STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on May 21 and May 23, 2007, upon the following claims:

	Claimant	Agency	Amount
1.	JMPK Company, LLC	Transportation	$16,635.47
2.	Fred & Leslie Schweinert	Administration	$8,182.32
3.	Klemme Bros. Well Drilling	Natural Resources	$17,405.00
4.	David E. Johnson	Natural Resources	$1.6 million +
5.	Audio Contractors, LLC	Revenue	$10,810.91
6.	Steven J. Graf	Revenue	$42,502.86
7.	Todd Burow	Revenue	$4,138.86
	Todd Burow	Revenue	$4,138.87
	Todd Burow	Revenue	$2,933.05
	Todd Burow	Revenue	$1,459.30
	Todd Burow	Revenue	$1,459.30
	Todd Burow	Revenue	$1,459.30
	Todd Burow	Revenue	$1,518.31
	Todd Burow	Revenue	$2,000.68
	Todd Burow	Revenue	$2,107.66
	Todd Burow	Revenue	$3,354.55
	Todd Burow	Revenue	$3,045.55
	Todd Burow	Revenue	$2,596.09
	Todd Burow	Revenue	$2,525.57
	Todd Burow	Revenue	$601.55

The following claims were considered and decided without hearings:

	Claimant	Agency	Amount
8.	Bryan Pelant	Natural Resources	$185.45
9.	Tomas Barajas	Corrections	$42.65
10.	Mark Brown	Corrections	$19.66
11.	Mark Brown	Corrections	$61.70
12.	Mark Brown	Corrections	$48.63
13.	Shirell Watkins, Sr.	Corrections	$108.55

The Board Finds:

1. JMPK Company of Richland Center, Wisconsin, claims $16,635.47 for costs associated with the installation and later removal of a billboard due to an erroneously granted permit by the Department of Transportation. The claimant states that in 1998, it applied for a permit from the DOT to erect a billboard on land near Highway 14 in Iowa County. The claimant states that the permit was granted in October 1998 and that, in reliance of that permit, the claimant had the billboard erected in 2004. The DOT subsequently determined that a scenic easement did not allow the billboard in that location. The DOT cancelled the previously issued permit and ordered the removal of the sign. The claimant points to the fact that there are many other billboards in this area as well as evidence that another sign once stood in the exact location where the claimant erected its sign. The claimant also points to the fact that the DOT entered into a Stipulation Agreement in 2005, in which the DOT admitted that they had erroneously approved the billboard permit. The claimant requests reimbursement of various expenses related to this incident. DOT and Iowa County permit application fees ($175 and $896, respectively), the cost of constructing the billboard ($12,532.77), the cost to remove the sign ($2,025.60) and attorneys fees ($1,006.10).

The DOT does not object to payment of this claim in the reduced amount of $2,000, but would object to any additional payment. The DOT states that, while it did issue a billboard permit in error, misrepresentations made by the claimant and the landowner in the permit

application contributed to that error. The DOT states that a scenic easement, which prohibited the erection of the billboard, has existed for the property in question since 1966. This easement has been part of the public record and was known to the property owner. The DOT states that the claimant is a sophisticated business with above average knowledge of commercial and real estate laws, as well as access to legal counsel and that the claimant knew, or should have known of the scenic easement that prohibited the billboard. The DOT states that the permit application completed by the claimant makes it clear that the applicant is responsible for compliance with all local laws and ordinances. The application submitted by the claimant contained a signed statement by the property owner granting permission to the claimant to erect the billboard on his land. The DOT states that its sign permit coordinator did not know of the scenic easement. The DOT admits that it is DOT practice to check for scenic easements before issuing permits, however it is not a ministerial duty to conduct the check. The DOT does not believe that the employee's failure to check for easements necessarily outweighs the negligent or intentional misrepresentations made by the claimant and the property owner in the permit application. The DOT objects to refund of the $175 permit application fee, which is nonrefundable. The DOT also objects to payment of the full cost of constructing the sign. The DOT points to the fact that the claimant still possesses the sign, which may be installed at another location, resulting in no loss for the claimant. The DOT believes that the damages involving the Iowa County permit fees, cost of sign removal, and attorneys fees may be legitimate ($3,927.10) but whether these costs were caused by the DOT or by the claimant's or the property owner's intentional or negligent conduct remains unclear. Because the DOT does recognize that an error was made by a DOT employee, the department would not object to payment of a portion of these damages in the reduced amount of $2,000 based on equitable grounds.

The Board concludes the claim should be paid in the reduced amount of $5,000 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation § 20.395 (3)(eq), Stats.

2. Fred and Leslie Schweinert of Nashotah, Wisconsin, claim $8,182.32 for costs associated with the failure of their well, which was allegedly caused by a nearby state construction project. The claimants' home was served by a hand-dug, 100-year old well located under the house. In summer of 2005, the state began construction of a boat launch on nearby Moose Lake. The project included installation of a roadway near the claimants' property and demolition of a nearby home, garage and trees. The claimants state that in the fall of 2005, the roadway project required heavy compacting of crushed stone. The claimants state that they felt the vibrations in their home caused by this process for two days. The claimants believe that these vibrations were the cause of the eventual collapse of their well in the spring of 2006. The claimants do not believe that the filling of their swimming pool had anything to do with the well collapse as the state alleges. The claimants request reimbursement for the costs associated with replacing the well and replacement of their water softener.

The Department of Administration recommends denial of this claim. The department points to the fact that the state has spent approximately $12,000 for landscaping work along the edge of the claimants' property at their request in order to address their concerns related to this project. The DOA states that if there were any substantiation of this claim, the state would not object to payment, however, the claimants have submitted no expert-based substantiation for the claim that construction vibrations caused the well collapse. The DOA states that DOA engineers have confirmed that the large rollers and vibrators used during this project can only compact soil 12-15 inches directly under the equipment. Although vibrations may be felt further away at ground level, the vibrations caused by the equipment do not run very deep into the ground. The DOA believes that it would be virtually impossible for the machinery used during this project to have had any adverse impact on a well located 100' from the compacting area and 35' deep in the ground. The DOA points to the fact that the well construction report submitted by the firm that drilled the claimants' new well states that the reason for the well replacement was "Old Well Gone Dry." The DOA believes that one possible reason for the drying-up of the well was that the claimants filled a new swimming pool at the same time as the construction project and that water pulled from the well to fill the pool may simply have dried up the aquifer into which the well was tapped. Finally, the DOA notes that

the compaction portion of the state project took place in October 2005, but the well did not fail until March 2006. The claimants provide no reasonable explanation for the 5-6 month delay between the construction and the failure of the well.

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 at this time. The Board states that it is not opposed to reconsidering this claim at a future date if the claimants are able to produce more definitive evidence explaining the cause of the well failure. *(Member Rothschild not participating.)*

3. Klemme Brothers Well Drilling of Kewaskum, Wisconsin, claims $17,405.00 for costs incurred abandoning two wells and drilling two new ones because of incorrect information provided by the Department of Natural Resources. The claimant was contracted to install two wells in the town of Jackson in 2004. The claimant suspected the property might be located in an area requiring special casing and called the DNR to double check the specifications of the special casing area. The claimant states that DNR employee Chad Czarkowski told him the property was not located in a special casing area and that there were no special requirements for the wells. The claimant installed the two wells without special casing per the DNR's instructions. One year later, the wells tested as unclean. The claimant states that after looking into the matter further, Mr. Czarkowski told him he had made an error and that the property was indeed in a special casing area. For safety purposes, the DNR required the abandonment of the two original wells and the claimant had to drill two new wells with the special casing. The claimant states that it only was paid for the first set of wells by the person who contracted his services. The claimant therefore does not feel it should be held responsible for the cost of abandoning the original wells or for the cost of drilling the new wells and requests reimbursement for those costs.

The DNR recommends payment of this claim in the reduced amount of $10,317.93. The DNR states that it does appear possible that a mistake may have been made by a DNR employee. The DNR notes, however, that it is difficult to determine exactly what happened from the employee's telephone log because the employee discussed several areas with the claimant during the same phone call. The DNR also points to the fact that the legal description provided by the claimant for this property was incorrect and may have contributed to the error. It is possible that the DNR employee gave the correct instruction—no special casing—for the incorrect plot of land provided by the claimant. The DNR states that there is no way to determine exactly what happened in this instance but believes that because there is reasonable possibility of an error on the part of the state, the claim should be paid. The DNR does not, however, support payment of the full amount requested by the claimant. The drilling costs of the second set of wells is higher because of the additional special casing expenses, but the DNR does not believe that it should have to pay the cost of the second set of wells. The DNR believes that if an error was made, it should only be responsible for paying for the result of that error—the first set of wells. If not for the error, the claimant would have been told about the special casing requirements right away and the first set of wells would never have been drilled. The DNR therefore believes that the claimant should be reimbursed for the cost of drilling and abandoning the first set of wells and recommends payment of the claim in the reduced amount of $10,317.93.

The Board recommends payment of this claim in the reduced amount of $10,317.93 based on equitable principles. The Board further recommends, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Natural Resources appropriation § 20.370 (4)(mq), Stats.

4. David E. Johnson of Port Wing, Wisconsin, claims $1.6 million for lost value of land. The claimant states that in 1981 he purchased approximately 1300 feet of lake frontage in the Orienta flowage in Bayfield County, with the intention of selling the lots to fund his retirement. In 1985, the Orienta Dam washed out due to flooding. The claimant states that for 12 years the dam sat inactive. The claimant alleges that the Department of Natural Resources' insistence that any new owner install a fish ladder deterred interest from potential purchasers. In 1997, Northern States Power Company initiated the permit process to remove the dam. The claimant states that public hearings were held relating to the removal permit and that one of

the factors that had to be considered during the permit process was damage to nearby property. The claimant alleges that the DNR provided false testimony during the hearing, which downplayed the impact the dam removal would have on his property value. The claimant believes that if the Administrative Law Judge had received correct information about the negative impact on the claimant's land, the ALJ would have included a compensation package for the claimant in the permit approval. The claimant states that after removal of the dam, the 144 acre lake that once existed was replaced by a barren, inaccessible river, which is hidden from all but one of his 12 lots. The claimant alleges that he has lost over a million dollars in property value and that lakeshore property in the area now sells for 700 to 800 a foot. The claimant requests reimbursement for the lost value of his property.

The DNR recommends denial of this claim. First, the claimant has provided no evidence for the claim that his property has been devalued and no documentation to support the dollar amount of his claim. Second, the DNR believes that the delay in bringing the claim raises issues about whether the present value of waterfront property would be the same as when this alleged loss took place. Third, the DNR believes that the claimant has no legal basis for his claim because he had no ownership rights in the flowage, which was owned by Northern States Power. The claimant was an owner of upland with riparian rights, however, once the flowage was drawn down, the riparian rights disappeared. The claimant had no right to have a certain water level maintained over time. Fourth, the DNR disputes the claimants assertion that relief could have been provided by the hearing ALJ, but was not due to DNR testimony. The DNR strongly denies that any false testimony was given. Furthermore, the claimant's assertion that, had a loss of property value been shown, the ALJ would have included a compensation provision in the permit, is highly speculative, unsupported by any evidence and likely outside the ALJ's authority. Finally, the DNR points to the fact that there is no connection between any DNR action and the damages the claimant is alleging. The dam was damaged and inoperable and the dam owner sought to have it removed. The DNR performed its regulatory duty in issuing the permit and testified truthfully at the public hearing. The DNR does not believe there is any negligence or liability on the part of the state and no reason in equity that the state should pay 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.

5. Audio Contractors, LLC of Oregon, Wisconsin, claims $10,810.91 for overpayment of sales taxes caused by a typographical error in a sales tax return for March-December 2001, which was filed in 2003. In November 2005, the claimant's accountant discovered that the claimant had accidentally duplicated some numbers when carrying them over to another page, thus overstating his sales tax for the period. The claimant contacted the Department of Revenue and requested a refund of the overpayment. From December 2005 through February 2006, the claimant was in communication with the DOR and submitted additional information as requested. The claimant states that during a March 28, 2006, phone call, DOR employee Susan Denis indicated that the claimant's request for refund had been approved and that the refund would be sent in mid-April. The claimant contacted the DOR at the end of April to check on the status of the refund and was then told that the refund request was under review and that there was an issue regarding changes in the statute of limitations. From May-July The claimant continued to contact DOR to check on the status of the refund. In August 2006, the claimant received a letter denying the request for refund. The claimant points to the fact that it cooperated with the DOR and spent many hours providing the information requested. The clamant believes that, for equitable reasons, it should be refunded the overpayment.

The DOR recommends denial of this claim. The DOR issued assessments for the sales tax periods in question. The claimant did not appeal the assessments and did not file the requested returns until 2003. Because the original returns were not filed or the assessments appealed within 60 days, the action became an office audit determination. Section 77.59 (4)(b), Stats., provides for a two year statute of limitations on refunds for taxes assessed by office audit. Because the claimant neither protested the assessments nor filed his returns within 60 days of the notice of the estimated assessments, the length of time permitted to file a claim for refund is two years from the assessment dates. The DOR auditor misread the statute and erred in telling the claimant a refund was coming. The claimant's requests for refund would

have had to be filed before June 2003 to March 2004 for the sales tax periods in question. The claimant's request for refund was not filed until over a year past the last possible sales tax refund deadline, therefore, the DOR recommends denial 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.

6. Steven J. Graf of Sturgeon Bay, Wisconsin, claims $42,502.86 for refund of overpayments of income and sales taxes. The claimant opened an upholstering business in 1995 to supplement his income and for the first two years, a business associate prepared and filed the tax returns on his behalf. The clamant states that his associate left in 1997 and that the clamant found the tax obligations overwhelming and intimidating for a business that only generated sales of $12,700 a year. The claimant missed tax deadlines and did not respond to notices from the Department of Revenue. The claimant states that his anxiety was further compounded when he went through a difficult divorce in 2002. The claimant's business closed in 2003. The claimant states that assessments totaling nearly $150,000 were issued and that the DOR collected more than $50,000 through wage garnishments and levies between June 1999 and November 2004. The claimant states that the DOR repeatedly told him that any overpayments would be returned to him once the returns were filed. The claimant states that when he filed the returns, his actual tax owed was approximately $2,000 but that the DOR had issued assessments for more than 7500% of the actual tax due and had collected more than 2500% of the actual tax due. The claimant states that when he filed the returns, he was told that he would not receive any refund because the statute of limitations had expired. The claimant does not dispute that his returns were not timely filed, however, he believes that the 2500% "penalty" collected by the DOR is excessive and requests return of his overpayments.

The DOR recommends denial of this claim. The DOR states that it has been trying to get the claimant to file his sales and income tax returns since 1998. The DOR filed tax liens and garnished the claimant's wages, actions which normally get a taxpayer's attention, however, the claimant ignored repeated notices. The DOR notes that the claimant met with the DOR in February of 2002, was given blank sales tax forms, and promised to filed the returns by March 2, 2002. The DOR told him that if he filed his missing returns, he could receive refunds, however, the claimant failed to file his returns as promised. The DNR states that in July 2003 the claimant called the DOR and again received sales tax return forms but again failed to file the returns. The DNR notes that the sales tax returns were not filed until September 2004, six years after the DOR first began issuing assessments. The claimant filed his 1997-1999 income tax returns on December 23, 2004. The DOR states that the statutes of limitations under § 77.59 (4)(b) and § 71.75 (5), Stats., have both expired. The DOR is providing refunds to the claimant for three sales tax periods for which the statute of limitations had not expired. The DOR states that the claimant operated a business for five years without filing the required sales tax returns and then ignored repeated notices and advice from the DOR regarding the need to file his returns and is therefore not due any further refund.

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. Todd Burow of Hager City, Wisconsin, makes 14 claims in the total amount of $33,338.65 for refunds of sales and income tax payments lost due to the statute of limitations. The claimant states that his income and sales tax returns were filed late. The clamant states that judgments for the missing returns were awarded against him and that the Department of Revenue garnished his wages. The claimant states that the DOR collected $56,245.06 but that his actual tax liability was only $2,720. The claimant states that overpayments which totaled $38,318.59 were lost to refund because of the expired statute of limitations. The claimant states that he is not contesting that interest and penalties should be paid on his delinquent taxes, however, he believes that this is an excessive amount of overpayment and requests refunds of the above amounts.

The DOR recommends denial of these claims, which involve failure to timely file income and sales tax returns. The DOR states that between May 1996 and April 2005, it issued a total of 40 estimated assessments against the claimant. The DOR began certifying the claimant's

wages in December 1996. The DOR notes that from the time certification began until February 2005, the clamant contacted the department only once in 2001 to inquire about his account. The claimant did not begin filing the requested returns until July 2005 and completed filing his returns in October 2005. The DOR points to the fact that the active wage certification was in place for more than 8 years before the claimant took any steps to resolve his delinquent account. The statute of limitations had expired when the claimant finally filed his returns and the DOR does not believe he is entitled to any additional refunds at this time.

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. Bryan Pelant of Appleton, Wisconsin, claims $185.45 for the cost of replacing two tires damaged by a boat ramp. In July 2006, the claimant was using a boat ramp at High Cliff State Park. Two of the tires on his boat trailer were gashed after entering the water. The claimant inspected the side of the boat ramp and discovered a shard of metal sticking 3-4 inches out of the side of the ramp in the area where the tires were punctured. The claimant notified the park superintendent and showed him the metal shard. The claimant requests reimbursement for the cost of the two trailer tires that had to be replaced because of the damage.

The Department of Natural Resources recommends payment of this claim. The DNR does not dispute that the damage occurred in the manner described by the claimant. The DNR notes that the damage was caused by a defect in the boat ramp itself, not by an unforeseen object such as a nail or broken bottle. The DNR also notes that the claimant would have an expectation that the ramp would be in good operating condition and would not damage his equipment when properly used. The DNR therefore believes that the claimant should be reimbursed for his damage based on equitable principles.

The Board concludes the claim should be paid in the amount of $185.45 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Natural Resources appropriation § 20.370 (1)(ea), Stats.

9. Tomas Barajas of Boscobel, Wisconsin, claims $42.65 for value of property removed from his cell and destroyed by the Department of Corrections. The claimant is an inmate at Wisconsin Secure Program Facility. He states that in October 2006, a correctional officer conducted a cell search and removed several magazines and photos because they were not properly labeled with the claimant's name and inmate number in red ink and because the magazine labels had been taped. The claimant alleges that DOC personnel often forgets to label items with red ink. The claimant also states that he taped the labels onto the magazines because the labels were falling off and that he has disbursement requests proving that he owned the property in question. The claimant states that he was never given the option of sending out his property instead of having it destroyed. He requests reimbursement for the value of the property.

The DOC recommends denial of this claim. The DOC states that the items found in the claimant's cell were altered and did not contain his name and inmate number as required. Possession of such altered property is in violation of DOC 303.47 Adm. Code. Such items are considered contraband and were therefore confiscated during the cell search. Section 303.10—Seizure and Disposition of Contraband, allows for the seizure and destruction of items that are considered contraband. Because the items confiscated were contraband and did not belong to the claimant, they were destroyed.

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

10. Mark Brown of Boscobel, Wisconsin claims $19.66 for the value of ordered canteen items confiscated and destroyed by the Department of Corrections. The claimant is an inmate at Wisconsin Secure Program Facility. The claimant states that in November 2006 he was given a canteen menu and was verbally told by the guard that he could order items off that menu. The claimant ordered $19.66 of food and hygiene items from the canteen menu. When the ordered items were about to be delivered, a guard told the claimant that he was not allowed

to have the items and confiscated them. The claimant requested that he be allowed to send out the items but the DOC denied that request and destroyed the items. The claimant believes that he should have been allowed to send out his items and requests reimbursement for the destroyed property.

The DOC recommends denial of this claim. The DOC states that the claimant has been in program segregation status and has been a Step Program inmate since July 2006. The Step Program has a limited canteen menu. The DOC states that the claimant ordered items that he was not allowed to have from a menu clearly labeled "High Risk Offender Program." The DOC states that he was well aware of his Step Program status and that he knew he must order from the menu labeled "Step Inmates". The DOC further states that it is the inmate's responsibility to order from the correct menu. The DOC destroyed the items because, pursuant to institution policy, inmates are not allowed to send out any items purchased from the canteen.

The Board concludes the claim should be paid in the amount of $19.66 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.

11. Mark Brown of Boscobel, Wisconsin, claims $61.70 for the value of items allegedly missing from his property. The claimant states that in December 2003, while an inmate at Oshkosh Correctional Institution, he ordered twice from the institution canteen (on December 8th and December 22nd). On December 25th the claimant was placed into temporary lock-up and his property was taken from him. The claimant alleges that when he was released from temporary lock-up and his property was returned, the majority of his canteen property, mostly food items, was missing. The claimant requests payment of the value of the missing items.

The Department of Corrections recommends payment of this claim in the reduced amount of $8.04. The DOC states that the property inventory completed on December 25th, when the clamant was placed in temporary lock-up, shows no canteen food items, though numerous non-edible items are listed. The DOC states that if food items had been in the claimant's property, they would have been noted on the inventory list along with the other property. The DOC does acknowledge that the property inventory form is irregular in that does not contain the claimant's signature. However, the DOC points to the fact that it is impossible to know how quickly the claimant consumed the food items he purchased. The DOC therefore recommends the claimant be reimbursed for half of the food items from his December 22nd canteen purchase, which amounts to $8.04.

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.

12. Mark Brown of Boscobel, Wisconsin, claims $48.63 for the unreimbursed value of a damaged television set. The claimant's television was moved when he was transferred from Racine Correctional Institution to Wisconsin Secure Program Facility. No damage was noted to television when it was packed at RCI, however there was damage to the TV when it arrived at WSPF. The Department of Corrections depreciated the TV at 10% per year and only reimbursed the claimant $112. The claimant does not believe this depreciation is fair, as he would be charged full value for any DOC property he damaged. The claimant paid $159.75 for the TV and requests reimbursement for the remaining value plus $0.88 tax, for a total of $48.63.

The DOC recommends denial of this claim. The DOC has established policies to reimburse inmates for damaged property in a fair and uniform manner. Pursuant to the DOC Internal Management Procedure Property Depreciation Schedule, TVs are considered to have a total of 10 useful years and are therefore depreciated at 10% annually. The claimant paid $159.75, which was rounded to $160. The TV was three years old and was therefore depreciated 30%. The DOC notes that the claimant never filed any appeal protesting the depreciation of the TV at the time the decision was made. The DOC does not believe the claimant is due any additional payment.

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.

13. Shirell Watkins, Sr. of Boscobel, Wisconsin, claims $108.55 for the unreimbursed value of a damaged television set and fan. In October 2003, the claimant was transferred from Green Bay Correctional Institution to the Wisconsin Secure Program Facility. Staff at GBCI packed the claimant's property, including a TV and fan, neither of which were noted as damaged. In 2006, during a routine property check of the WSPF warehouse, it was noted that both the fan and the TV were damaged. The claimant objects to the fact that the Department of Corrections depreciated the fan by 50% and the TV by 40% when calculating the reimbursement value. The claimant does not believe this depreciation is fair, as he would be charged full value for any DOC property he damaged. The claimant also objects to the fact that the DOC deducted 5% sales tax from the TV purchase. The claimant alleges that he did not pay any sales tax on the TV purchase. The claimant was reimbursed $149 by the DOC and requests payment of an additional $108.55 to cover the full purchase price of his fan and TV.

The DOC recommends denial of this claim. The DOC has established policies to reimburse inmates for damaged property in a fair and uniform manner. Pursuant to the DOC Internal Management Procedure Property Depreciation Schedule, both fans and TVs are considered to have a total of 10 useful years and are therefore depreciated at 10% annually. The Schedule also indicates that if no receipt is available, an item is assumed to be 5 years old and that taxes and shipping & handling should not be included in the base price for reimbursement. There was no receipt for either the TV or the fan. The cost of the TV was $235.50 minus 5% for sales tax. The age of the TV was determined from the claimant's trust account statement, which showed the payment for the TV. The TV was four years old and was therefore depreciated 40%, for a reimbursement of $136. The age of the fan was unknown, so it was depreciated at 50% for a reimbursement of $13. The DOC reimbursed the clamant according to its standard policy and does not believe that there are any equitable grounds to grant him any additional payment.

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 claims of the following claimants should be denied:

Fred and Leslie Schweinert
David E. Johnson
Audio Contractors, LLC
Steven J. Graf
Todd Burow (14 claims)
Tomas Barajas
Mark Brown ($61.70)
Mark Brown ($48.63)
Shirell Watkins, Sr.

That payment of the following amounts to the following claimants from the following statutory appropriations is justified under s. 16.007, Stats:

JMPK Company, LLC	$5,000.00	§ 20.395 (3)(eq), Wis. Stats.
Bryan Pelant	$185.45	§ 20.370 (1)(ea), Wis. Stats.
Mark Brown	$19.66	§ 20.410 (1)(a), Wis. Stats.

The Board recommends:

Payment of $10,317.93 to Klemme Brothers Well Drilling for damages relating to well drilling costs, and that this payment be taken from Department of Natural Resources appropriation § 20.370 (4)(mq), Wis. Stats.

Dated at Madison, Wisconsin this 11TH **day of** JUNE**, 2007.**

Robert Hunter, Chair
Representative of the Attorney General

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

Nate Zolik
Representative of the Governor

Jeffrey Stone
Assembly Finance Committee