

STATE OF WISCONSIN CLAIMS BOARD

On January 30, 2024, the State of Wisconsin Claims Board met in person and via Teams videoconference to consider the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Michael Mudler	Natural Resources	\$3,026.45
2. C&C Services, LLC	Administration	\$58,000.00

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
3. Budget Dumpster, LLC	Revenue	\$88,518.58
4. Remington Oil Co., Inc.	Agriculture, Trade & Consumer Protection	\$785.21
5. Jerome Walker	Corrections	\$364.95

With respect to the claims, the Board finds:

(Decisions are unanimous unless otherwise noted.)

1. Michael Mudler of Sherwood, Wisconsin claims \$3,026.45 for vehicle damage caused by a boulder in the middle of a road within Interstate State Park. On August 21, 2023, Mr. Mudler was camping at the park and used his phone GPS for directions to a destination outside the park, where he planned to meet friends. Mr. Mudler left his campsite (#16) in his vehicle using the GPS directions and proceeded towards a park exit when his vehicle was abruptly stopped by a boulder in the middle of the road. Mr. Mudler reports that the boulder was surrounded by weeds, and that there was no signage warning the road was closed. Mr. Mudler inspected his car, determined it was drivable, and exited the park from a different direction to meet his friends. He reported the incident to park staff the same day. Mr. Mudler alleges he was later told by a park ranger that there used to be signage warning of the boulder, but it was no longer there. Mr. Mudler received a preliminary estimate for vehicle repairs, totaling \$3,026.45. At the hearing, Mr. Mudler indicated that he had contacted his insurance company and was told to go through the Claims Board process first, before filing an insurance claim.

DNR initially recommended this claim be paid, pending proof of *actual* damages. DNR indicates there is an unmaintained path that connects N. Campground Road to the St. Croix State Fish Hatchery Property, which has been closed to vehicle traffic for over a decade. DNR placed a large boulder in the road as a physical barrier to prevent vehicles from traveling that area. There was previously signage restricting the area to pedestrian traffic, but it was vandalized and DNR had not yet replaced it. There was no signage in place at the time of this incident, but DNR believes the boulder would have been visible given the incident occurred during daylight hours. DNR concedes it bears some responsibility for the damage but initially contested basing an award on the preliminary estimate provided by Mr. Mudler. At the hearing, DNR indicated it no longer questioned the preliminary estimate and recommends payment in full.

The Board concludes the claim should be paid in the amount of the claimant's insurance deductible, \$1,000, with the expectation that Mr. Mudler will pursue the remainder of his damages through his insurer. The Board further concludes, under authority of Wis. Stat. § 16.007 (6m), payment should be made from the Department of Natural Resources appropriation Wis. Stat. § 20.370(1)(ma).

2. C&C Services, LLC of Schofield, Wisconsin claims \$58,000 for damages related to a 2021 roof replacement project for a DOT building in Wausau. C&C's bid for the project was significantly less than any other bidder. C&C won the contract and began work in April 2021. In May 2021, DOT notified C&C that it intended to terminate the contract due to allegedly poor

workmanship. C&C acknowledges that there were a several issues that needed to be addressed (nails driven too far into the roof by a subcontractor and one instance of water leaking into the building) but claims that it made all necessary repairs and/or remediations. C&C disputes DOA's claim that C&C inadequately supervised the project. C&C hired an experienced subcontractor, whose work was appropriately overseen by C&C. C&C notes that an inspector hired by C&C's bonding company determined that the roof was adequately installed. C&C alleges that it had substantially completed the project by June 21, 2021, however, DOA terminated the contract on June 29, 2021 and refused to pay C&C for its work. C&C believes it provided a fully functional roof as evidenced by the fact that DOA has not replaced or repaired the roof since it was installed. C&C believes the state has been unjustly enriched and requests reimbursement in the full amount of the contract.

DOA recommends denial of this claim. C&C's contract was terminated because its work did not conform to the requirements of the contract. DOA states that C&C hired an unapproved subcontractor in violation of the contract and failed to adequately supervise that subcontractor's work. Although C&C alleges it corrected all issues, the state determined that was not accurate and multiple deficiencies remained during a post-punch list inspection. DOA has very specific, stringent specifications for state building projects to ensure that facilities funded by taxpayer dollars are constructed to meet or exceed a project's full life expectancy. C&C's roof does not meet the contract specifications and therefore has a significantly decreased life expectancy. DOA intends to replace the roof in the future and the fact that it has not yet done so does not somehow entitle C&C to payment for deficient work under the contract, which clearly states that "Payments will not be made for incomplete or deficient Work." DOA contends that C&C failed to meet its obligations under the contract and therefore has no right to payment pursuant to that contract.

The Board concludes that this claim raises questions of fact regarding C&C's performance under the terms of the contract and to what extent, if any, DOA has been unjustly enriched. These issues are better evaluated by a court of law, and therefore, the Board denies payment of this claim. *[Member Hanson not participating.]*

3. Budget Dumpster, LLC of Westlake, Ohio claims \$88,518.58 for refund of sales/use taxes levied by DOR. Claimant (located in Ohio) contracts with third parties to provide waste removal services for customers in Wisconsin. Claimant alleges that it registered for a Wisconsin seller's permit in 2011, but later determined a permit was not necessary because taxable services were not being provided. Claimant did not cancel the permit and did not file sales/use tax returns in Wisconsin. DOR eventually sent estimated assessments in 2018, 2019, and 2020. In June 2021, DOR began levying funds to cover the assessments. Claimant started working with MCE Salt Solutions LLP (a sales and use tax consulting firm) in March 2022. MCE confirmed with DOR that Claimant's services were not taxable. Claimant indicates that the permit was cancelled at that time, and in-process assessments were closed. Claimant sought to recover the funds that had been levied but was advised by DOR those refunds would not be released until income/franchise returns were filed. Claimant filed and paid the tax returns in July and August 2022, totaling \$23,293.00. At that time, Claimant was not aware that the funds would not be fully refunded. Claimant received refunds in 2022 for the periods of 12/31/19 to 12/31/21, totaling approximately \$12,000, but was notified by DOR that per Wis. Stat. § 77.59(4)(b), the statute of limitations (SOL) had closed for the tax periods ending 3/31/2011 to 9/30/2019. Claimant disagrees and believes the SOL for applying for a refund does not close until June 2023, because the funds were levied (*i.e.*, paid) in June 2021. Claimant holds it had no reason to apply for a refund by September 2020 (the SOL calculated by DOR), because levies did not begin until June 2021. Claimant further believes that the remaining levied AMEX funds should be refunded based on "compromise" authority available to DOR.

DOR recommends this claim be denied. DOR has no record of Claimant applying for or receiving a seller's permit. DOR contends it issued estimated assessments based on survey responses received by Claimant, which led DOR to believe that taxable services were being provided. DOR alleges it sent Claimant approximately 58 letters between June 2018 and March 2022 to obtain additional information. DOR holds that the two-year SOL runs from the date of assessment, rather than the payment (levy) date. The remaining estimated assessments were

issued in 2018 and 2019. Claimant had two years from issuance to apply for a refund. Therefore, Claimant had until September 2020 to apply for a refund on most of the assessments. Lastly, DOR notes that the Tax Appeals Commission has held that the phrase “and paid” is included in the statute (Wis. Stat. § 77.59(4)(b)) to clarify that an assessment must be paid before a refund claim can be filed. DOR holds it has done all in its power and does not have the authority to use fair and equitable relief powers to circumvent the SOL.

The Board recommends to the legislature payment of this claim in the reduced amount of \$79,666.72, which represents a 10% reduction to account for Budget Dumpster’s failure to timely raise and resolve the issue and provide DOR with sufficient information, including the costs borne by the State.

Note that this case summary was updated from what was published out of the September 7, 2023 meeting of the Claims Board to reflect additional information provided by the Department of Revenue.

4. Remington Oil Co., Inc. of Antigo, Wisconsin claims \$785.21 for reimbursement of costs incurred due to an error made by a DATCP Bureau of Weights and Measures Inspector. After completing inspection of the premium gasoline dispensers at Summit Lake BP on March 21, 2023, the inspector had 45 gallons of premium gasoline to return to its tank. The inspector mistook the diesel fuel tank for the premium gasoline tank and pumped the premium gas into the diesel fuel tank. Immediately upon noticing the error, the inspector notified Summit Lake BP, which contacted their service company, Remington Oil, to rectify the situation.

DATCP recommends payment of this claim. Diesel fuel mixed with premium gasoline could lower the flashpoint of the diesel fuel, potentially harming diesel engines or posing a safety risk to people using the contaminated fuel. The work done by Remington was appropriate to correct the mistake made by the DATCP inspector.

The Board concludes the claim should be paid in the amount of \$785.21 based on equitable principles. The Board further concludes, under authority of Wis. Stat. § 16.007 (6m), payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation Wis. Stat. § 20.115(1)(t).

5. Jerome Walker of Green Bay, Wisconsin claims \$364.95 for value of eyeglasses destroyed as contraband by DOC. On June 27, 2021, DOC staff confiscated several property items during a search of Walker’s cell, including a pair of Versace eyeglasses, which Walker claims were worth \$1300. DOC issued Walker a conduct report for possession of contraband in violation of Wis. Admin. Code DOC 303.47. A disciplinary hearing was held, Walker was found guilty, and DOC destroyed the eyeglasses. Walker alleges that DOC’s destruction of the eyeglasses violated Wis. Admin. Code 303.09(2), which gave him the right to mail the eyeglasses to his family. Walker disputes DOC’s assertion that he obtained the eyeglasses through improper means. He claims he has owned the glasses since 2015 and that DOC staff even repaired them at one point, which proves that his eyeglasses were allowed. Walker also believes that DOC lacked sufficient evidence to determine that his eyeglasses exceeded the allowed value limit of \$75, but that they simply speculated that they were so based on the brand. Walker alleges that the Administrative Code supersedes DAI policy, and that the Code allowed him to mail out the glasses so they would not be destroyed.

DOC recommends denial of this claim. Walker received a conduct report for possession of contraband in violation of DOC 303.47. Walker was unable to produce a receipt for the glasses, which DOC determined were over the allowed value limit and could not have been purchased through property at the institution. DOC notes that Walker first claimed his glasses were worth \$1300 but then submitted a receipt to the Claims Board for \$364.95. At the time of this incident, the maximum value limit for a pair of eyeglasses was \$75. No institution would have permitted an inmate to possess glasses valued at \$364.95, let alone \$1300. DOC states that the hearing officer properly disposed of the eyeglasses as a result of the disciplinary process, pursuant to DAI Policy. DOC also notes that there is no conflict between the Administrative Code and DAI Policy, in fact, the Code incorporates the Policy by reference and specifically provides that disposition of contraband property may be made pursuant to DOC policy. DOC believes that

Walker is attempting to use the Claims Board process to challenge the outcome of his disciplinary matter, which is not appropriate. DOC argues that it was not negligent and that there is no equitable reason to pay this claim because Walker has not proven that he obtained the glasses through proper channels or that they are of the value that he alleges.

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 payment of the amount below to the identified claimant from the following statutory appropriation is justified under Wis. Stat. § 16.007(6)(b).

Michael Mudler	\$1,000.00	Wis. Stat. § 20.370(1)(ma)
Remington Oil Co., Inc.	\$785.21	Wis. Stat. § 20.115(1)(t)

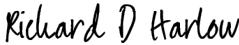
That the following identified claims are denied:

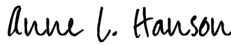
C&C Services, Inc.
Jerome T. Walker

The Board recommends to the legislature:

Payment of the claim of Budget Dumpster, LLC in the amount of \$79,666.72.


Dated at Madison, Wisconsin this 16th day of February, 2024


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 R. Duane Harlow, Chair
 Representative of the Attorney General

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 Anne L. Hanson, Secretary
 Representative of the Secretary of
 Administration

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 Eric Wimberger
 Senate Finance Committee

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 Alex Dallman
 Assembly Finance Committee

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 Mel Barnes
 Representative of the Governor