

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on December 5, 2003, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Linda Kilgore	Corrections	\$8,578.89
2. Deborah A. Axelson	Workforce Development	\$20,778.68
3. Brandy C. Solomon	Workforce Development	\$74,880.00
4. Market & Johnson	Administration	\$7,569.00
5. David F. Kral	Revenue	\$1,771.06
6. Joyce D. Roetgen	Health and Family Services	\$1,052.10

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
7. Kwangbae Kim	University of Wisconsin	\$131.88
8. Oscar I. Winger	Transportation	\$1,043.26

The Board Finds:

1. Linda Kilgore of Cameron, Wisconsin claims \$8,578.89 for vehicle and property damage allegedly related to her employment as a Probation and Parole Agent with DOC. The claimant states that she served one of her offenders with revocation papers, at which time he threatened her. The revocation hearing was scheduled for 9:00 a.m. on July 12, 2002. Around 3:00 a.m. on July 11, 2002, someone propped a lit propane torch under the gas tank of claimant's vehicle, which was parked in the driveway of her residence. The ensuing explosion and fire destroyed the vehicle and various personal items stored in the car, a tree and five bushes, damaged the driveway, and caused smoke damage to the home. An individual named Scott Ristow is suspected in the crime. The claimant states that Mr. Ristow has strong connections to Loren Purintun, the offender scheduled for revocation on July 12. The claimant believes that Mr. Purintun arranged the arson in retaliation for his revocation. The claimant received a settlement payment of \$5,164.25 from her homeowner's insurance, but alleges that her actual damages totaled \$13,743.14. The claimant states that she accepted the insurance payment under protest because she had to purchase a replacement vehicle for her family because the vehicle destroyed was their only car and they do not have access to public transportation. The claimant believes that the connection between Mr. Ristow and Mr. Purintun proves that this arson was a direct result of her actions as a Probation and Parole Agent and believes that DOC should reimburse her for her uninsured damages.

DOC recommends denial of this claim and believes the claimant has already been properly compensated by her insurer. DOC points to insurance payments as follows: 1) Claim for tree removal - \$472. Insurance payment \$450.00. 2) Claim for driveway replacement - \$5058.00. The claimant's insurer limited payment to replacement of the actual damaged portion of the driveway, not the entire driveway as claimant claimed. The insurer paid the claimant \$1160 to replace the damaged part of the driveway. 3) Claim for replacement trees and bushes - \$2321. The cost of replacing the destroyed bushes, \$1500, was completely covered by the claimant's insurance. Replacement of the destroyed tree was limited to \$500, per the claimant's policy. Total insurance payment for tree and bush replacement was \$2150. 4) Claim for pressure wash of roof, soffit and driveway - \$890. The claimant's insurance payment included \$1016.25 for "additional subcontractor allowances and labor allowances" which DOC believes would include these costs. 5) Claim for rake, hose, degreaser - \$18.59. The claimant's insurer also included a \$120 payment to reimburse the claimant for her personal efforts to clean her property, which DOC believes would include these costs. 6) Claim for personal property in automobile - \$483. The claimant's insurance reimbursed her \$268 for personal property destroyed along with her automobile, however, vehicle floor mats and the 30 cassette tapes allegedly destroyed were not covered pursuant to the claimant's insurance policy. 7) 94 Mercury Cougar - \$4500 Blue Book value. According to the claimant's documentation, she had no insurance

on the vehicle. DOC believes that this is a very unfortunate incident but that the claimant has been appropriately reimbursed. Since the crime remains under investigation and no charges have been filed, no definitive proof exists to clearly link the incident to the claimant's employment. Finally, DOC states that even were such a link eventually established, it is the person responsible for the crime who should be held accountable for the claimant's damages and she could seek payment under Chapter 949, Wis. Stats.

The Board concludes the claim should be paid in the reduced amount of \$4,500.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation s. 20.410(1)(b), Stats. The Board further concludes that, in the event that the claimant is able to obtain reimbursement in the future for losses caused by third parties, the Department of Corrections may seek reimbursement of the funds expended from appropriation s. 20.410(1)(b), Stats.

2. **Deborah A. Axelson** of Waupun, Wisconsin claims \$20,778.68 for unpaid wages related to a wage complaint filed with DWD in May 1999 against Brooks Ambulance, Inc. In February 2000 DWD concluded that Brooks Ambulance owed the claimant the wages in question. Brooks refused to pay the wages and in September 2000 DWD referred the case to the Columbia County DA, requesting that he commence an action against Brooks. The claimant believes that from this point onward, Jill Komarek, the DWD investigator deliberately stalled by not responding to requests for information from either the claimant's attorney or the DA's office. The claimant states that Mr. Sarbacker wrote DWD in February 2002 requesting additional investigation by DWD but that Ms. Komarek did not cooperate. The claimant believes that Ms. Komarek was somehow in collusion with Brooks Ambulance to stall the case. The claimant questions why DWD did not file a lien on Brooks' assets after the company refused DWD's order to pay the claimant's wages. The claimant also believes that Ms. Komarek did not follow up properly after Brooks refused other requests made by DWD. The claimant points to the fact that another individual with a wage claim against Brooks has already been paid.

DWD recommends this claim not be paid and denies any mishandling of the claimant's wage claim. DWD conducted an investigation and agreed that Brooks owed wages to the claimant. When Brooks did not pay the wages within 15 days, DWD followed standard procedure and referred the claim to the Columbia County DA's Office. The case was referred to Columbia County in September 2000, with ample time for the DA to file a civil action against Brooks. (The statutory deadline to file a civil complaint was May 13, 2001.) Once DWD refers a case to a district attorney, the handling of the matter is within the discretion of the DA and DWD's involvement in the matter is concluded. DWD points to the fact that the statutes provide that wage complaints do not have to be filed with DWD. At any time in this process, the claimant's attorney could have filed a civil action against Brooks directly, on behalf of the claimant, however the claimant's attorney failed to do so. In addition, for reasons unknown to DWD, the Columbia Co DA chose not to file a civil claim against Brooks but instead attempted to bring criminal charges against the company. The criminal charges were dismissed as insufficient and the DA requested additional information from DWD in an attempt to correct this insufficiency. DWD points to the fact that this information was not requested until February 12, 2002, well after the May 2001 deadline for filing a civil complaint and that DWD responded to this request within 7 days. The claimant also believes that DWD acted inappropriately by not filing a lien against Brooks. DWD states that it files wage liens only in exceptional circumstances (such as an employer on the verge of bankruptcy or that appears to be leaving the state) none of which were applicable to Brooks. DWD also points to the fact that a lien would not have prevented the running on the statute of limitations on filing a civil claim. If the DA's office had filed a civil claim and obtained a judgment, that judgment could have been used to obtain a lien. DWD believes that it handled the claimant's wage claim appropriately and that her losses are attributable to the failure of both her attorney and the Columbia County District Attorney's Office to file a civil action against Brooks Ambulance.

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. *[Member Fitzgerald dissenting.]*

3. **Brandy C. Solomon** of Milwaukee, Wisconsin claims \$74,880.00 for lost wages alleged caused by DWD's approval of forged documents. In August 1999 the claimant was hired by M & I Data Services and her employment was terminated 120 days later. The claimant has since learned that her name (among others)

was used in a tax fraud scheme perpetrated by Annette Fabry. Ms. Fabry offered to prepare and submit necessary documentation for several WI businesses to obtain tax credits for hiring individuals who qualified under the Work Opportunity Tax Credit or Welfare-to-Work Tax Credit programs. Ms. Fabry collected a fee of 15% of the tax credits earned for her clients. A federal investigation uncovered that Ms. Fabry fraudulently obtained certification from DWD by submitting forged documents, altered to make it appear that the employees in questions met the eligibility requirements for these tax credit programs, when in fact, they were not eligible. (Ms. Fabry was convicted in August 2003.) The claimant has learned that her name was submitted by Ms. Fabry to fraudulently obtain a tax credit for M & I Data Services. The claimant believes that DWD was careless in approving Ms. Fabry's forged documents. She also believes that because of DWD's approval of the fake documents, she was falsely classified by M & I Data Services as a "high-risk" employee in need of training and rehabilitation. She points to the fact that she was put under constant supervision by the company and counseled daily regarding meeting expectations. In addition, she states that the company employed her for exactly 120 days, which is the minimum required to obtain the tax credit. The claimant believes that DWD should have been more diligent in reviewing the documents submitted by Ms. Fabry. She states that since her termination, she has been mostly unemployed or underemployed. She requests reimbursement of three year's lost wages in the amount of \$74,880.

DWD recommends denial of this claim. DWD believes that the claimant has not established any basis for a claim against the state. The fraud uncovered by the federal investigation involved false documents filed by Ms. Fabry, who benefited from the fraud because her company received a percentage of the tax credits received. DWD believes that there is no evidence that the false tax credit documents had any effect on the claimant's work at M & I Data Services. A review of her discharge by the Wisconsin Labor and Industry Review Commission on April 3, 2000, found that the claimant was discharged for misconduct (excessive absenteeism) connected with her employment and ordered her to repay previously paid unemployment benefits. DWD states that it has had no involvement with the fraud perpetrated by Ms. Fabry. DWD was a victim of the fraud and fully cooperated with the investigation into the matter.

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. **Market & Johnson, Inc.** of Eau Claire, Wisconsin claims \$7,569.00 on behalf of claimant's subcontractor, LaForce, Inc. for additional costs incurred for the Highview Geriatric Prison Remodeling Project in Chippewa Falls, WI. The claimant states that in August 2001, LaForce contracted with the claimant to supply doors, frames and hardware for this project. LaForce states that the specifications it received from the architect, PTD, Inc., set forth the quantity of L-6 key switches required for the project. LaForce states that the specifications indicated a quantity of "1 each" for each L-6 mark. LaForce also notes the singular use of the word "switch" in the description: "Provide model 643 heavy duty key switch. . ." As a result, LaForce only included 1 key switch for each L-6 mark in its bid and submitted its shop drawings to the claimant. In October, the claimant returned the drawings, with notations made by PTD indicating that a second key switch was required at each L-6 mark. LaForce quoted the additional cost to the claimant in November 2001. In summer 2002, the claimant informed LaForce that PTD had denied the request for compensation for the additional switches. LaForce attempted to negotiate with PTD without success. LaForce believes that the language in the specifications was very clear that a single switch was needed for each L-6 mark. LaForce points to the fact that in other descriptions, plural language was used ("2 each push plates"), clearly showing a distinction between the need for singular or multiple items. LaForce believes that it was through no fault of their own that they incurred the costs of the additional 68 key switches. Because LaForce, as a subcontractor of the claimant, had no contract with the state, the claimant is filing this claim on LaForce's behalf.

DOA recommends denial of this claim. The claimant itself does not have any claim against the state in this matter, they are merely acting as a proxy for LaForce, which has no contractual arrangement with the State of Wisconsin. DOA believes that any claim for payment by the claimant based on the fact that its subcontractor worked on a DOA project cannot be supported in the absence of any contractual arrangement between LaForce and the state. DOA believes that LaForce has a more appropriate claim against the claimant, with whom it had contracted, than it does against the state.

The Board concludes the claim should be paid in the reduced amount of \$3,784.50 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Administration appropriation s. 20.505(1)(kc), Stats. [*Member Rothschild not participating.*]

5. **David F. Kral** of Racine, Wisconsin claims \$1,771.06 for damages related to the incorrect application of a federal tax payment to the Wisconsin DOR. The claimant states that when he filed his 1999 extension requests for both federal and state taxes, he mistakenly mailed checks for both federal and state payments to DOR. The claimant states that DOR did not return the check, but kept the federal payment of \$35,000 for over six months. The claimant also states that because DOR did not endorse the check, he was unaware that it had been misapplied. It was not until the taxpayer submitted his state returns and the DOR returned the \$35,000 along with his refund, that the claimant was aware there was a problem. The IRS charged the claimant \$1,771.06 for interest because it did not receive the \$35,000 payment in a timely fashion. The claimant believes that DOR should have realized the error and returned the money immediately. The claimant also believes that keeping his money for over six months unjustly enriched DOR. He requests payment of the interest he had to pay the IRS.

DOR recommends denial of this claim. The claimant erred in mailing a check intended for the IRS to DOR. DOR's depository bank processed the check on May 3, 2003. The check was stamp endorsed with the processing date and DOR's lockbox and bank account number. Neither the claimant nor his accountant contacted DOR about the error. In August 2000, DOR received the claimant's 1999 returns. In October 2000, DOR refunded the \$35,000 payment along with the claimant's tax refund. DOR states that its processing procedures and those of its depository bank are set up to provide the most efficient service possible given budget limitations. DOR states that because of the additional cost, the procedures are not set up to identify taxpayer errors such as this. DOR points to the fact that in similar situations, the IRS has indicated that Form 2210 can be submitted to the IRS to request a reduction or waiver of the penalty. DOR has forwarded Form 2210 to the claimant.

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.

6. **Joyce D. Roettgen** of Union Grove Wisconsin claims \$1,052.10 for damage to her vehicle. The claimant is employed at Southern Wisconsin Center. The claimant alleges that she noticed the damage on July 13, 2003, when she returned to her vehicle in the SWC parking lot. She states that there was damage to the front left quarter panel of the vehicle. The claimant does have insurance coverage for the damage, minus her \$500 deductible. She requests reimbursement for the entire cost of repairing the vehicle.

DHFS recommends denial of this claim. DHFS points to the fact that, although the claimant states on her claim form that she discovered the damage on July 13 in the SWC parking lot, the incident report she attached to her claim states that she noticed the damage on July 14 after she went to a car wash. DHFS believes that there is no evidence to establish when, where or how the damage to the claimant's vehicle occurred and that the state should therefore not be held responsible for the damage.

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.

7. **Kwangbae Kim** of Madison, Wisconsin claims \$131.88 for repair of damage to vehicle caused when his vehicle was hit by a baseball while driving on the University of Wisconsin-Madison campus. The claimant states that he was driving down Observatory Drive on August 4, 2003, when his car was hit by a baseball from the nearby playing field. According to the claimant, the individual who hit the baseball, James Murphy, and his friend, Miguel Rosales, came up to the claimant after the ball hit the vehicle. The claimant states that Mr. Murphy indicated that he was a law student at the UW and that he would be willing to pay for the claimant to fix the dent in his car caused by the baseball. The claimant states that Mr. Murphy told him to call after the repairs were done and that he would reimburse the claimant for his costs. Both Mr. Murphy and Mr. Rosales gave the claimant their phone numbers. The claimant states that he had the car repaired the next day and contacted Mr. Murphy. The claimant states that Mr. Murphy did not mention reimbursing the

claimant but instead told him to call Mr. Rosales. The claimant contacted Mr. Rosales, who allegedly told him that Mr. Murphy was not responsible for the accident because he had not intended to cause any damage and that Mr. Murphy had no insurance. According to the claimant, Mr. Rosales also stated that the claimant should pursue a claim with the State Claims Board. The claimant requests reimbursement for the cost of repairing the dent in his vehicle.

Although the UW does not dispute the facts of this incident as presented by the claimant, the UW does not believe it should be held responsible for the claimant's damages. As the claimant has indicated, the damage was caused by the actions of two students, who apparently admitted to the act. The UW states that these students are not agents or employees of the University and that there therefore is no negligence on the part of the state. The UW is aware that the board can grant awards based on equitable principles but does not believe that this case warrants such action. The UW believes that motorists assume ordinary risks while traveling on University property. One risk of driving past a playing field is that a car could be hit by a stray ball. The UW believes that it would be unreasonable to expect the University to protect against this possibility by enclosing all of its playing fields and does not believe that it should be required to compensate individuals for this type of accident. Finally, the UW points out that the claimant still has the possibility of gaining relief by pursuing a small claims action against the students responsible for the damage.

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.

8. **Oscar I. Winger** of LaCrosse, Wisconsin claims \$1,043.26 for vehicle damages caused by a state employee driving a state vehicle. The claimant is a state employee and works in the same office as Karen Olson. The claimant states that he and his family were living in the basement of the Olson's home while his family was renovating their home. While living there, the claimant's family parked their vehicles in the Olson's driveway. The claimant states that in April 2002, Ms. Olsen pulled her state vehicle out of the garage on the way to work and struck the claimant's vehicle, which was parked in the driveway. The claimant states that Ms. Olson filled out the appropriate paperwork and turned it in to the La Crosse District Office, which forwarded the documentation to Risk Management. The records were never received by Risk Management and the claimant was not aware of any other options or of the 180 day statute of limitations. He requests reimbursement for the cost of repairing his vehicle. The claimant states that he does not have collision coverage for the vehicle.

DOT recommends payment of this claim. This accident apparently was reported to the district office and the necessary paperwork was filled out, however, no paperwork related to this accident was ever received by DOT Risk Management and a search of the PHH Vehicle Management records show that this accident was not reported to them as required. DOT Risk Management first learned of the accident 16 months after it occurred, when the claimant submitted a claim for damages. DOT believes that the paperwork submitted by the claimant is in order and that the claim would have been paid by DOT if it had been received in a timely manner. DOT believes that Ms. Olson was negligent for improper lookout while backing up her vehicle. DOT therefore recommends payment of this claim.

The Board concludes the claim should be paid in the reduced amount of \$521.63 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(4)(er), Stats.

The Board concludes:

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

Deborah A. Axelson
Brandy C. Solomon
David F. Kral
Joyce D. Roettgen
Kwangbae Kim

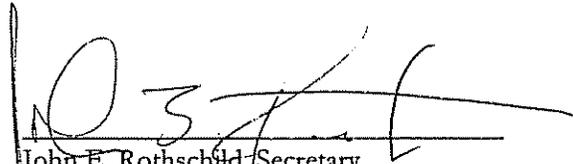
2. Payment of the following amounts to the following claimants from the following appropriations is justified under s. 16.007, Stats:

Linda Kilgore	\$4,500.00	s. 20.410(1)(b)
Market & Johnson, Inc.	\$3,784.50	s. 20.505(1)(kc)
Oscar I. Winger	\$521.63	s. 20.395(4)(er)

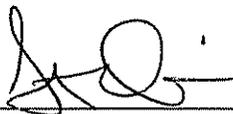
Dated at Madison, Wisconsin this 10th day of December 2003.



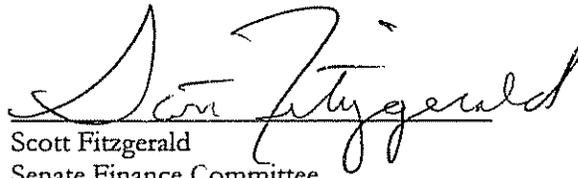
Alan Lee, Chair
Representative of the Attorney General



John E. Rothschild, Secretary
Representative of the Secretary of Administration



Stan Davis
Representative of the Governor



Scott Fitzgerald
Senate Finance Committee

Dan Meyer
Assembly Finance Committee

STATE CLAIMS BOARD

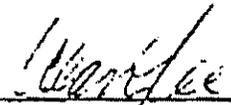
DECEMBER 5, 2003

PAGE 6

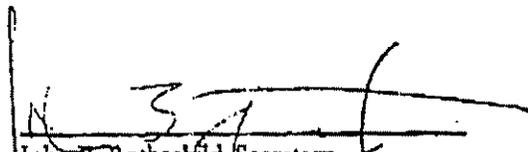
2. Payment of the following amounts to the following claimants from the following appropriations is justified under s. 16.007, Stats:

Linda Kilgore	\$4,500.00	s. 20.410(1)(b)
Market & Johnson, Inc.	\$3,784.50	s. 20.505(1)(kc)
Oscar L. Winger	\$521.63	s. 20.395(4)(er)

Dated at Madison, Wisconsin this 10th day of December 2003.



 Alan Lee, Chair
 Representative of the Attorney General

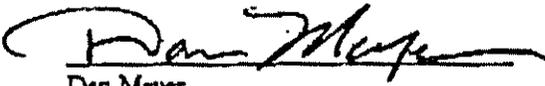


 John E. Rothschild, Secretary
 Representative of the Secretary of Administration



 Stan Davis
 Representative of the Governor

 Scott Fitzgerald
 Senate Finance Committee



 Dan Meyer
 Assembly Finance Committee

