STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the Department of Administration Building, St. Croix Room, Madison, Wisconsin, on December 19, 2002, upon the following claims:

Claimant	Agency	Amount
1. Russell & Edna Jeske	Department of Revenue	$29,955.61
2. Terrance A. Kaucic	Department of Revenue	$14,553.26
3. Megan E. Weinhandl	University of Wisconsin	$70.00
4. Genevieve G. McBride	University of Wisconsin	$2,805.00

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

Claimant	Agency	Amount
5. Tara Hoekman	Department of Health and Family Services	$7,768.55
6. Jeremy S. Daubon	Department of Corrections	$70.40
7. Dennis Gonzalez	Department of Corrections	$144.50
8. Dennis Gonzalez	Department of Corrections	$32.16
9. M.H. Ranch, Inc.	Department of Transportation	$1,636.40
10. Heinn/Trend Corporation	Department of Administration	$23,291.32

The Board Finds:

1. **Russell and Edna Jeske** of New Berlin, Wisconsin claim $29,955.61 for overpayment of property taxes. The claimants state that they sold 2 acres of land to a developer in 1984. This land was added to the developer's tax parcel but was not removed from the claimants' tax parcel, allegedly due to an error by DOR. As a result, the claimants paid taxes from 1984 to 1999 on two acres of land that they no longer owned. The new owner of the land also paid taxes on the 2 acres. The claimants state that they discovered the error in 1999 when they hired a third party to conduct a real estate appraisal. The claimants state that they received a notice in May 1999, in which DOR allegedly admitted that they had made an error. The claimants did receive a partial refund for the overpayment from the Village of Elm Grove in the amount of $3,660 for the year 1999. The claimants also note that the description on their property tax bill did change in 1990. Prior to that year, the description read "3AC" but in 1990 the description stated "0.895AC," the correct description. Despite the change, however, there was no reduction in the claimants' taxes from 1990 to 1999. The claimants request reimbursement for the amount they overpaid on the land they no longer owned.

DOR recommends denial of this claim. DOR is responsible for assessing all manufacturing property, however, the taxes on such property are collected and kept by the local municipality, not DOR. DOR states that it was not notified of the sale of the 2 acres until 1999. DOR states that it relies on owners of property to report changes in property ownership. Section 70.995(12)(a), Stats., provides that manufacturers shall submit an annual form to DOR for each real estate parcel assessed. DOR records indicate that no change in ownership was ever reported on this form. DOR states that they made the appropriate changes as soon as they were notified of the change in ownership. DOR states that it is usually the municipality's responsibility to notify DOR when they split a parcel of land. DOR also states that it is the local municipality that is responsible for sending out the tax bill and collecting the payment. Finally, DOR points to the fact that state statutes allow for a 60-day period to appeal an annual assessment. DOR states that the claimants never filed any appeal to their annual assessments, so the assessments became final and the appeal periods for all years in question have long since expired.

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.

2. **Terrance A. Kaucic** of Milwaukee, Wisconsin claims $14,553.26 for overpayment of employee withholding taxes related to his now defunct corporation, Northern Building Products. The claimant states that he owed $35,625.04 in taxes and that DOR began taking large monthly payments from him in 1990, which continued until July 2002. The claimant states that the garnishments had a severe negative impact on his financial situation and also alleges that they led to his divorce. The claimant later discovered that he had overpaid the amount owed by $14,553.26. The claimant believes that, in fairness, this money should be returned to him.

DOR recommends denial of this claim. DOR states that in April 1993, it issued an estimated assessment based on the claimant's failure to file withholding tax reports for June 1991 through September 1991. That assessment was due May 31, 1993. DOR records indicate that certification of the claimant's wages began in January 1994 and continued for eight years with three different employers. DOR alleges that during this time period, it held several informal hearings with the claimant and that DOR twice lowered the certification percentage in response to the claimant's complaints that he could not live on his reduced income. DOR states that the claimant inquired about a petition for compromise in April 1998 and that he was advised at that time to file the missing reports. On May 5, 1999, the claimant's request for amnesty was denied based on his failure to file the requested reports. DOR states that in January 2001, it informed the claimant's Power of Attorney that the reports needed to be filed. According to DOR records, the claimant contacted DOR in September 2001 and stated that he had no records and therefore could not file the reports. Another hearing was held in July 2002 to discuss the claimant's wage certification. At that time the estimated assessment was compromised under the fair and equitable provisions of s. 71.92(4), Stats. DOR personnel prepared mock withholding reports based on previous withholding tax and the remaining balance of the assessment was cancelled. Based on the mock tax reports, the calculated overpayment on the assessment is $18,810.63. DOR points to the fact that at no time did the claimant ever provide the actual tax information needed to calculate the correct tax liability, which would have allowed him to file a claim for refund of any overpayments.

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.

3. **Megan E. Weinhandl** of Marengo, Illinois claims $70.00 for money that was allegedly stolen while she was attending a summer camp at the UW. The claimant and other campers were housed in a UW dormitory and were all given keys to their rooms. Police reports indicated that sometime between 9:15 and 11:30 a.m. on July 17, 2002, an unknown person entered the dormitory and stole items and cash from the campers' rooms. The claimant states that her door was locked at the time of the thefts but that $70 was stolen from her room. The police report indicates that there was no sign of forced entry to the claimant's room. The claimant points to the fact that the room doors can only be locked from outside the room using the key, therefore, the only way that the claimant's door could be locked after the theft was with a master or room key. The claimant also points to the fact that one of the other rooms involved in the thefts was found locked with the room keys still inside the room. The claimant believes that this evidence proves that the thief would have had to possess a master key to enter the rooms and she therefore believes that the UW was negligent in its handling of keys.

The UW recommends denial of this claim. The UW alleges that, at the time of the thefts, all building keys were accounted for. The UW states that the doors to the building were locked between 11:30 p.m. and 6:30 a.m. but that they remained open during the daytime. The UW states that it finds no evidence that the theft was due to negligence by any state employee. The UW believes that it

exercised due care in providing facilities to campers and that it should not be held responsible for the claimant's loss.

The Board concludes the claim should be paid in the amount of $70.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the University of Wisconsin appropriation s.20.285 (5)(h), Stats.

4. **Genevieve G. McBride** of Milwaukee, Wisconsin claims $2,805.00 for attorney's fees allegedly incurred because of her employment at the UW. The claimant has been a faculty member of the Department of Journalism and Mass Communication at UW-Milwaukee (Department) with graduate faculty status since 1990. The claimant states that in August 2000, the Department informed her that it was not renewing her graduate faculty status. The claimant alleges that this constituted a significant demotion, which impacted her responsibilities and would have resulted in a loss of significant amounts of research time and research publication activities, which would have a negative impact on her future professional advancement. The claimant appealed the Department's decision. The claimant hired an attorney to assist her with her appeal, which required many months of committee hearings, and she eventually prevailed when the Graduate Faculty Council overturned the Department's decision. The claimant believes that, as a state employee and pursuant to s. 895.46(1)(a) and s. 14.11(2)(a), Stats., she should be reimbursed for her attorney's fees, which she states were incurred in the course of her duties as a UW employee. The claimant states that her legal fees are reasonable. She states that her research finds no legal requirement that this request be filed within a specified time frame and also alleges that she was unaware that she had an option for reimbursement through the State Claims Board until she saw recent media coverage regarding legal costs for legislative employees.

The UW recommends denial of this claim. First, the UW believes that the claim is untimely. Although the UW recognizes that there is no formal statute of limitations governing the filing of this claim, the UW does not believe that it should now be held responsible for legal expenses associated with an event that occurred so long ago. The UW also points to the fact that the Wisconsin Supreme Court has held that a university professor is not entitled to attorney's fees for legal services rendered in an optional internal grievance procedure. The UW also believes that awarding this claim would, "in effect institutionalize the presence of attorneys in internal university proceedings and would undermine the notions of faculty governance and make such proceedings highly adversarial." The UW believes that even in the most unusual circumstances, the faculty grievance process involves familiar and accessible participants, procedures and language and therefore does not require the services of an attorney to act as an "interpreter." The UW also states that there is no evidence that the claimant would have been unsuccessful without the assistance of her attorney because the arguments raised in her favor were neither novel nor particularly legal in nature. Finally, the UW objects to the amount of attorney's fees requested by the claimant. The submitted billing simply contains the notation "Re: Discrimination" (an issue that the claimant never raised during her appeal). Furthermore, the UW points to the fact that although this incident began in August 2000, and the final appeal decision was issued in early November 2000, the bill submitted by the claimant is for services from September 1, 2000 through April 18, 2001. The claimant has provided no explanation or justification for any fees incurred during the five-month period after the conclusion of her appeal.

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. **Tara L. Hoekman** of Beloit, Wisconsin claims $7,768.55 for unpaid medical bills for herself and her daughter, which allegedly should have been paid by Medical Assistance (MA). The claimant alleges that she was told by her caseworker that she should be covered for all dates of service in question. The claimant states that she was not aware of any unpaid medical bills until she received a copy of her credit report and found that there were collections actions against her for medical bills not covered by MA. The claimant states that she never received any notices of unpaid bills from either

the hospital or the MA program. The claimant alleges that, after she discovered the problem with the bills, she went to her caseworker, who told her that she was full covered for all dates in question, but that some of her coverage had been applied retroactively. The claimant alleges that the caseworker told her that because some of her MA coverage was retroactive, the claimant should have received bills for some of her medical services. The claimant states that she never received any bills. The claimant believes that both she and her daughter were fully covered for all dates in question and requests payment of the unpaid medical bills, which are damaging her credit.

DHFS believes that this claim should be denied. DHFS does not agree that the claimant and her daughter were covered for all dates of service as she alleges. DHFS records indicate that there are five dates of service for which the claimant and/or her daughter were not eligible for MA coverage. Disputes regarding MA eligibility are handled by appealing to the Division of Hearings and Appeals in a timely manner. DHFS states that the claimant was notified every time her MA eligibility changed and that she never filed any appeal to those changes. DHFS believes that appealing these changes now is untimely and that it is inappropriate for the Claims Board to address the claimant's eligibility issues at this time. DHFS states that in October 1988, the claimant did not appear in the computer system, so Beloit Memorial Hospital did not file a claim with the MA program for services provided to the claimant. When this was discovered in November 1999, Rock County Human Services manually certified the claimant for MA coverage retroactive to September 1998. DHFS points to the fact that state regulations provide that claims for payment related to retroactive eligibility must be received within 180 days of the mailing of the retroactively dated card to the MA recipient. Beloit Memorial Hospital alleges that the claimant never told them about the retroactive eligibility within the 180 time frame. DHFS believes that it was the claimant's responsibility to pursue this in a timely manner and that she failed to do so. Finally, DHFS notes that the claimant has not actually paid any of the bills for which she is requesting reimbursement and, even if she had, state law prohibits any direct reimbursement to a MA recipient.

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. **Jeremy S. Daubon** of Boscobel, Wisconsin claims $70.40 for the cost of books, photographs and a catalog allegedly lost by DOC personnel. The claimant, an inmate at the Wisconsin Secure Program Facility, states that on January 7, 2002, he was caught sliding an envelope of photos under his door. He alleges that the photos were confiscated by DOC but were later missing from his property box. He states that on April 5, 2002, after he was demoted to a lower status, DOC personnel confiscated his books, two of which are now missing from his property. He also alleges that he is missing a catalog. He states that he was not allowed to have catalogs in his cell but that they were placed in his property box, to which he was only allowed supervised access. The claimant disagrees with DOC's assertion that the receipt he submitted for his books is not legitimate. He states that he has other handwritten receipts for book purchases because the companies from which he orders the books are not "traditional" bookstores. The claimant believes that just because the receipt is informal does not mean that it is invalid. The claimant states that DOC does not deny losing his photographs, but instead rejects that portion of his claim based on technicalities. He further alleges that DOC officers do not properly document the property they take when the confiscate items. Finally, The claimant believes that the burden of proof is upon DOC and that DOC cannot prove that he did not lose the property for which he is claiming reimbursement.

DOC recommends denial of this claim. DOC would like to first point out that the claimant originally alleged that his copy of the Administrative Code also was lost by DOC and submitted a receipt as "evidence" of that loss. This receipt actually belongs to another inmate, Dennis Gonzalez, who had used it as evidence in his own claim to the Claims Board. The claimant altered this receipt and falsely submitted it as his own in an attempt to deceive the board. DOC states that it investigated the claimant's complaint of a lost catalog and found that there was an envelope in his property box

from the company in question, which contained two catalogs. Although the claimant denied that either of these was the allegedly missing catalog, DOC believes that he failed to submit any proof of an additional catalog. DOC records indicate that the claimant did file an Inmate Complaint regarding his allegedly lost pictures but that this complaint was filed over one month after the alleged incident, well past DOC's 14 day limit and the complaint was therefore dismissed as untimely. DOC also believes that the receipt submitted by the claimant as evidence of the two allegedly lost books is extremely suspicious. The receipt shows a printed, company letterhead but then only contains handwritten notation of the book titles and price, plus shipping and handling. There is no date, customer information or payment information. DOC strongly suspects that the claimant has also fabricated this receipt. DOC believes that the only "evidence" submitted in support of this claim has been manufactured by the claimant. Given the claimant's outright fabrications and attempts to deceive the board, DOC does not believe there is any equitable basis for payment of this claim.

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

7. **Dennis Gonzalez** of Boscobel, Wisconsin claims $144.50 for additional compensation for photographs lost by DOC. The claimant, an inmate at the Wisconsin Secure Program Facility, states that DOC lost or stole 56, 8 x 10 color photographs. The claimant filed an inmate complaint and was reimbursed $140.00, half the cost of the photographs. The claimant alleges that these photographs do not depreciate, but instead increase in value over time. He therefore requests that he be awarded the remaining value of the photographs, plus the cost of shipping.

DOC recommends denial of this claim. DOC states that, while it was unfortunate that the claimant's property was misplaced, DOC has followed its standard policy in addressing the issue. DOC states that the claimant was reimbursed for 50% of the cost of each photograph ($2.50 each) in accordance with DOC's depreciation schedule. Pursuant to this schedule, commercial photographs are considered publications and are depreciated at 50%. DOC agrees with the Corrections Complaint Examiner, who noted, "Depreciation is a real factor when dealing with property and insurance companies take a very similar approach in the outside world. In this case, the DOC depreciation schedule was appropriately applied." DOC does not believe that the claimant is entitled to any further compensation for his damages.

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. **Dennis Gonzalez** of Boscobel, Wisconsin claims $32.16 for property allegedly misplaced by DOC personnel. The claimant, an inmate at the Wisconsin Secure Program Facility, states that DOC personnel took his property and did not inform him of what specific items were being seized, as required by section DOC 306.15 of the Wisconsin Administrative Code. The claimant states that the property was taken when he was placed on restrictions but that it was not returned when the restrictions were lifted.

DOC recommends denial of this claim. DOC records indicate that on May 1, 2002, the claimant received a Conduct Report for disobeying orders and misuse of state and federal property because he covered the camera in his cell with toilet paper. As a result of the Conduct Report, the claimant was placed on restrictions and all personal items that could be used to obstruct the view of his cell (toothpaste, lotion, paper, etc.) were removed from his cell until the restrictions were lifted on May 15, 2002. The claimant filed an Inmate Complaint on May 16th, alleging that some of his property was not returned. The ensuing investigation determined that DOC misplaced a wireless notebook and two legal pads and the claimant was reimbursed $2.35 for those items. DOC points to the fact that the Institution Complaint Examiner noted that some of the missing items were purchased as far back as March 2001 and that it was highly unlikely that items such as conditioner and lotion

were still in the claimant's possession as of May 2002. The claimant's allegations have been investigated by the institution and responded to accordingly through the Inmate Complaint System.

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. **M.H. Ranch, Inc.,** of Westfield, Wisconsin claims $1,636.40 for damages related to the removal of a sign advertising the claimant's business. The claimant states that in June 2000 it contacted Marquette County regarding permission to place a sign off I-39 at the Westfield exit ramp. The claimant states that the county gave them the okay but told them that they also needed to contact DOT because it was unclear who owned the land in question. The claimant states that they spoke with John Zielinski at DOT, who met with the claimant's employee at the site and discussed placement of the sign. The claimant alleges that Mr. Zielinski flagged a specific spot where they could place their sign and that they had the sign installed on that spot. In December 2001, the claimant again contacted Mr. Zielinski to discuss installing an improved, larger sign. The claimant alleges that Mr. Zielinski stated that as long as the new sign was installed in the same spot as the old one and could not be read from the highway, no permit was necessary and there would be no problem. The claimant ordered a new sign. The claimant alleges that the company creating the new sign also contacted DOT and was told that the sign was not a problem as long as it could not be read from the highway. The new sign was installed around May 1, 2002. On May 7, 2002, the claimant received a letter from DOT stating that the sign was on DOT property and needed to be removed within 30 days. The claimant has removed the sign. The claimant states that the new sign cost $1,561.40 and that they paid $75.00 to have it removed. The claimant believes that it should not be penalized because it relied on DOT instruction when placing the sign.

DOT recommends denial of this claim. DOT denies the claimant's allegation that Mr. Zielinski gave verbal permission for placement of the sign. Verbal approval for such signs is not allowed pursuant to s. 84.30, Stats., and Trans 201, Wis. Adm. Code, which require a permitting process for the placement of signs. DOT states that it is the sign owner's responsibility to determine ownership of the land and then receive permission from the appropriate landowner. Ownership of the land can be determined by obtaining plat maps from the Highway District office. DOT states that when Mr. Zielinski met with the claimant at the site, the claimant did not bring any plat maps, therefore it was not possible to determine ownership of the land in question. DOT also alleges that the claimant indicated at this meeting that they already had permission from a property owner, therefore, Mr. Zielinski assumed that the claimant planned to place the sign on private property. DOT did not become aware that the sign was placed in the DOT right-of-way until the larger sign, which was visible from the highway, was noticed during a routine sign survey. DOT then sent a 30 day notice informing the claimant that the sign was in violation of s. 86.19, Stats., as well as Trans 201.07, 201.075 and 233, Wis. Adm. Code, and that the sign needed to be removed or it would be taken down by DOT. DOT states that this notice also indicated that the claimant could solve the problem by applying for an Off Premise Permit and gave instructions for obtaining a permit application. DOT points to the fact that the sign was neither confiscated nor destroyed by DOT; it is in the claimant's possession. DOT has offered suggestions for other ways to legally install the sign at other locations, if the claimant wishes to do so. DOT believes that, since the sign is still usable by the claimant at other locations, the claimant has suffered no actual loss and the claim should therefore 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.

10. **Heinn/Trend Corporation** of Milwaukee, Wisconsin claims $23,291.32 for costs related to security guard services provided pursuant to a building lease. The claimant owns a building leased by

the state through DOA. (The claimant purchased the building in 1997, however, the lease was entered into in 1992 with the previous owner.) The claimant states that in June 1994, DOA signed a First Lease Amendment to the original Lease and that this Amendment provided for continuation of security guard services under the lease. The claimant states that the Amendment also stated that the Lessor would be reimbursed by the state for security guard costs that exceeded $20,996.28 per year upon presentation of documents verifying such excess costs. The claimant states that the Amendment contains no language requiring the billing for these excess costs to be submitted within a specific time period. In September 2001 the claimant submitted an invoice to the state for excess security guard costs for 1998-2001. The claimant believes that the non-availability of funds clause in the original Lease does not apply to these costs. The claimant argues that this clause only absolves the state from liability relating to costs associated with future use of the property but that the clause can not be applied to past costs that were incurred while the state actually used and occupied the building. The claimant further points to the fact that DOA did provide reimbursement for the excess costs for 2000 and 2001 and that there is therefore no evidence that the state would have thought the costs for 1998 and 1999 excessive, had they been presented earlier. The claimant requests payment of the excess security costs for 1998 and 1999 in the amount of $23,291.32. The claimant also requests payment of interest at the statutory rate of 5% from September 2001 through the date of payment.

DOA recommends denial of this claim and does not believe that the claimed costs were presented to the state in a timely manner. DOA does not understand why the claimant delayed for over four years before presenting these costs to the state. DOA believes that this delay and the resulting four-year cumulative billing places an unfair and excessive burden on the state, particularly at a time when the state's ability to seek supplemental resources is essentially non-existent. DOA points to the fact that its December 22, 1992, letter, which served as a Lease Addendum, clearly stated that the security service could be cancelled or renegotiated by the Lessee. DOA therefore believes that the delayed billing denied the state the right to terminate or renegotiate the services as provided for in the First Lease Amendment. DOA also states that the First Lease Amendment states that the Lessor would be reimbursed if the costs exceeded the stated amount "per year for said guard service" which indicates that the agreement for security services was entered into on an annual basis. DOA believes that it is therefore a logical expectation that notification of the excess costs would be annual as well. Finally, it is DOA's position that, pursuant to section 15 of the original Lease, the availability of funds for the 1998 and 1999 costs had lapsed by the time the claimant presented its invoice.

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 Rothschild not participating.)*

The Board concludes:

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

Edna and Russell Jeske
Terrance A. Kaucic
Genevieve G. McBride
Tara L. Hoekman
Jeremy S. Daubon
Dennis Gonzalez (2 claims)
M.H. Ranch, Inc.
Heinn/Trend Corporation

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

Megan E. Weinhandl	$70.00	20.285(5)(h), Stats.

Dated at Madison, Wisconsin this 16th day of January 2003.

Alan Lee, Chair
Representative of the Attorney General

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

Amanda Schaumburg
Representative of the Governor

Sheryl Albers
Assembly Finance Committee