

## STATE OF WISCONSIN CLAIMS BOARD

On February 7, 2018, 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. Kurt & Barbara Zipp	Revenue	\$4,624.80
2. Shanquil Bey	Children & Families	\$163,691.53

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
3. Jay Callahan	Natural Resources	\$8,630.90
4. Penny Schofield	Transportation	\$1,400.00
5. Randy Alexander	Corrections	\$167.44
6. Vance Hernandez-Smith	Corrections	\$247.00
7. Corey J. Frederiksen	Corrections	\$99.85
8. Wade A. Strassburg	Corrections	\$1,320.00
9. Terrance J. Shaw	Corrections	\$400.15
10. Donovan Crowe	Corrections	\$257.60

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

1. **Kurt & Barb Zipp** of Darien, Wisconsin claim \$4,624.80 for interest charged on a Department of Revenue income tax assessment. The IRS adjusted claimants' 2008 and 2009 federal income tax returns. Claimants did not dispute the adjustment. Claimants allege that they were told by the IRS that they did not need to contact DOR but that the IRS would do so and DOR would contact claimants if any Wisconsin tax assessments were issued. Claimants' tax preparer also told them to wait until they were contacted by DOR. DOR issued an assessment on their adjusted 2008 and 2009 returns eleven days short of the 4-year statute of limitations on the assessment. Claimants do not dispute the amount of tax assessed, however, DOR added 12% interest. Because it took DOR so long to issue the assessment, the interest charged was nearly 40% of the total amount assessed. Claimants filed a Petition for Redetermination with DOR but was told the agency did not have authority to reduce the interest. They then filed a Petition for Review with the Tax Appeals Commission, but the Commission also told them it did not have authority to reduce the interest amount. Claimants believe the amount of interest charged is excessive. They note that the IRS reduced their interest due to 3%. They request reimbursement of the interest amount charged by DOR.

DOR recommends denial of this claim. Claimants underreported their 2008 and 2009 income by over \$100,000 each year. Section 71.76, Stats., requires taxpayers to file amended Wisconsin returns upon finalization of their IRS audit. Claimants failed to do so. The IRS notified DOR of the audit in July 2011. Section 77.77(7)(b), Stats., provides a four-year statute of limitations for DOR to make assessments based on IRS adjustments. DOR had been receiving 35,000 to 55,000 federal audit reports each year. At the time DOR received notification of the claimants' adjustment, the department was actively seeking legislative approval of additional staff to address a backlog of IRS audit determinations. Despite this backlog, DOR issued claimants' assessment within the four-year statute of limitations. The 12% interest charged is a statutorily mandated amount, which DOR has no authority to reduce. DOR notes that the interest could have been avoided altogether if claimants had not underreported their income or had promptly notified DOR of the audit adjustment as required by § 71.76, Stats. DOR believes there has been no showing of negligence on the part of the state and that there is no equitable basis for payment of this claim.

The Board finds that although DOR faced a unique situation causing a backlog in processing federal audits, the time it took to process claimants' audit was excessive. The Board encourages DOR to improve its communications with taxpayers when the department receives information from the IRS. The Board concludes the claim should be paid in the reduced amount of \$2,312.40, representing half of the interest paid by claimants, based on equitable principles. The Board further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Department of Revenue appropriation § 20.566(1)(a), Stats.

**2. Shanquil Bey** of Milwaukee, Wisconsin claims \$163,691.53 for monies allegedly owed to her licensed child care center. Claimant's center cared for children whose care was subsidized by the Wisconsin Shares program. On August 20, 2010, the Department of Children and Families suspended Wisconsin Shares payments to claimant's child care center. Claimant states that she was one of 35 child care centers which were "raided" in the Milwaukee area due to media coverage about child care fraud. She states that she was suspended based on "red flags" in DCF's system, not due to any finding or evidence of guilt. Claimant appealed that suspension to Milwaukee County Circuit Court. The court found that DCF violated claimant's due process rights and ordered DCF to issue payments to her for any child care previously provided and to resume Wisconsin Shares payments. Claimant alleges that DCF has failed to make the payments ordered by the court. She alleges that the two checks issued by DCF in March 2011 were for care provided prior to August 20, 2010. She also alleges that DCF underpaid her for child care provided prior to her suspension. She alleges that DCF is in contempt of the court order. She requests \$103,355.17 for underpayments and \$60,336.36 for unpaid child care from October through December 2010.

DCF recommends denial of this claim. DCF notes that the court directed DCF to issue payments to claimant for any *eligible* care previously provided and to resume Wisconsin Shares payments for any *eligible* care. DCF did pay claimant for eligible care she previously provided. DCF issued checks on March 24, 2011, in the amounts of \$5,023.45 and \$2,861.36. DCF believes claimant has submitted no evidence supporting her allegation of underpayment. DCF notes that claimant has pursued her claim for additional money in a variety of forums. DCF believes her claims are without merit and should be denied.

The Board defers decision of this claim at this time so that it may obtain additional information from both claimant and DCF.

**3. Jay Callahan** of Rhinelander, Wisconsin claims \$8,630.90 for vehicle damage allegedly incurred due to a defective Department of Natural Resources boat landing at Spider Lake in Oneida County, Wisconsin. On April 25, 2017, claimant used the boat landing to launch his new boat. He backed his boat trailer to the end of the ramp, where there were two cement slabs stacked on top of each other. He states that the boat came off the trailer without difficulty. He was kneeling on the dock facing away from the lake when the boat trailer backed down an approximately 6-foot deep hole at the end of the ramp. He states that the tongue of the trailer acted as a lever and pulled his vehicle into the lake. Claimant alleges that his vehicle was turned off, the transmission was in "park," and the emergency brake was on when this incident occurred. Claimant notes that the boat landing was fixed the same day as this incident. Claimant only had liability insurance coverage for his vehicle. He requests reimbursement for towing costs, repair costs, and the cost of replacing his vehicle when it was eventually determined not to be repairable.

DNR recommends denial of this claim. DNR staff became aware of repairs needed at the Spider Lake boat landing on April 19, 2017. The repairs could not be done immediately, because heavy equipment was needed to move 700 lb. planks. DNR did not close the ramp or post warnings, because the defects were clearly visible, and most boaters would still be able to effectively use the landing. Repairs to the landing were conducted on April 25, 2017. DNR believes it is highly improbable that an empty boat trailer could have pulled a 3,600-lb. vehicle, allegedly in "park" with the emergency brake engaged, from a dead stop, over a 4-inch high plank and out into the lake. DNR notes that if the vehicle had been in "park" the front wheels would have been locked, and unable to roll down the ramp. DNR proposes a more likely explanation of how this event occurred. Claimant intentionally or accidentally left his vehicle in

neutral or reverse. The stacked planks at the end of the ramp acted as a chock-block for the trailer's wheels, preventing the trailer from rolling down the ramp. When the boat was launched, the weight on the trailer decreased, releasing the tension holding the trailer's wheels against the planks. The trailer wheels rolled over the stacked planks and pulled the vehicle into the lake. DNR notes that claimant has provided no explanation of how the condition of the landing caused this incident. DNR also points to the recreational immunity statute, § 895.52(2), (4), Stats., which prevents claims against the state absent some malicious intent. Finally, DNR believes that if the board determines payment should be made, such payment should be limited to the cost of the tow and the fair-market value of claimant's destroyed vehicle. DNR would therefore request any payment be limited to \$3,434.

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 which the state should assume and pay based on equitable principles.

**4. Penny Schofield** of Blue River, Wisconsin claims \$1,400.00 for cost of a vehicle allegedly totaled in an accident on October 15, 2017. Claimant alleges she hit a deer while driving on Hwy. 133 in Grant County between Blue River and Boscobel. She claims she did not see the deer because of high weeds on the side of the roadway. The vehicle was a 2001 Buick Century for which she paid \$1,400. Claimant states that her repair shop told her the repair cost would be more than the vehicle is worth. She only carried liability insurance on the vehicle. She requests reimbursement for the cost of the vehicle.

The Department of Transportation recommends denial of this claim. DOT has a Routine Maintenance Agreement with Grant County for maintenance of the state roads in that county. Claimant should pursue her claim with Grant County. There has been no negligence on the part of the state.

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 which the state should assume and pay based on equitable principles.

**5. Randy Alexander** of Green Bay, Wisconsin claims \$167.44 for full replacement value of a television broken by Department of Corrections staff. Claimant is an inmate at Green Bay Correctional Institution (GBCI). In May 2017, he received his property from GBCI storage and noticed his television was no longer working. He filed an inmate complaint and DOC determined the television was damaged while under staff control. However, claimant was only reimbursed \$59, the depreciated value of the TV. Claimant does not believe DOC's reimbursement is fair because DOC requires inmates to pay the full purchase price when they damage institution TVs. Claimant states that the purchase price of the TV was \$167.44. He believes DOC should cover the cost of repairing his TV, reimburse him for the full value of the TV, or provide him with an institution TV as a replacement.

DOC recommends denial of this claim. Claimant has been reimbursed pursuant to DOC's depreciation schedule for property reimbursement. DOC policy DAI 310.00.03 permits institutions to either repair or replace broken items. In this case, DOC reimbursed claimant so he could replace the television. DOC believes claimant has been properly reimbursed for his television and should not be reimbursed again by the Claims Board.

The Board concludes the claim should be paid in the reduced amount of \$108.44, the purchase price of the television minus the amount already reimbursed by DOC, based on equitable principles. 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. Vance Hernandez-Smith** of Stanley, Wisconsin claims \$247.00 for damage to a typewriter allegedly caused by the actions of Department of Corrections staff. Claimant is an inmate at Stanley Correctional Institution. In October 2016, he gave his typewriter to the property sergeant to pack and ship to Will's Repair Service to fix a broken key. He states that Will's notified him by phone that the typewriter arrived broken into several pieces and therefore could not be repaired under warranty. Claimant alleges that Will's also told him the typewriter was not shipped in its original box, but in a standard institution box without adequate

padding. Claimant's social worker spoke to the shipping service, UPS, which allegedly told her that they would not pay for the damage because their investigation concluded the typewriter was improperly packed. Claimant filed a complaint with the Inmate Complaint Review System. He provided contact information for both UPS and Will's Repair Service, so the Institution Complaint Examiner could contact them as part of the investigation. Claimant states that the ICE did not contact either party, but simply relied on the property sergeant's statement that she packed the typewriter in the original box with the original padding. Claimant believes the ICE's investigation was inadequate because contacting Will's or UPS would have proven the sergeant's statement was untrue. Claimant believes the ICE's inadequate investigation was a violation of DOC 310, Wis. Admin. Code and requests reimbursement for his damaged typewriter.

DOC recommends denial of this claim. The Inmate Complaint Examiner's investigation determined that DOC staff properly packed claimant's typewriter in the original box with the original padding as is standard practice and that DOC was therefore not responsible for any damage. This conclusion was upheld by the institution warden and the Corrections Complaint Examiner. DOC notes that claimant has submitted no evidence of any negligent handling of his typewriter by DOC staff. Despite claimant's statements regarding UPS's investigation, he has submitted no evidence that UPS concluded the typewriter was improperly packed. Finally, as of this date, the typewriter is still in the possession of Will's Repair Service and DOC is therefore unable to confirm the damage alleged by claimant.

The Board concludes claimant has failed to provide evidence of the value of the typewriter, there has been an insufficient showing of negligence on the part of the DOC employees in packing the typewriter, and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**7. Cory Frederiksen** of Portage, Wisconsin claims \$99.85 for value of property allegedly lost by Department of Corrections staff. Claimant is an inmate at Columbia Correctional Institution. On December 9, 2016, he was transferred to Temporary Lock Up (TLU) and his personal property was packed up by DOC staff. On December 12, 2016, his property was returned, and he notified DOC that several items were missing. He filed an inmate complaint about the missing property, but his complaint was denied. Claimant states that the additional missing items he added to this claim were not included in his original inmate complaint because he received additional property back after the inmate complaint was filed and discovered more missing items. Claimant points to Division of Adult Institutions Policy 309.20.03, which provides that when property is packed up due to an inmate's transfer to TLU, the inmate is supposed to be allowed to review and sign the property inventory form. Claimant states that he was not given his property inventory form to review and sign, in violation of that policy. He also states that state and federal law have found that once an inmate is placed in TLU, his property becomes the responsibility of the staff assigned to the unit. Claimant alleges that DOC staff was negligent in handling his property and requests reimbursement.

DOC recommends denial of this claim. DOC investigated this incident in response to claimant's inmate complaint. The complaint investigator reviewed his property inventory and receipts and determined that the allegedly missing items were not in claimant's property at the time he was transferred to TLU. DOC notes that these items could have been given away, lost, or stolen at any time prior to claimant's transfer. DOC also notes that claimant is now alleging that more items were missing than he did in his original inmate complaint. DOC believes he has not exhausted his administrative remedies regarding those additional items. DOC has found no evidence that claimant had those additional items in his cell when he was transferred to TLU. DOC believes there is no evidence that staff mishandled claimant's property and that his claim should be denied.

The Board concludes the claim should be paid in the reduced amount of \$38.44 based on equitable principles. 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.

**8. Wade A. Strassburg** of Oregon, Wisconsin claims \$1,320.00 for rent and transportation expenses allegedly related to an accident at Stanley Correctional Institution (SCI) in July 2015.

At the time of the accident, claimant was an inmate employee working in the SCI kitchen. He states that he slipped and twisted his knee because the floors were wet. He points to the fact that there were no "wet floor" signs posted in the area, despite the fact that SCI staff had told inmates to empty the water from the steam tables onto the floor. Claimant states that his injury required knee surgery after his release from SCI. He alleges that he has been unable to work because of the injury and therefore cannot keep up with his rent payments. In addition, he is claiming transportation expenses for travel to and from various medical appointments related to his injury.

The Department of Corrections recommends denial of this claim. DOC believes claimant has not demonstrated that his expenses are the result of DOC negligence. DOC notes that claimant has provided no receipts or proof that he would not have incurred these expenses but for the negligence of DOC. Claimant filed an inmate complaint related to this accident. The investigation into that complaint revealed that floors in the food service area are often wet, especially during the summer months, a condition of which claimant should have been aware. In addition, food service employees' duties include cleaning all equipment, which results in varying amounts of water on the floor. DOC believes that as a food service employee, claimant should have been aware that the kitchen floors were often wet and exercised reasonable caution while performing his duties. His inmate complaint was denied. DOC believes it responded appropriately to the accident by providing medical attention to claimant and that there is no evidence of negligence by DOC or its employees.

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 which the state should assume and pay based on equitable principles.

**9. Terrance J. Shaw** of Sturtevant, Wisconsin claims \$400.15 for court filing fees, cost of service, supplies, and photocopies allegedly incurred due to the actions of Department of Corrections staff. Claimant received a conduct report charging him and his roommate with covering their cell door window. He filed a complaint with the Inmate Complaint Review System, which was denied. He filed a Writ of Certiorari in Dane County Circuit Court challenging the conduct report. The court found no evidence supporting claimant's guilt. The court reversed DOC and vacated the conduct report. In its decision, the court stated that the conduct report was "arbitrary and capricious," that DOC "did not follow its own rules," and that claimant's "right to due process was violated by the DOC's staff." Claimant takes issue with DOC's assertion that he has not exhausted his administrative remedies. He notes that these costs were incurred in January-February 2017. DOC rules require that ICRS complaints be filed within 14-days, therefore, any complaint he filed now would be considered untimely. Because no remedy exists for him under the ICRS system, he is not legally obligated to use it. DOC also seems to suggest that § 814.25, Stats., shows legislative intent to completely bar prisoners from ever receiving costs for actions related to prison conditions. Claimant believes this is a misinterpretation of the statute, which clearly allows costs under certain circumstances. Claimant notes that § 814.25, Stats., only bars *the court* from awarding costs in a certiorari action related to prison conditions, it is not a total ban against prisoners receiving costs. Claimant states that such a ban would violate prisoners' rights under Article 1, Section 9 of the Wisconsin Constitution. He requests reimbursement for his costs, which would not have been incurred but for the arbitrary and capricious actions of DOC.

DOC recommends denial of this claim. While claimant did file an ICRS complaint related to the conduct report he received, he did not file a subsequent complaint requesting reimbursement for his costs. Because he did not do so, he has failed to exhaust his administrative remedies as required by Chapter DOC 300, Wis. Admin. Code. DOC also believes that § 814.25, Stats., makes it clear that the Wisconsin Legislature did not want prisoners to be awarded costs for actions related to prison conditions. Section 814.25(2)(b), Stats., specifically states such costs are not allowed for certiorari actions related to prison conditions. DOC believes that if the court is not allowed to award such costs, it stands to reason that claimant should not be allowed to circumvent the statute by claiming such costs before the Claims Board.

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 which the state should assume and pay based on equitable principles.

**9. Donovan Crowe** of Portage, Wisconsin claims \$257.60 for monies allegedly illegally deducted from claimant's inmate account at Columbia Correctional Institution. In December 2016, the Department of Corrections switched computer software from the Wisconsin Inmate Trust System (WITS) to the Wisconsin Integrated Corrections System (WICS). After the switch, WICS deducted \$80 court costs and \$170 supervision fees from claimant's inmate account. He alleges that these debts had already been paid under the WITS system. He filed an institution complaint and both the Inmate Complaint Examiner, and the Corrections Complaint Examiner affirmed his complaint. Despite this decision, DOC's business office has refused to refund the money to claimant. Claimant points to two January 2017 DOC memos as evidence that DOC admits it erred in deducting the money. He requests reimbursement for the \$250 deducted from his account and \$7.60 for the cost of filing this claim.

DOC recommends denial of this claim. DOC states that the initial decision to affirm claimant's institution complaint was erroneous. After the decision, it was discovered that the court costs and supervision fees had never been added to claimant's debts and obligations under the WITS system and had therefore never been deducted from his account. This oversight was discovered when the switch was made to the WICS system and those debts were added to claimant's accounts and properly deducted under the new system. DOC notes that the January 2017 memos do not support his argument and are not admissions of error by DOC in this matter. DOC believes claimant has submitted no proof that he has previously paid these debts and that his claim should be denied.

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 which the state should assume and pay based on equitable principles.

***The Board concludes:***

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

Jay Callahan  
 Penny Schofield  
 Vance Hernandez-Smith  
 Wade A. Strassburg  
 Terrance J. Shaw  
 Donovan Crowe

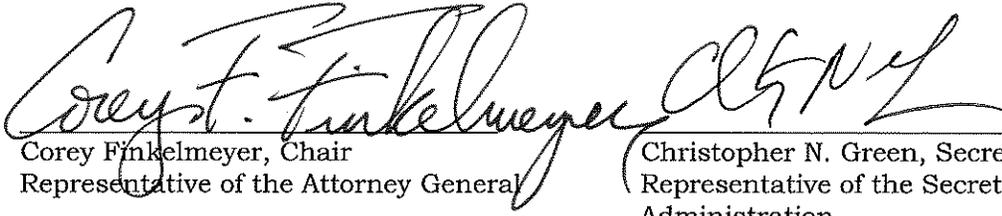
**That payment of the amount below to the identified claimant from the following statutory appropriation is justified under § 16.007(6)(b), Stats.**

Kurt & Barb Zipp	\$2,312.40	§ 20.566(1)(a), Stats.
Randy Alexander	\$108.44	§ 20.410(1)(a), Stats.
Cory J. Frederiksen	\$38.44	§ 20.410(1)(a), Stats.

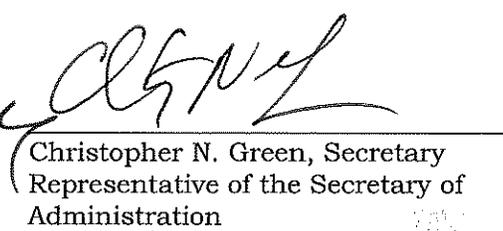
**That decision of the following claims is deferred until a later date:**

Shanquil Bey

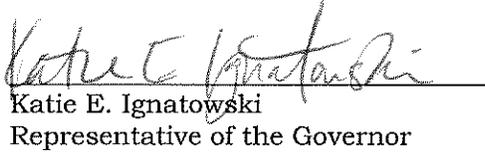
Dated at Madison, Wisconsin this 27<sup>th</sup> day of February, 2018



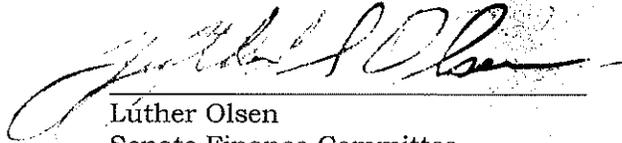
Corey Finkelmeyer, Chair  
Representative of the Attorney General



Christopher N. Green, Secretary  
Representative of the Secretary of  
Administration



Katie E. Ignatowski  
Representative of the Governor



Luther Olsen  
Senate Finance Committee



Mary Felzkowski  
Assembly Finance Committee