

## STATE OF WISCONSIN CLAIMS BOARD

On December 15, 2015, at the State Capitol Building in Madison, Wisconsin, the State of Wisconsin Claims Board considered the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. TRC Engineers	Financial Institutions	\$918.00
2. Robert Steinway	Natural Resources	\$10,000.00
3. Regenal Hoskins	Transportation	\$352.00

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
4. Sandra Klemm	Natural Resources	\$375.22
5. Reinaldo Acosta, Jr.	Corrections	\$245.00
6. Elbert Compton	Corrections	\$400.00
7. Jerome T. Walker	Corrections	\$45.61
8. Jerome T. Walker	Corrections	\$51.95
9. Raynard R. Jackson	Innocent Convict Compensation	\$25,000.00

***With respect to the claims, the Board finds:***

1. **TRC Engineers** of Windsor, Connecticut claims \$918.00 for refund of an alleged overpayment of fees due to an error on the claimant's Foreign Corporation Annual Report for 2015. The claimant states that its 2015 Wisconsin assets should have been reported as \$0 but were mistakenly reported as \$902,855. The claimant states that this error resulted in DFI calculating fees of \$1,008 instead of the correct amount, \$65. The claimant requests reimbursement for the overpayment.

DFI recommends denial of this claim. DFI notes that it has no means by which to verify the accuracy of the information provided by the claimant, because the claimant has exclusive control over the information on which the Annual Report's calculations are based. DFI points to the fact that there was no error by DFI or any of its employees. DFI notes that the Claims Board has a history of denying similar claims and recommends that the board deny this claim as well.

The Board concludes the claim should be denied based upon statements made at hearing by DFI that the claimant will receive a credit towards future fees in the amount of the overpayment and the claimant's statement that they would not have pursued this claim if they had been aware of the credit. *[Member Ignatowski not participating.]*

2. **Robert Steinway** of Minong, Wisconsin claims \$10,000 for value of a boat motor damaged while in DNR custody and other expenses. In July 2011, a boat owned by the claimant's company was involved in a serious accident on the Chippewa River. Both boats involved in the accident were badly damaged. At the time of the accident, DNR took custody of the claimant's boat and retained custody for several years. The claimant states that he made a number of attempts to determine whether DNR had winterized the boat while it was in storage but that he was given conflicting information. DNR also denied his request for return of the boat. When the boat was finally released to the claimant in 2015, he discovered that the motor, which had not been damaged in the accident, had a cracked engine block because DNR had not winterized the motor and the fluids inside had frozen.

The claimant believes DNR should be held responsible for not properly storing his property while it was in DNR custody. He again notes that the motor was not damaged in the accident and would have been salvageable but for DNR's negligence.

The claimant alleges that purchase of a new engine would cost in excess of \$20,000. He plans to fix the motor and has received an estimate of \$9,948.04 for the repair. The claimant states that the motor is a current model and, once repaired, has value far and above the repair costs. The claimant states that DNR's argument that full payment should not be made because the repairs have not yet occurred does not negate DNR's obligation to pay for their negligence. The claimant also notes that it is reasonable for him to wait for the claim to be paid rather than advancing his own money for the repair.

The claimant believes that the discussion as to the existence or nonexistence of insurance is not a defense to the admitted negligence of DNR. The claimant stated at hearing that his insurance claim was denied by his boat dealer's policy but that he received payment for the value of the boat under his general liability policy, minus a \$5,000 deductible. However, the claimant argues that this fails to take into account the value of the engine, which would have remained a viable asset if not damaged by DNR's negligence. The claimant states that "his insurance coverage was based on what was left of the boat" and that "DNR's position would be viable if a trailer was included" (it was not).

Finally, the claimant notes that he has incurred \$2,500 in attorney's fees attempting to recover costs for damage caused by DNR. The claimant believes that \$10,000 is a reasonable settlement for DNR's negligence.

DNR recommends payment of this claim in the reduced amount of \$1,000. DNR recognizes its responsibility to properly store evidence but never thought to drain water from the boat because it was "totaled" and no longer usable. Moreover, DNR took possession of the boat as part of a multi-agency investigation of a very serious accident involving four deaths. There were concerns regarding chain of custody issues if this important piece of evidence was moved to a marina for winter storage. DNR also notes that the agency was at one point negotiating with the claimant to retain the boat for training purposes but that negotiations fell through.

DNR points to the Claims Board's own website, which indicates the Board makes awards on claims for "out-of-pocket" damages; however the claimant has not actually incurred any costs to repair the motor. DNR notes that the purpose of the Claims Board is not to compensate individuals for mistakes allegedly made by the state, or to punish agencies for those mistakes, but to reimburse individuals for actual expenses. DNR admits it inadvertently damaged the motor—but in an already wrecked boat. DNR notes that it is highly unlikely that a motor from a wrecked boat will be re-used.

DNR points to the fact that the claimant has not definitively answered the agency's questions regarding insurance: Was the boat insured for collision? Was an insurance claim made and paid? If so, what payment did the claimant receive? DNR finds it difficult to believe that the claimant would not have insured this expensive business asset (which was brand new at the time of the accident) for comprehensive/collision coverage. DNR points to the Claims Board's longstanding history of not making awards for damages covered by insurance, regardless of whether or not the claimant filed a claim with their insurer. If the claimant received compensation from his insurer for the full value of the boat, that payment would have included the value of engine. An additional award would be contrary to Claims Board precedent and would constitute unjust enrichment.

The Board concludes that to the extent the claimant suffered any damages due to the actions of DNR, it appears he was made whole by his insurer. The Board thinks the claimant's insurer could have been the proper claimant because Mr. Steinway failed to prove or provide any documented losses. The Board further concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one with the state should assume and pay based on equitable principles.

**3. Regenial Hoskins** of Fitchburg, Wisconsin claims \$352.00 for tire damage incurred on 10/15/14. The claimant was traveling eastbound on Hwy. 12/18 when he struck a piece of

concrete that had broken out of the roadway, causing a large hole in the road. The claimant states that four vehicles struck the piece of concrete and there was no way to avoid it due to the traffic volume and the way it was sticking out. He requests reimbursement for his \$250 insurance deductible and the \$102 charge he had to pay out of pocket to obtain 2 new tires instead of used ones. The claimant states that his insurance company contacted Dane County and was told that DOT was the responsible party.

DOT recommends denial of this claim. DOT has a contract with Dane County for maintenance of interstate roads within the county. This contract has a hold harmless agreement which says that Dane County will indemnify and save harmless the State from all claims brought because of damages received by any person on account of any act, omission, neglect or misconduct of Dane County employees. Pursuant to that contract, DOT believes this claim should be brought against the Dane County Department of Transportation.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one with the state should assume and pay based on equitable principles.

**4. Sandra Klemm** of Hubertus, Wisconsin claims \$375.22 for vehicle window shattered by an object thrown by a riding mower. On 6/19/15, the claimant was traveling on Highway 13 at Roche-a-Cri State Park. As she passed the DNR employee mowing the grass in front of the park, an object shattered the rear passenger window of her vehicle. The claimant stopped to speak to the employee, who taped up her window and provided her with forms to file a claim. The claimant's vehicle is insured for liability only and she requests reimbursement for the cost to fix the window.

DNR recommends payment of this claim. DNR spoke to the employee who was operating the mower at the time of the incident. The employee stated that a road crew's recent work in the area "churned things up a bit" and theorized that the mower could have picked up a rock or other object which caused the damage. DNR notes that, although the claimant does not have comprehensive insurance coverage for her vehicle, if she had, the deductible would likely be above the amount being claimed. DNR believes there is no evidence of negligence on the part of its employees but 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 neither one for which the state is legally liable nor one with the state should assume and pay based on equitable principles.  
*[Members Finkelmeyer, Ignatowski, and Olsen dissenting.]*

**5. Reinaldo Acosta, Jr.** of Boscobel, Wisconsin claims \$245.00 for value of a television allegedly damaged by DOC. The claimant was transferred to the Wisconsin Secure Program Facility (WSPF) on 6/12/14 and initially housed on an intake unit. On 7/7/14, he was moved to a permanent cell where he was allowed to have his TV. The claimant alleges that when he arrived at his permanent cell, the TV was already there. The claimant states that this violates DOC rules, which require that all electronics must be checked into an institution in front of the inmate in order to prove they are in working order. The claimant alleges that his TV was working when he transferred to WSPF but that when he arrived in his permanent cell on 7/7/14, the TV would not work. The claimant states that Corrections Officer Key witnessed that the TV did not work when the claimant arrived in his permanent cell. The claimant filed an inmate complaint, which was denied. The claimant appealed the denial, alleging that DOC never contacted CO Key, but his appeal was denied. The claimant requests reimbursement of \$245, the cost of the TV.

DOC recommends denial of this claim. DOC states that on 7/7/14, prior to moving the claimant to his permanent cell, DOC staff delivered the TV there, plugged it in and found it to be in working condition. DOC states that staff had no further contact with the claimant's television until he reported it was malfunctioning. DOC believes there is no credible evidence that DOC staff damaged the claimant's TV and that this claim should be denied.

The Board concludes the claim should be paid in the amount of \$245.00 based on equitable principles due to DOC's apparent failure to follow its own policies. The Board further

concludes, under authority of § 16.007(6m), Stats., payment should be made from the Department of Corrections appropriation § 20.410(1)(a), Stats.

**6. Elbert Compton** of Waupun, Wisconsin claims \$400.00 he alleges he was awarded by the court due to an incorrect Judgment of Conviction (JOC). In the claimant's original 2004 JOC, the court imposed: \$80 court costs, \$280 crime victim/witness assistance surcharge, \$20 crime lab assessment, \$20 drug assessment, and a \$250 DNA surcharge. In 2008, the court vacated the \$250 DNA surcharge and DOC reimbursed that money to the claimant's inmate account. In March 2011, the court amended the claimant's JOC to: \$120 court costs, \$420 crime victim/witness assistance surcharge, and \$30 in other obligations. The claimant filed a motion with the court challenging the increase in the crime victim/witness assistance surcharge. The court agreed the surcharge had been calculated incorrectly and amended the JOC to reflect the correct surcharge of \$280. The claimant alleges that DOC should have reimbursed \$400 to his account to reflect the corrections to his JOC but that DOC failed to do so.

DOC recommends denial of this claim. DOC states that it never changed the obligations attached to the claimant's inmate account to reflect the increased crime victim/witness surcharge. As a result, the claimant was never charged by DOC for the erroneous crime victim/witness surcharge. DOC states that the amount deducted from the claimant's account never exceeded the original \$280 surcharge originally imposed by the court. DOC does not believe the claimant should be reimbursed for an amount he never paid. In addition, DOC notes that in April 2011 institution staff notified the claimant that it had incorrectly entered an additional court cost amount as \$2600, rather than \$100. Upon discovery of this error, DOC immediately corrected the amount. DOC notes that this was a harmless error because, at the time it was discovered, the claimant had only paid \$97.12 towards that additional court cost.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one with the state should assume and pay based on equitable principles.

**7. Jerome T. Walker** of Waupun, Wisconsin claims \$45.61 for cost of hobby supplies allegedly improperly destroyed by DOC. The claimant is an inmate at Waupun Correctional Institution. He was sent to temporary lock-up (TLU) on 4/26/14 and his hobby property was sent to the Hobby Department for inventory because he could not possess it while in TLU. DOC staff inventoried his hobby property on 5/1/14. A portion of his pink and light lavender yarn was declared excess/contraband and was destroyed. The claimant states that he is allowed to have a total of 160 oz. of yarn and that he only had 157.5 oz. at the time of the 5/1/14 inventory. The claimant also states that he has receipts to prove that he purchased the pink and light lavender yarn. The claimant alleges that the prior inventory on 3/18/14 shows a "pink/lt lavender - started on project" which was a blanket that he decided not to finish. The claimant states that between 3/18/14 and 5/1/14 he undid that project and that is how he obtained the allegedly "excess" pink and light lavender yard. The claimant also alleges that the project listed on the 5/1/14 inventory as "lt lavender/pink project (crocheted) started" proves that the project started at the time of the 3/18/14 inventory was more substantial and almost completed by the time of the 5/1/14 inventory. The claimant believes his receipts prove that he purchased the yarn and requests reimbursement for the cost of the yarn as well as photocopy and postage costs to pursue his claim.

DOC recommends denial of this claim. On 3/16/14 the claimant was sent to TLU and Hobby staff inventoried his property on 3/18/14. The claimant was transferred back to his regular cell and his property returned on 4/4/14. The claimant was again sent to TLU on 4/26/14. When Hobby staff inventoried his property on 5/1/14, they discovered he had 14.4 oz of pink yarn and 23.2 oz. of light lavender yarn in excess of what was shown on the 3/18 inventory. The claimant had no receipts showing he had purchased additional yarn between 4/4 and 4/26. Therefore, DOC staff determined he must have obtained the yarn through unauthorized means and declared it contraband. Pursuant to DOC policy, the contraband yarn was destroyed. DOC disputes the claimant's allegation that he obtained the yarn by ripping out the project started at the time of the 3/18 inventory. The 5/1 inventory clearly shows the

claimant was still working on the same project. DOC states that staff properly seized and disposed of the yarn because it was contraband and obtained by the claimant through unauthorized channels.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one with the state should assume and pay based on equitable principles.

*[Member Ignatowski dissenting.]*

**8. Jerome T. Walker** of Waupun, Wisconsin claims \$51.95 for property allegedly improperly seized and destroyed by DOC staff. The claimant is an inmate at Waupun Correctional Institution. On 11/4/14, DOC staff searched his cell and confiscated a number of canteen items. The claimant alleges that DOC staff took the items because they believed he had not purchased them but that he was able to produce receipts for 98% of the items. The claimant alleges that after he produced the receipts, DOC told him the items had been confiscated because they were "past their 6 month consumption time." The claimant states there is no DOC rule requiring that canteen items be consumed within 6 months of purchase. The claimant filed an inmate complaint, which was denied. He appealed that decision but was again denied. The claimant states that he was not over the possession limit for any of the items and that DOC should not have seized them. He also believes that he should have been allowed to mail the allegedly contraband items to his family, rather than them being destroyed by DOC.

DOC recommends denial of this claim. DOC notes that canteen purchase limits for inmates are also canteen possession limits. DOC states that inmates are informed of this rule and are responsible for ensuring they do not exceed the allowed number of canteen items. DOC states that the cell search turned up numerous canteen items in excess of the possession limits and a number of items for which the claimant could not produce receipts. Because the items were in excess of allowable canteen limits, the items were declared contraband and destroyed. DOC notes that, per DOC policy, inmates are not allowed to mail out canteen items to family members. DOC believes the excess canteen items were correctly classified as contraband and properly destroyed.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one with the state should assume and pay based on equitable principles.

**9. Raynard R. Jackson** of Boscobel, Wisconsin claims \$25,000.00 for Innocent Convict Compensation pursuant to §775.05, Wis. Stats., related to a 2004 conviction. The claimant states that he was framed by officers of the Milwaukee Police Department and that he is innocent of the crimes for which he was convicted.

The claimant states that on 3/25/03 he and a companion, Morris Rash, saw a police car pass them as they entered a store. When they exited the store, the squad turned around and followed them as they walked down the sidewalk. The claimant states that he and Rash ran from the officers because they were both subject to outstanding warrants. The claimant states that Officer Lough chased him but that he was apprehended by Officer Dodd. Officer Awadallah apprehended Morris Rash. The claimant states that he did not have a gun.

The claimant states that this encounter involved a "rogue" group of District 3 officers: Awadallah, Lough, Dodd, and Dineen, who had a history of framing individuals for crimes and other misconduct. The claimant notes that the prior District 3 Captain had been relieved of command for sending a memo that encouraged officers to make "the thugs" lives "even more miserable than before" after a District 3 officer was transferred out of the district due to misconduct. The claimant alleges that these four officers planted a gun at the scene of his arrest and conspired to falsify reports in order to frame him.

The claimant alleges that the officers lied about many elements of the arrest. He states there is no record of the "drug dealing complaint" to which the officers said they were responding. He states the officers saw him and Rash enter and leave the store; therefore, they were clearly not loitering. The claimant notes that Officer Lough wrote contradictory reports, one indicating that he picked up the gun as he pursued the claimant and one indicating that he went back for the gun after he apprehended the claimant. The claimant points to the fact that

the gun the officers claim he discarded was the exact same type and caliber issued to police officers, that it was not registered or reported stolen, and that it did not have the claimant's fingerprints on it. The claimant notes that Officer Lough testified at trial that he inventoried the gun into evidence, but police records show that it was Officer Awadallah who checked in the gun, more than five hours after claimant was arrested. The claimant states that Officer Lough also reported that he was present for both the claimant's and Rice's arrests, even though the claimant and Rice fled in different directions and were arrested in different locations. The claimant alleges that, contrary to the reports he filed, Officer Lough did not have any contact with him, and that Officer Dodd arrested him. The claimant alleges that Officer Dodd struck him while he was handcuffed, and took his watch and money, neither of which was ever inventoried.

In February 2005, the claimant was convicted of possession of a firearm by a felon, carrying a concealed weapon, and resisting an officer.

The claimant's initial postconviction counsel, Attorney Lucius, filed an appeal in September 2005. In March 2005 Officer Awadallah was charged in federal court for threatening to plant evidence on a suspect in an unrelated case. Despite the fact that the charges against Officer Awadallah were prominently reported in multiple Milwaukee-area and statewide media sources while the postconviction motion was still pending, Lucius failed to raise the issue in the motion.

In addition, in 2006 while the claimant's appeal was pending, the court of appeals released its decision in *State v. Missouri*. The court granted a new trial to Missouri due to the trial court's refusal to admit evidence of other acts of misconduct involving Officers Awadallah Lough, Dodd, and Dineen. Despite the fact that these were the same four officers involved in claimant's arrest, Lucius failed to amend his motion. The claimant's postconviction motion was denied by the trial court.

In 2007, the claimant's new attorney, Mr. Gould, filed a postconviction motion for ineffective assistance of counsel based on Lucius's failure to raise issues related to the *Missouri* decision and newly discovered evidence—Officer Awadallah's conviction on federal civil rights charges. This motion was also denied by the trial court.

Attorney Gould appealed the denial and in December 2008, the court of appeals ordered a hearing on the issues. In the July 2009 hearing, the court found that attorney Lucius's failure to bring up Officer Awadallah's prosecution and the *Missouri* decision constituted ineffective assistance of counsel. The court vacated the two gun-related convictions and remanded those charges for a new trial. In August 2009, the State dismissed the gun-related charges.

The claimant states that the officers involved in his arrest have no credibility, which has been proven by Awadallah's conviction and reversals of numerous other individuals' convictions based on the same type of misconduct by the officers involved in his arrest.

The claimant states he would have only served 9 months for the obstruction conviction and requests the maximum reimbursement for the six years and three months he spent in prison.

The Milwaukee County District Attorney's Office (DA) recommends denial of this claim. The DA states that neither the court proceedings nor the claimant's submissions establish that he was actually innocent of the crimes for which he was convicted, and that the State's decision to dismiss the gun-related charges was not based on a determination that the claimant was innocent of those charges.

The DA notes that the court of appeals did not find that there was merit to the claimant's underlying claim, but only that his motion was sufficient to warrant a hearing. At the July 2009 hearing, Judge Martens found that Awadallah's conviction and the *Missouri* decision "at least as it relates to Awadallah" created a reasonable probability that the trial result would have been different due to Awadallah's role in the chain of custody of the recovered gun. Judge Martens vacated the gun-related charges and ordered a new trial on those counts; however, the obstruction charge was not overturned.

The DA points to the fact that Judge Martens' ruling was limited to Officer Awadallah and the chain of custody issue. Significantly, Judge Martens 1) did not find that the claimant was innocent in fact; 2) did not find that any officer engaged in misconduct; 3) did not find that

the evidence would be insufficient to establish guilt at retrial; and 4) did not determine that Missouri evidence was admissible to any officer other than Awadallah.

The DA states that it moved to dismiss the gun-related charges because the evidence would not have been as strong at retrial, since Awadallah was not available to establish chain of custody. That, and the possibility that Missouri evidence would be admitted, raised the question of whether the State could prove the charges beyond a reasonable doubt. In addition, the claimant had served most, if not all, of his maximum sentence. Therefore, the state moved to dismiss the outstanding charges.

The DA believes the claimant has failed to meet the standard of providing clear and convincing evidence that he was innocent and recommends denial of this claim.

The Board defers decision of the claim at this time so that the claimant can be made available to attending a hearing.

**The Board concludes:**

**That the following identified claimants are denied:**

- TRC Engineers, Inc.
- Robert Steinway
- Regenial Hoskins
- Sandra Klemm
- Elbert Compton
- Jerome T. Walker (2 claims)

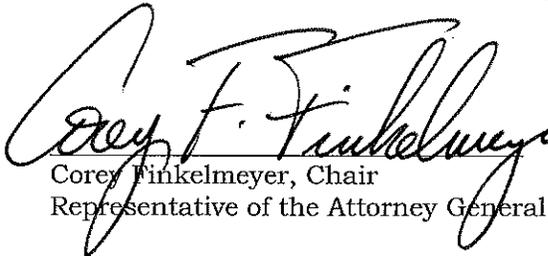
**That decision of the following claim is deferred to a later date:**

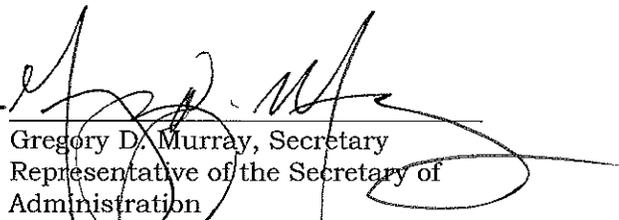
Raynard R. Jackson

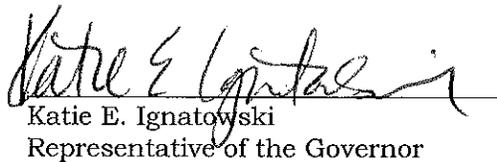
**That payment of the amount below to the identified claimant from the following statutory appropriation is justified under § 775.05, Stats:**

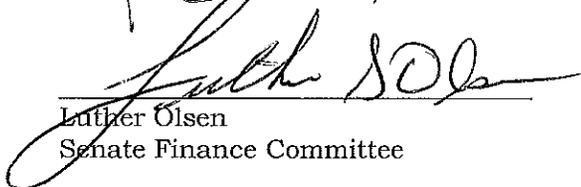
Reinaldo Acosta, Jr.	\$245.00 § 20.410(1)(a), Wis. Stats.
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Dated at Madison, Wisconsin this 16th day of January 2016

  
 Corey Finkelmeyer, Chair  
 Representative of the Attorney General

  
 Gregory D. Murray, Secretary  
 Representative of the Secretary of Administration

  
 Katie E. Ignatowski  
 Representative of the Governor

  
 Luther Olsen  
 Senate Finance Committee

  
 Mary Czaja  
 Assembly Finance Committee