claimant informed the Department and requested that the amount of use tax already paid by Leeson be credited against the claimant's assessment. The Department contacted Leeson's tax manager and was told that the use taxes in question were paid on invoices after 1991, therefore, the payments were beyond the field audit period. Based on this information, the Department denied the claimant's request to credit Leeson's payments against the assessment. The claimant entered into a stipulation agreement with the Department and paid the assessment in full. It was later discovered that Leeson's use tax payments were made in 1989 and 1990; not 1992 as previously believed. As a result, the payments by Leeson were within the claimant's audit period and the claimant alleges that the amount should have been deducted from the Department's assessment of the claimant. Leeson tried to file a claim for the payments but the Department denied the claim because of the four-year statute of limitations. The claimant requests reimbursement of the \$5,223.01, which should have been deducted from the assessment. The Department recommends denial of this claim. It is unfortunate that the \$5,223.01 in taxes was paid twice, however, the claimant signed a closing agreement with the Department and paid the assessment. The Department acted properly and in good faith based on information it obtained from a credible person at Leeson, its tax manager, and should not be held responsible for the 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.

3. Mark and Barbara Lucius of Milwaukee, Wisconsin claim \$ 7,984.93 for damages related to an automobile accident on February 2, 1994. The claimants were involved in an automobile accident with an employe (Norman Heard) of the University of Wisconsin—Milwaukee. Both claimants were allegedly injured and their vehicle damaged. In May 1994 the claimants' legal counsel sent a letter to UW Risk Management requesting that the UW notify its liability carrier. The claimants' legal counsel received a letter from Sentry Insurance, indicating that it was investigating the accident. The claimants' legal counsel prepared and sent a formal Notice of Claim naming both Mr. Heard and the UW. The notice was not timely served upon the state and was therefore denied. The claimants proceeded with a lawsuit against Mr. Heard. Default judgment was granted against Mr. Heard, who eluded service of process and declined to participate in the lawsuit in any way. Subsequent, repeated and persistent attempts to serve Mr. Heard were unsuccessful and have remained so to the present day. Such attempts include efforts by the claimants to pursue available legal channels to collect upon their judgment. The claimants have no recourse with the state, via the courts, because the Notice of Claim was untimely. The claimants allege, however, that it is clear that the state not only had such notice, but that it had

actively engaged its investigator, Sentry Insurance, within the applicable time period. The claimants further allege that the essential purpose of the notice of claim statute has been fulfilled here, and the they are being punished, in effect, because the State had benefited from a technicality and because Mr. Heard refused to cooperate with the investigation. The University of Wisconsin recommends denial of this claim. The claimant's retained counsel, but they failed to file a Notice of Claim with the State within the time limit prescribed by s. 893.82, Wis. Stats. Because of their failure to file a timely Notice, the suit was dismissed against the state. It appears that the claimants obtained judgment against Mr. Heard, but have not been able to collect. The claimants had an opportunity to litigate this matter, but due to the negligence of counsel, they failed to meet the technical requirements imposed by state law. 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.

4-14. The following claims are for tire damage allegedly caused by ash from the University of Wisconsin. 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 have 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, without any particular basis other than the passage of time, set a cut off date of May 15, 1997, and denied claims for damages incurred after that date. The University of Wisconsin recommends denial of these claims. When the townships notified the University of the residue problem, the UW took immediate, corrective action 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 the use of the ash. Accordingly, reimbursements were made for certain claims arising prior to May 1997. The UW contends that responsibility for the continued use of any stockpiled ash, or for road sweeping necessary to clear remaining ash, would be at the municipal level. The UW also argues that given the remoteness in time between the first applications of the ash and the filing of these claims, there is no equitable basis for payment. The Board concludes that the claimed amounts listed below should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., the payments should be made from the University of Wisconsin appropriation s. 20.285 (1)(c), Stats.

4.	Ronald J. Anderson	\$155.40
5.	Candi Boley	\$300.00
6.	Warren Burger	\$90.40
7.	Bonnie Gerner	\$280.59
8.	Gary & Carol Larsen	\$265.71
9.	Mareen Reeson	\$372.32
10.	Bill Resop	\$107.06
11.	Carlton P. Severson	\$58.03
12.	John L. Syftestad	\$83.52
13.	Kenneth Wittenwyler	\$21.00
14.	Robert & Alice Yaeger	\$126.22

15. Douglas W. Brown of Sun Prairie, Wisconsin claims \$171.33 for vehicle damage allegedly caused by a lawnmower at the University of Wisconsin. The claimant's vehicle was backed into a stall in lot

59 on the UW campus. When he returned to his vehicle, the claimant noticed a scratch on one end of his rear bumper. He contacted the UW grounds department and spoke with Tom Hamburg, who allegedly admitted that the damage could have been caused by a UW lawnmower. However, when the claimant submitted his claim to UW Risk Management, Mr. Hamburg would not support his previous statement in writing. The claimant has paid for the repairs but has not submitted a claim to his insurer. The claimant has insurance coverage for the damage, minus a \$50 deductible. The University of Wisconsin recommends this claim be denied. There is no evidence to support the claimant's contention that a lawnmower caused the damage to his vehicle. There is nothing in the record to suggest that any lawn mower touched the claimant's car, and thus there is no basis for concluding that there was negligence on the part of a state employee. 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. Amy Freed of Madison, Wisconsin claims \$62.25 for repair of a retinoscope. The claimant's retinoscope was accidentally knocked off a table by a proctor during a Department of Regulation & Licensing optometry licensing exam. The Department of Regulation & Licensing concurs with the facts as presented by the claimant and recommends payment of this claim. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Regulation & Licensing appropriation s. 20.165 (1)(i), Stats.

17. Glacier State Distribution Services, Inc., of Brodhead, Wisconsin claims \$31,010.00 for damages related to bids for road salt contracts with the Department of Transportation. The claimant transports its salt by rail in covered cars and stores the salt indoors. Most salt producers transport their salt by barge and do not store it indoors, which, according to the claimant, results in the salt being contaminated by water and dirt. Therefore, the claimant contends that its product is superior in quality to that supplied by water based transportation. The claimant claims that the Department of Transportation is being unjustly enriched by paying the same price for both the claimant's superior product and that of water based suppliers. The claimant believes that section 16.75 (1m), Stats., which directs the Department to use life cycle costing, requires the Department to pay a premium for superior quality salt. The claimant further states that the Department did pay a premium of \$.50/ton for higher quality salt in its 1994-95 contracts. The claimant requests payment of this premium for their 1995-96 road salt contracts in the amount of \$5,850. The claimant also claims that the Department failed to award it the Taylor County road salt contract, despite the fact that the claimant was the lowest responsive bidder. The claimant claims \$4,520 in lost profits from the Taylor County contract. The claimant's lost revenues total \$10,370 and the claimant requests treble damages along with costs and attorneys fees pursuant to Chapter 133 of the Wisconsin Statutes. The Department of Transportation recommends denial of this claim. In its 1994-95 contracts, the Department did offer a premium for indoor storage of salt in order to encourage vendors to use indoor storage, not because of life cycle costing. The Department has chosen not to offer this premium on subsequent bids because no reliable data exists to support the value of storing salt as provided pursuant to the premium. Furthermore, section 16.75 (1m), Stats., states that life cycle cost estimates are required whenever such action is appropriate. The Department had no information indicating that life cycle cost estimates are appropriate for the acquisition of salt and therefore did not apply them to the 1995-96 road salt contracts. Finally, the claimant was not awarded the Taylor County contract because the bid required 100% storage of the salt by December 31. The claimant's bid only provided 80% of the salt in storage by December 31. This was unacceptable to the Department because of the risks associated with not having adequate salt supplies on hand when needed. 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. (Members Main and Lee not participating.)

18. Kelly Lang of Roscoe, Illinois claims \$1,627.44 for damages related to a title error. In July 1996, the claimant purchased a 1985 Buick Regal from Robert Passow. The purchase price was \$1400 and the vehicle title indicated actual mileage of 68,349. Approximately six months later, the vehicle completely broke down and the claimant was told by a mechanic that the engine, which probably had several hundred thousand miles on it, had worn out. The claimant did a title search and discovered that there was actually in excess of 200,000 miles on the vehicle. When a Wisconsin title was issued on April 11, 1992, it was mistakenly issued as "actual miles" when it should have been recorded as "in excess" of 100,000 miles. The claimant contacted the former owners and discovered that they were not aware of the title error. The claimant states that she would not have purchased the vehicle, had she known the actual mileage. The claimant has incurred damages other than the loss of the purchase price. She spent roughly \$300 on new tires and small repairs shortly after purchasing the vehicle. It cost \$91.80 for a rental car, \$34.04 for gas, and \$101.60 for a diagnosis when the car broke down. The claimant was able to sell the vehicle for \$300. She requests reimbursement of her remaining expenses, since the error was made by a Department of Transportation employe, and was not fault of either the claimant or the previous owner. The Department of Transportation recommends payment of this claim in the amount of \$1,327.44. The Department does find negligence on the part of a state employe for not correctly processing the title. The Department recommends payment of \$1,327.44. This amount represents the purchase price, the vehicle rental fee and gas, and the engine diagnostic work, minus the \$300 the claimant was able to sell the vehicle for. The Board concludes the claim should be paid in the reduced amount of \$1,327.44 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 fund, unappropriated revenue.

19. William Medina of Florence, Colorado claims \$50.00 for reimbursement of a money order allegedly stolen by personnel at the Waupun Correctional Institution. The claimant alleges that he received the money order from an acquaintance. WCI refused to deposit the funds in his account or send him the money order when he was transferred to another institution. He believes the Department of Corrections does not have the authority to keep the money order from him and requests \$50 reimbursement. The Department of Corrections recommends this claim be denied. The money order in question was from an inmate named Robert Ciarpaglini and was made out to the order of a Daniel Furseth. The money order had then been modified to show it as coming from Mr. Furseth to the order of the claimant, another WCI inmate. Section DOC 303.40, Wis. Adm. Code prohibits unauthorized transfer of money between inmates. Because of this rule and concerns about the alterations on the face of the money order, the WCI business office declined to deposit the money in the claimant's account and instead re-deposited it in the account of Mr. Ciarpaglini. If Mr. Ciarpaglini wishes to send another draft to the claimant, nothing is stopping him from doing so. WCI staff acted appropriately and there is no merit to this claim. 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.

20. Veronica Miller of Las Vegas, Nevada claims \$1,354.64 for uninsured medical bills allegedly incurred due to an accident at State Fair Park on August 5, 1996. The claimant states that she broke her wrist and ankle when she stepped on a hump that was part of a storm sewer. She states that her ankle twisted into the drain and she fell, landing on her wrist. She requests reimbursement for her

uninsured medical expenses. Wisconsin State Fair Park recommends this claim be denied. State Fair Park has no evidence or reports that indicate the claim should be paid. 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.

21. Jack P. Peters of Horicon, Wisconsin claims \$20.05 for replacement of a damaged boat light. The claimant's rear boat light was broken when a Department of Natural Resources warden bumped her boat into the back of the claimant's boat. The claimant did not realize there was a 120 day deadline for filing with State Risk Management and is requesting reimbursement of the cost to replace the damaged light. The Department of Natural Resources recommends the claim be paid. The Board concludes the claim should be paid 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 concludes:

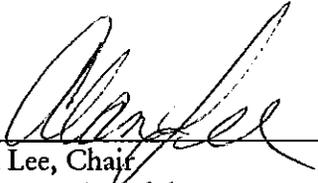
1. The claims of the following claimants should be denied:

Scott Air Charter
 Mark and Barbara Lucius
 Douglas W. Brown
 Glacier State Distribution Services, Inc.
 William Medina
 Veronica Miller

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

Russell L. Gray	\$450.00
Ronald J. Anderson	\$155.40
Candi Boley	\$300.00
Warren Burger	\$90.40
Bonnie Gerner	\$280.59
Gary and Carol Larsen	\$265.71
Mareen Reeson	\$372.32
Bill Resop	\$107.06
Carlton P. Severson	\$58.03
John L. Syftestad	\$83.52
Kenneth Wittenwyler	\$21.00
Robert and Alice Yaeger	\$126.22
Amy Freed	\$62.25
Kelly Lang	\$1,327.44
Jack P. Peters	\$20.05

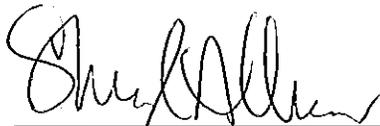
Dated at Madison, Wisconsin this 4 th day of March 1998.



Alan Lee, Chair
Representative of the Attorney General



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



Sheryl Albers
Assembly Finance Committee



Brian Burke
Senate Finance Committee



Stewart Simonson
Representative of the Governor