STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on September 2, 2009, upon the following claims:

	Claimant	Agency	Amount
1.	Jerome Franke	Revenue	$47,103.99
2.	Stephen Kramer	Natural Resources	$5,000.00
3.	Mark Stillmunkes	Natural Resources	$76,050.00
4.	Kelly Westphal	Natural Resources	$100.00

The following claims were considered and decided without hearings:

	Claimant	Agency	Amount
5.	Craig G. Bucholz	University of Wisconsin	$943.99
6.	Joseph M. Huber	Revenue	$29,995.00
7.	Michael & Tammy Reynolds	Natural Resources, Justice	$4,854.00
8.	Joshua J. VanMinsel	Transportation	$1,033.50
9.	Kim L. Polinski	Revenue	$850.00
10.	Timothy Schimmel	Agriculture, Trade & Consumer Protection	$310.20
11.	William Wachowiak	Agriculture, Trade & Consumer Protection	$1,000.00
12.	Dennis & Diana Denman	Natural Resources	$7,500.00
13.	Barbara A. Bichler	Natural Resources	$82.56
14.	Glendon P. Krouse	Corrections	$202.98
15.	Monty Contreras	Corrections	$3,386.93
16.	Milton Smith	Corrections	$151.22
17.	Myron E. Edwards	Corrections	$118.00
18.	Myron E. Edwards	Corrections	$268.99
19.	Victor L. Edmondson	Corrections	$204.90
20.	John H. Jones	Corrections	$221.12
21.	Jovanni Lopez	Corrections	$50.30
22.	Robert Osowski	Corrections	$40.75

The Board Finds:

1. Jerome Franke of Milwaukee, Wisconsin, claims $47,103.99 for overpayment of estimated assessments for failure to file 1998, 1999 and 2000 income tax returns. The claimant states that the Department of Revenue garnisheed his wages from 2003 to 2005 and also received $28,087.22 from a tax lien when he sold a home. The claimant filed all three returns on December 22, 2005. He states that he overpaid by tens of thousands of dollars and that the DOR returned $9,305.51 but would not return the remaining overpayment. The claimant states that he has learned a lesson and is now keeping up with his tax filings. He requests reimbursement of his $47,103.99 overpayment.

The Department of Revenue recommends denial of this claim. The department states that the claimant is a chronic late filer. DOR records indicate that the department issued an estimated assessment for 1998 taxes in January 2003, with a due date of March 31, 2003. The assessment was not paid nor the returns filed, therefore the department began wage certification in June 2003. This certification continued until the 1998 return was filed in December 2005. During this time, additional estimated assessments were issued for 1999 and 2000; however those assessments are not the subject of this claim because there was no overpayment for those tax years. The DOR states that the filed 1998 return showed a tax due of $1,636.00. DOR records indicate that the amount of overpayment for 1998 is $47,103.99. The DOR states that it is prohibited from refunding this overpayment pursuant to § 71.75(5),

Stats., which bars refund of the overpayment because no refund was claimed within two years of the assessment date. The deadline for claiming that refund was January 27, 2005.

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. Stephen Kramer of Franksville, Wisconsin, claims $5,000.00 for costs associated with repeated flooding of his property. The claimant states that he purchased a property seven years ago which is not in a floodplain but that he has experienced regular, serious flooding since 2003. The claimant states that he has approached state, federal and county government agencies but that no one has been able to provide him with a solution for his problem. The claimant states that he has spent $3,000 renting pumps and that he finally installed a water extraction system at a cost of $40,000. The claimant believes that buildup of debris and beaver dams on the Root River is a major part of the problem and that the Department of Natural Resources is responsible for the failure to clean out the river. The claimant states that he has amassed over $60,000 in damages but is requesting reimbursement in the amount of $5,000, the direct payment statutory limit for the Claims Board, so that he may recoup some of the expenses he has incurred from the repeated flooding.

The Department of Natural Resources recommends denial of this claim. The department does not dispute that the claimant has a flooding problem; however he has made no assertion and presented no evidence that this problem has any connection to the DNR. The department states that it has had only one contact with the claimant regarding this issue, during which two DNR staffers attempted to provide helpful suggestions to the claimant. The department believes that this involvement with the claimant cannot be the basis of an action against the DNR and that the claimant has provided no evidence to show that the department is in some way at fault for his flooding problem.

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. Mark Stillmunkes d/b/a Stillmunkes, Inc. of Lamotte, Iowa, claims $76,050.00 for payment for brush removal services allegedly owed pursuant to a purchase order with the Department of Natural Resources. In January 2008, the claimant submitted a bid to the DNR of $130 an hour for brush removal and forestry services in the Yellowstone Wildlife Area. The DNR issued a purchase order in the amount of $20,800. The purchase order states "Amount show is an estimate, actual amount paid will be based on actual authorized hours of services delivered." DNR employee Bruce Folley was the contact person to authorize services. The claimant states that unforeseen conditions on the land caused delays. The claimant states that, prior to the project, Mr. Folley represented to him that all brush on the site would be three inches in diameter or smaller. The claimant states that there was actually much larger diameter brush, including large stumps and logs leftover from a previous logging operation. The claimant states that he contacted Bruce Folley and was given approval to work beyond the May 31, 2008, deadline on the purchase order. The claimant states that he kept Mr. Folley updated on the status of the project and that Folley told him to continue until the work was completed. The claimant alleges that he told Mr. Folley that he was going to go over the purchase order amount and that Mr. Folley told him not to worry because he would be "paid by the hour." The claimant completed work on the project in August 2008 and submitted an invoice to the DNR for $96,850. The department paid the claimant $20,800 but refuses to pay the remaining balance. The claimant states that the DNR approved all of the work he provided and requests reimbursement for the unpaid balance of $76,050.

The Department of Natural Resources believes this claim has no merit and recommends denial by the Claims Board. The claimant submitted a written bid of $130 an hour. The department states that during follow up conversations with Bruce Folley, the claimant indicated that he could chip between one-half to one acre an hour. The DNR states that it based the purchase order on the claimant's most conservative estimate of one-half acre per hour and issued a purchase order for 160 hours of service. The spring of 2008 was very rainy and that postponed work on the project, which did not begin until May. The DNR states that the claimant contacted Mr. Folley and requested to work past the May 31st deadline on the

purchase order. Mr. Folley approved the postponement of the May 31st deadline but did not approve any additional hours of service. The department states that over the course of the project the weather continued to be wet and the claimant experienced some equipment problems. The department states that, despite various contacts with Mr. Folley during the course of the project, the claimant never requested approval for additional hours of service. Mr. Folley believed the delay in completion of the project to be solely due to the weather and equipment issues. Upon completion of the project, the department received a $96,850 bill for 745 hours of service—more than four and a half times the amount provided for in the purchase order. The DNR states that Mr. Folley repeatedly tried to reach the claimant but he did not respond. In October 2008 the claimant's attorney contacted the department demanding payment of the entire bill but the DNR denied payment beyond the purchase order amount of $20,800. The DNR believes that the 745 hours billed is unreasonable and notes that completion of the project took 12 weeks, which would equal 62 hours of work a week on the project—an unusually high number of hours for that type of physical labor. The department also notes that the claimant has provided no proof that the additional hours were actually worked. The DNR believes that if it actually did take the claimant four times as long to do the cutting as he proposed in his original bid, he should not be rewarded for miscalculating that bid.

The Board recommends payment of this claim in the reduced amount of $30,000.00 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(1)(ht), Stats.

4. Kelly Westphal of Waupun, Wisconsin, claims $100.00 compensation for time and inconvenience of cleaning floors dirtied by Department of Natural Resources Wardens. The claimant states that in November 2008, two DNR wardens came to his home to discuss a hunting complaint. The claimant states that one of the wardens had muddy boots and left tracks on the carpet as she entered his home. The claimant states that he placed a throw rug down, assuming she would remove her boots but she continued to follow him through the house, leaving muddy footprints on the carpeting and hardwood floors. The claimant states that the other warden apologized for the mess as they left but that the warden with the muddy boots made no apology. The claimant believes that it was very disrespectful for the wardens to show such disregard for his home. He does not believe it is fair that his fiancée had to clean up the mess on the carpets and hardwood floors. Although the claimant's fiancée did the cleaning, the claimant obtained estimates from a professional cleaning company in order to provide a fair estimate for reimbursement. The cleaning estimates total $240, however, the claimant is willing to accept the DNR's suggested rate of $25 per hour and requests $100 reimbursement for the 4 hours that it took his fiancée to complete the cleaning.

The Department of Natural Resources recommends payment in the reduced amount of $50. The two wardens have confirmed that they left muddy boot tracks in several areas of the claimant's home as they questioned him regarding an alleged illegal hunting incident. Because the claimant did not pay to have the floors professionally cleaned, the department does not believe he should be awarded the full amount claimed. The DNR states that the claimant indicated his fiancée spent 2 hours cleaning the floors. Assuming the cost of a maid service at approximately $25 an hour, the department believes $50 would be fair compensation for the claimant's time an inconvenience. Finally, the department notes that, although it does not normally recommend compensation for hurt feelings, the DNR believes that it was not right that the claimant's home was sullied, causing upset and offense.

The Board concludes the claim should be paid in the reduced amount of $50.00 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(3)(mi), Stats.

5. Craig G. Bucholz of Shawano, Wisconsin, claims $943.99 for estimated cost to repair vehicle damaged by a UW-Madison waste management truck. The claimant is a construction worker and was working at a construction site on North Francis Street. He states that he normally parked his vehicle in Lot 91 on North Francis Street, inside the gates of the construction site. He states that on August 27, 2008, he needed to temporarily move his

vehicle outside the gates of Lot 91 to allow for removal of equipment from the construction site. He states that a UW garbage truck backed into his vehicle while it was parked outside the gates. The claimant alleges that there was only one occupant of the truck and therefore there was no spotter to assist the driver backing up the truck. The claimant requests reimbursement in the amount of $943.99, the average of the three repair estimates he received. The claimant has vehicle insurance but only carries liability coverage.

The UW-System believes it has no legal or equitable obligation to reimburse the claimant and recommends denial of this claim. The UW points to the fact that the claimant's vehicle was parked illegally in a location not designated for parking when the vehicle was struck by the UW truck. The UW states that because of the nearby construction fences and trailers, the area into which the waste truck driver had to maneuver was very narrow. The UW states that there was a second employee acting as a spotter but that employee was on the other side of the truck and unable to see the claimant's car until the truck was about to hit it, at which time he alerted the truck driver. The UW states that despite the fact that the driver was going at a very slow speed (approximately 2 mph) he was unable to stop the heavy truck before it struck the claimant's vehicle. The UW-Madison Office of Risk Management's investigation found that the damage to the claimant's vehicle was the result of his parking illegally. The Risk Management Office offered to reimburse the claimant for 50% of his damages; however, the claimant rejected this offer. The claimant filed a Notice of Claim with the State, which was denied by the Department of Justice. The UW believes there was no negligence on the part of the state and that there are no equitable reasons to reimburse 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. Joseph M. Huber of Hales Corners, Wisconsin, claims $29,995.00 for refund of overpayment, penalties and interest related to late filing of income taxes. The claimant admits that he fell behind in his taxes but states that he has worked very hard for the last eight years to get caught up. He states that he made large bi-monthly payments in order to pay the estimated taxes. He states that there was a delay in gathering together his records to complete his returns because four years of records had been lost in a basement flood and had to be recreated. The claimant states that he has learned his lesson and will keep current with his taxes in the future. When the claimant filed his taxes, he found that the tax estimates, interest and penalties resulted in an overpayment of approximately $29,995.00. He requests reimbursement for this amount.

The Department of Revenue recommends denial of this claim. The department states that the claimant is a chronic late filer who has been making payments either voluntarily or through wage certification for the past 14 years. The department notes that the claimant's 2001 tax return was filed within 4 years of the assessment date and therefore, if any refund is due, the department will issue that refund directly to the claimant. The department states that § 71.75(5), Stats., prohibits refund of the overpayment because no refund was claimed within the prescribed time periods (two years for 1998 and 1999 and four years for 2000).

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. Michael and Tammy Reynolds of Cassville, Wisconsin, claim $4,854.00 for damages relating to an order by the Department of Natural Resources that Don's Well Drilling fix the claimants' allegedly non-compliant well. The claimants state that the DNR and the Department of Justice created a stipulation with Don's Well Drilling as part of a 2005 prosecution of that company for violations of well drilling laws. The claimants point to the fact that they had no say in this stipulation agreement between the DOJ, the DNR and Don's. They also point to the fact that they were not allowed to choose another contractor to fix their well and that the DNR has never actually proven that their original well was non-compliant. In July 2007 as Don's was drilling the new well, it partially caved-in. Don's was unable to fix the problem because of subsequent equipment failures. In addition, Don's truck damaged the claimants' LP gas line. The claimants state that five months elapsed without contact from Don's or the DNR, during which the well remained unfixed. In January 2008, the DNR

informed the claimants that the department had given Don's an extension until the end of the month to finish the well. The claimants state that they did not agree with this extension and had no choice in the matter. Don's never returned to fix the well. In February 2008 claimants again contacted the DNR and were told that Don's was in foreclosure and was not returning the DNR's phone calls. The claimants also note that the letter of credit the DNR obtained from Don's did not name the DNR or the DOJ and expired on December 13, 2007. The DNR and the DOJ failed to renew the letter of credit despite the fact that they gave Don's an extension to complete the work until January 31, 2008. Don's insurer did fix the damage done to the claimants' LP line but denied their claim to fix the caved in well. The claimants insurance covered the cost of drilling a new (third) well, however, the claimants were left with significant costs related to the abandonment of the 2nd well and their insurance deductible for construction of the new well. The claimants find it hard to believe that the state can order work on a homeowner's property without proving anything is wrong, without notifying the property owner, without giving the property owner any choice in the matter, and then have no responsibility for the work that is done. The claimants also believe that the DNR and DOJ erred in failing to set up a proper line of credit which would have protected the claimants' property.

The Department of Justice and the Department of Natural Resources recommend denial of this claim. This situation arose out of an enforcement action taken by the DOJ on behalf of the DNR against Don's Well Drilling relating to improper well sealing. The court case resulted in a stipulation and consent order requiring that Don's remediate its work on four wells, including the claimants'. The order gave Don's 24 months to complete the correction of all four wells. The departments state that the order did not require either agency to supervise Don's work or to ensure that Don's had obtained or renewed the line of credit required by the order. Neither the DOJ nor the DNR believe that Don's failure to complete the work and subsequent insolvency creates a liability on the part of the state to complete the work or compensate the claimants. Although the DNR regrets it did not communicate more effectively with the claimants throughout this process, the department does not believe this lack of communication creates a legal liability for the state to remedy the damage caused by Don's.

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 Means not participating.]

8. Joshua J. VanMinsel of Fredonia, Wisconsin, claims $1,033.50 for damages relating to an incorrect vehicle title issued by the Department of Transportation. The claimant states that he purchased the vehicle for $5,500 from a private seller who provided a clean Wisconsin title. The claimant had the vehicle retitled in his name and again received a clean title from the DOT. Two weeks after the purchase, the claimant received a letter from the DOT stating that there had been an error on the title issued to the previous owner. The title should have carried the brand "Previously Titled in Florida as Salvage" and that the odometer reading was "not actual." The letter also informed the claimant that he could not legally drive the vehicle in Wisconsin until it was inspected. The claimant was moving and had to store the vehicle for a time until the inspection could be completed. The claimant was eventually able to sell the vehicle but only for $5,000. The claimant states that he never would have purchased the vehicle had he known of the salvage brand. He requests reimbursement for the $500 loss on the sale of the vehicle, the $349.50 sales tax and fees paid on the original purchase, the $84 inspection charge and the $100 storage fee.

The Department of Transportation recommends payment of this claim. A DOT employee made an error when he failed to carry forward the brand from the vehicle's Florida title. Although the claimant filed a Notice of Claim pursuant to § 892.82, Stats., by the time the vehicle had been inspected and sold, the 120 day statutory limit had expired and the claim had to be denied by the Department of Justice.

The Board concludes the claim should be paid in the amount of $1,033.50 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(5)(cq), Stats. [Member Sherman not participating.]

9. Kim L. Polinski of Oak Creek, Wisconsin, claims $850.00 for partial reimbursement of interest and penalties paid on delinquent employee withholding taxes. The claimant's business closed in December 2007, with $3,391.00 in employee withholding taxes not paid. The claimant filed business and personal bankruptcy in April 2008. The claimant states that he was aware that the tax debts would not be discharged by bankruptcy, but believed the Department of Revenue would notify them to make payment arrangements for the taxes owed. The claimant notes that the Department of Workforce Development notified them regarding unpaid workers compensation payments and that they were able to make monthly payment arrangements. The claimant states that they do not understand why the DOR would not be able to contact them after their bankruptcy, when it was clearly allowable for another state agency to do so. The claimant states that he never received the July 2008 notice sent by the department because it was sent to his closed business PO Box. The claimant states that it was not until the DOR seized their personal tax refund in April 2009 that he became aware that the initial tax liability of $3,391 had grown to $4,409.37. The claimant believes that if the DOR had contacted him earlier to make payment arrangements, the interest and penalty on the original debt would have been much smaller. The claimant requests reimbursement for $850 of the interest and penalty charged by the department.

The Department of Revenue recommends denial of this claim. The claimant filed a 2007 annual withholding tax report on February 28, 2008, with a reported tax due of $2,893.62. Despite the tax due, the claimant submitted no payment with this filing. The DOR states that the department was notified on April 30, 2008, that the claimant had filed for bankruptcy. The department states that DOR legal counsel has advised the department not to send delinquent tax collection notices once a taxpayer has sought protection from debt collection through bankruptcy. The DOR does mail an original notice of amount due to the taxpayer, which the department sent to the claimant in July 2008. Finally, the department notes that despite the fact it did not mail additional notices to the claimant, he would have been well aware that he filed his withholding tax report without 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. [Member Sherman not participating.]

10. Timothy Schimmel of Chippewa Falls, Wisconsin, claims $310.20 for veterinary bills and other costs incurred when a Department of Agriculture, Trade and Consumer Protection Food Safety Inspector hit one of the claimant's dogs while pulling into the driveway. The inspector arrived at the claimant's property in March 2009 to conduct a Grade A farm inspection. There were a number of dogs in the area of the driveway but it appeared to the inspector that they were moving out of the way as he pulled into the driveway. The inspector did not realize that one small dog had not moved out of the way and was struck. The claimant's wife discovered the dog and notified the inspector who apologized. The claimant took the dog to the vet where it was treated for a fractured pelvis. The claimant requests reimbursement for his veterinary bill ($283), mileage to the vet at $0.30 per mile ($7.20) and $20 compensation for two hours of his time.

The Department of Agriculture, Trade & Consumer Protection does not oppose payment of this claim. Although the DATCP inspector proceeded slowly up the driveway due to the dogs in the area, one of the dogs did not move out of the way and was injured. The claimant's wife told the inspector that the dog did not know to get out of the way of vehicles. The inspector apologized for injuring the animal and left his business and home phone with 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. [Member Sherman not participating.]

11. William Wachowiak of Mukwonago, Wisconsin, claims $1,000.00 for damage relating to removal of an ash tree from his property by Department of Agriculture, Trade & Consumer Protection personnel. The claimant states that in November 2008, he discovered two DATCP employees across the street on his property. They had cut down an ash tree and were sawing it into pieces and loading it into a truck. The claimant confronted the employees who

who told him they had orders to cut down and remove the tree. The claimant states that he received no notice and had never granted permission for removal of this tree. The claimant points to the fact that this is the second time that DATCP personnel have entered his property without permission and cut down a tree. In March 2007, DATCP employees working with the Emerald Ash Borer program cut down another tree and girdled the tree involved in this claim. The claimant requests $1,000 reimbursement.

The Department of Agriculture, Trade & Consumer Protection recommends denial of this claim. The department states that the claimant has already been reimbursed by the Claims Board for damage to this tree, which had been girdled, and another tree which was removed by DATCP personnel in 2007. (At that time, department personnel incorrectly believed these trees to be in the right of way when they were, in fact, on the claimant's property.) The claimant received $2,000 payment from the board for damage to both the removed tree and the girdled tree (because girdling would cause the eventual death of the tree). The girdled tree had recently died and therefore posed a threat to users of the nearby right of way. It is unfortunate that DATCP personnel neglected to notify the claimant before coming onto his property, especially given the previous claim; however, the department had informed the claimant back in 2007 that it would be returning to his property to clean up the debris. DATCP has apologized at length to the claimant for failing to notify him before removing the tree. The department states that removal of the tree did not cause any additional damages for the claimant and actually saved him the expense of removing the dead tree himself. The department believes that the claimant has already been reimbursed by the Claims Board for the death of this tree and is not entitled to any further 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. [Member Sherman not participating.]

12. Dennis and Diana Denman of Plain, Wisconsin, claim $7,500.00 for the value of three elk cows that were shot by the Department of Natural Resources in July 2009. The claimants state that someone let the elk out of the pen on their farm. The claimants state that the animals were not three miles from their farm when they were shot as required by § 29.875(1r), Stats., and that the DNR did not contact them prior to shooting the elk. The claimants allege that the elk were no threat because they have had a closed herd for eight years, are in compliance with state regulations and have conducted all required state tests. The claimants state that the loss of the three elk hurt their breeding program because the animals can produce offspring annually for 18 to 20 years. The claimants request $3500 for the breeding stock cow, $2500 for the breeding stock heifer, and $1500 for the grade cow.

The Department of Natural Resources recommends denial of this claim. The DNR points to the fact that § 29.875(1r), Stats., allows for seizure and disposal if the animal has traveled more than three miles *or* it has not returned to its farm within 24 hours of escape. The department also notes that under this section, there is no requirement that the animals pose a "risk" and no provision for compensation of the owners. The DNR was notified of the escape on July 7th and based on citizen sightings of the elk; it appears the animals escaped prior to 8:30 AM on that day. The elk were located on July 9th. The DNR states that it attempted to contact the claimants but was unable to do so because their phone number is unlisted. The department proceeded to destroy the animals which by this time had been escaped for at least 45 hours. The animals were field dressed and packed in ice to preserve the hides and meat for the claimants. The DNR points to the fact that it had nothing to do with the escape of the animals and that agency personnel followed state law and DNR regulations in destroying the elk. Although the DNR believes there is no legal or equitable basis for payment, the department also believes that the claimants have overestimated the value of the destroyed elk. The department points to the fact that the Wisconsin Supreme Court has concluded that fair compensation to a breeder is based on the market value of the animal at the time of the loss, not the estimated future value of the animal. The DNR also points to the fact that Department of Agriculture, Trade and Consumer Protection indemnity payments to owners of animals destroyed under disease eradication programs are limited to 2/3 of an animal's appraised value. The DNR notes that the carcasses and hides returned to the claimants do have value, as the claimants themselves estimated the value of slaughter animals at $500 to

$700. The DNR believes that if any payment is made to the claimants, the claimed amount should be reduced based on prior court decisions and the slaughter value of the animals. In addition, the DNR believes that because the state bears no responsibility for the escape of the animals, the department's expenses ($468) should also be deducted from any payment to the claimants.

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 Sherman not participating.]

13. Barbara A. Bichler of Random Lake, Wisconsin, claims $82.56 for medical expenses related to an injury at Harrington Beach Park in February 2008. The claimant states that she purchased a park sticker and that the park ranger on duty volunteered to help remove the old park stickers from her vehicle window. The park ranger used a razor blade to remove the stickers and as the claimant tried to assist, the blade cut her thumb. The cut would not stop bleeding and the claimant states that the park ranger suggested that she go to the clinic for treatment. The claimant states that the clinic was closed, so she went to the emergency room and was treated. She requests reimbursement for the portion of her bills not covered by her medical insurance, $82.56.

The Department of Natural Resources recommends payment of this claim in the amount of $100. The department's information confirms that the injury occurred as stated in the claim. The department instituted a policy change in response to this incident and park rangers no longer assist patrons with sticker removal or supply razor blades for that purpose. The DNR notes that there is some slight discrepancy between the balance due provided by the claimant and that provided by her insurer ($85.20). Given this discrepancy and the inconvenience caused by the injury, the DNR recommends payment of $100 to cover the balance due for her treatment as well as additional out-of-pocket expenses she may have incurred as a result of this injury.

The Board concludes the claim should be paid in the reduced amount of $50.00 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. [Member Sherman not participating.]

14. Glendon P. Krouse of Cadott, Wisconsin, claims $202.98 for the replacement cost of boots and jeans damaged in the course of his duties as a correctional officer. The claimant is employed at Chippewa Valley Correctional Treatment Facility. In December 2008, the claimant was responding to an inmate with a medical emergency. As he assisted the inmate into a wheelchair, the inmate vomited blood, which spattered on the claimant's boots and jeans. The claimant's jeans were approximately 16 months old and cost $21.99 (now $32.99) and the boots were approximately 26 months old and cost $129.99 (now $169.99). The claimant provided this information to his institution's business manager but was only offered $40.05 reimbursement for the boots and jeans. The value of the items was depreciated based on a determination of 3 useful years of life for the boots and 4 useful years of life for the jeans. The claimant disagrees with this determination, noting that a pair of boots will typically last much longer than a pair of jeans. The claimant states that he does not wear either of these items any longer because the jeans are permanently stained and he does not believe it is possible to sanitize the leather boots. The claimant notes that at most other correctional institutions, employees are supplied with a shirt, jacket and pants and also receive a $65 annual work boot/belt allowance. CVCTF, however, only provides employees with a shirt and they are required to wear their own pants and shoes. The claimant feels he should be reimbursed for the actual replacement cost of the damaged items.

The Department of Corrections recommends payment of the claim in the reduced amount of $40. The department states that the claimant is represented by AFSCME Labor Union and is therefore subject to the current Labor Agreement between AFSCME and the state. That agreement provides that if personal clothing is damaged beyond repair, the employing agency will pay the actual value of the damaged clothing "as determined by the Employer." The agreement also states that the value of the damaged clothing will be determined at the time the damage occurs. The DOC states that the agreement makes it clear that the claimant is not

entitled to reimbursement for the value of brand new items but for the depreciated value of his clothing at the time of the damage. The department has promulgated a depreciation schedule used for inmate property and that same schedule is used for this claim. Using the original prices and estimated age of clothing provided by the claimant, the department calculated reimbursement based on the depreciation schedule, arriving at a reimbursement amount of $40, and recommends payment of not more than that amount.

The Board concludes the claim should be paid in the reduced amount of $40.00 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. [Member Sherman not participating.]

15. Monty Contreras of Waupun, Wisconsin, claims $3,386.93 for reimbursement of restitution taken by the Department of Corrections. The claimant states that he was convicted of a burglary committed on 8/30/88. The 10 year prison sentence was stayed and the claimant was placed on probation. The claimant's probation was revoked in 1994 and he was sent to prison. He was released in October 2004. The claimant states that, upon his release $3,386.93 should have been returned to him, however, his parole agent informed him that the money would be taken as restitution for the 1988 conviction. The claimant points to the fact that § 973.20(1), Stats., which authorizes trial courts to order restitution when imposing either a prison sentence or probation, did not take effect until 9/1/88, and only applies to crimes committed after that date. (1987 Wis.Act 398.) Prior to the creation of that statute, § 973.09(1)(b), Stats., was in effect, which allowed for restitution if a defendant was placed on probation but not if he was sentenced to prison. The claimant states that, because his crime was committed prior to 9/1/88 and he was sent to prison after the revocation of his probation, no restitution is allowed. The claimant requests reimbursement of the $3,386.93 seized by the DOC.

The Department of Corrections recommends payment of this claim in the reduced amount of $2,472.52. The department states that the claimant was convicted of two counts of burglary in the 1988 case. Count 1 was committed on 9/3/88 and Count 2 was committed on 8/30/88. Court records indicate that the claimant was sentenced to 5 years in prison on Count 1 and received a stayed prison term on Count 2. The claimant was then placed on consecutive probation. Because the Count 1 burglary occurred after 9/1/88, § 973.20(1), Stats., applies and restitution is allowed for that crime even though the claimant was revoked and sent to prison. The DOC disagrees with the amount the claimant alleges was taken by the department in October 2004. Department records indicate that the amount received at that time was $3,172.46, not $3,386.93. Of the $3,172.46 received by the DOC, $2,472.52 was improperly applied to restitution for offenses that occurred prior to 9/1/88 and the department believes that amount should be returned to the claimant. DOC records indicate that the remainder of the money was properly applied to court costs, attorney's fees, and restitution for offenses occurring after 9/1/88.

The Board concludes the claim should be paid in the reduced amount of $2,472.52 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Claims Board appropriation § 20.505(4)(d), Stats. [Member Sherman not participating.]

16. Milton Smith of Redgranite, Wisconsin, claims $151.22 for the value of canteen items confiscated and destroyed by the Department of Corrections as well as the cost of photocopies made for filing this claim. The claimant is an inmate at Redgranite Correctional Institution (RGCI). In March 2007 a RGCI officer conducted a search of the claimant's cell and confiscated numerous food and hygiene items as being in excess of canteen limits. The claimant states that the items were not in excess of canteen limits because the rules at the time allowed inmates to possess 1.5 times the canteen ordering limit and to keep those items for up to three months from the date of purchase. RGCI conducted a disciplinary hearing relating to this matter in April 2007. The claimant states that the only punishment ordered in writing by the hearing examiner was the loss of 25 days of canteen ordering privileges. The claimant believes that because the hearing examiner did not issue a written order for destruction of the items that he should have been allowed to mail the items out. The claimant filed an Offender Complaint, which was denied. The canteen items were destroyed by RGCI.

The claimant states that he never received a contraband property tag or notice that his property was to be destroyed. The claimant does not believe that the Offender Complaint program and appeal process is an administrative remedy and therefore disagrees with the DOC's statement that he did not exhaust his administrative remedies. The claimant requests reimbursement for his canteen items and the cost of photocopies.

The Department of Corrections recommends denial of this claim. DOC property rules require inmates to retain copies of canteen receipts until canteen items are consumed. Obtaining food and toiletry items from other inmates is forbidden. The claimant could not provide receipts for the confiscated items and he was found guilty of possession of contraband. DOC rules state that inmates are allowed to choose to send items out unless a conduct report is issued, in which case the Hearing Officer orders the method of disposal. Because the claimant received a conduct report in this matter, the Hearing Officer ordered that the items be destroyed. The department states that, contrary to the claimant's allegations, RGCI did issue a contraband tag and the claimant received a copy. The Hearing Officer's orders relating to disposition of the canteen items were written on the list of items attached to the contraband tag. The DOC acknowledges the officer who conducted the cell search mistakenly believed canteen items could only be held for six weeks instead of the three months allowed by DOC rules at the time. However, the department notes that canteen records show that the vast majority of the destroyed items were not purchased within three months of the cell search. An analysis of canteen records indicates there are only a handful of items that may possibly have been incorrectly destroyed. The total value of these items is $19.78 however the DOC does not believe the claimant should be compensated in this amount due to his demonstrated dishonestly. The department believes that the lack of receipts for the confiscated items proves that the claimant has been receiving numerous items from other inmates in violation of DOC rules. The department also notes that the claimant has been repeatedly found guilty of this infraction. Finally, the DOC states that the claimant failed to file a timely appeal and therefore did not exhaust the administrative remedies available to him.

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 Sherman not participating.]

17. Myron E. Edwards of Boscobel, Wisconsin, claims $118.00 for the full cost of television damaged by Department of Corrections' staff at the Wisconsin Secure Program Facility (WSPF). The claimant was transferred from Green Bay Correctional Institution (GBCI) to WSPF in 2005. There was no damage to the TV noted by GBCI staff when they packed the claimant's property prior to the transfer and the TV was never in his possession while he was at WSPF. WSPF staff noticed damage to the claimant's television during an inventory of the property room and notified the claimant. The claimant states that he purchased the TV in 1998 for $168.99. He filed a complaint regarding the damage, requesting reimbursement for the full cost of the TV. The initial complaint was dismissed and the claimant appealed. The claimant notes that his appeal was "affirmed" not "affirmed with modification" but that he only received $51.00 for his TV because the DOC depreciated its value. The claimant believes that because his appeal was "affirmed" that he should have received the full amount requested in the complaint. The claimant also alleges that the Internal Management Procedure (DOC 310 IMP 2) setting the depreciation schedule used by the department is invalid because it constitutes a rule and was not properly promulgated pursuant to Chapter 227. In addition, the claimant argues that the IMP exceeds the DOC's rule-making authority pursuant to § 227.11(2)(a), Stats. The claimant believes that the department violated his due process by destroying the TV after his appeal. The claimant argues he should have been allowed to decide how to dispose of his property and that he would have sent the TV out for repair. The claimant also states that the TV was improperly declared to be contraband because the unit was still usable and was not "nearly or completely unserviceable" as required by DOC policy. The claimant requests reimbursement for the remaining cost of his TV.

The Department of Corrections recommends denial of this claim. DOC records indicate that the damage to the TV apparently occurred while it was under staff control. The department has established a depreciation schedule in order to fairly and uniformly compensate inmates for damaged property and the claimant was reimbursed $51 pursuant to

that schedule in January 2007. (Pursuant to the depreciation schedule IMP, TVs depreciate 10% per year.) The department does not allow inmates to send TVs out for repair unless they are still under warranty and the payment made to the claimant was never intended to reimburse him for repair costs. Pursuant to the Administrative Code, the DOC held the television until the Warden made a decision on the claimant's appeal. The DOC states that once the claimant had been reimbursed for the TV, it became the property of the department as properly destroyed as contraband. The DOC notes that the claimant has already pursued this matter in Small Claims Court and did not prevail. Finally, the department does not believe that the Claims Board is the appropriate forum in which to challenge the constitutionality of DOC 310 IMP 2.

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 Sherman not participating.]

18. Myron E. Edwards of Boscobel, Wisconsin, claims $268.99 for the full cost of eyeglasses and tennis shoes lost by Department of Corrections' staff. The claimant was transferred from the Wisconsin Secure Program Facility (WSPF) to Green Bay Correctional Institute (GBCI) in 2004. He states that when he arrived at GBCI one pair of eyeglasses, an eyeglass case, a pair of tennis shoes and two typewriter ribbons were missing from his property. He filed an inmate complaint regarding his missing property but was reimbursed a depreciated amount for the eyeglasses and shoes. The claimant believes he should be reimbursed for the full cost of these items. The claimant alleges that the Internal Management Procedure (DOC 310 IMP 2) setting the depreciation schedule used by the DOC is invalid because it constitutes a rule and was not properly promulgated pursuant to Chapter 227. In addition, the claimant argues that the IMP exceeds the department's rule-making authority pursuant to § 227.11(2)(a), Stats. The claimant disagrees with the DOC's argument that the claim should be denied because he failed to exhaust his administrative remedies. The claimant notes that nothing in § 16.007, Stats., requires that he *fully* exhaust administrative remedies. The claimant argues that appealing his inmate complaint would have been pointless because the department would have simply relied on DOC 310 IMP 2 to justify their reduced reimbursement. The claimant believes that this IMP is used to deliberately undermine the value of inmate property. The claimant requests reimbursement for the remaining value of his eyeglasses and tennis shoes.

The Department of Corrections recommends denial of this claim. The department does not dispute that the eyeglasses and shoes were misplaced while under staff control. DOC records indicate that the claimant filed an inmate complaint and was reimbursed pursuant to the department's Inmate Property Depreciation Schedule. The claimant's eyeglasses were 9 years old and his tennis shoes were three years old. He was reimbursed $28 for the glasses and $33 for the shoes. (The claimant was fully reimbursed for the cost of the typewriter ribbons.) The department does not believe the Claims Board is the appropriate forum in which to challenge the legal authority of DOC 310 IMP 2. In addition, the DOC believes the claim should be denied due to the fact that the claimant did not file an appeal with the Corrections Complaint Examiner and therefore failed to exhaust his administrative remedies. The department notes that nowhere in § 16.007 does it state or imply that an inmate is not required to fully exhaust his administrative remedies before filing a claim with the Claims Board as the claimant argues. Furthermore, DOC 310.05 Adm Code requires that an inmate exhaust "all administrative remedies that the department of corrections has promulgated by rule" prior to commencing a civil action or special proceeding against the DOC. The department believes the claimant was appropriately reimbursed and that he should not be allowed to request review of this matter in a different forum 3 ½ years after the incident.

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 Sherman not participating.]

19. Victor Edmondson of Waupun, Wisconsin, claims $204.90 for damages relating to property allegedly lost or damaged by the Department of Corrections. The claimant was

transferred from Redgranite Correctional Institution (RGCI) to the Wisconsin Secure Program Facility (WSPF) in 2008. He states that his television was damaged when it arrived at WSPF and that it had not been damaged prior to his transfer. The claimant also alleged that a set of pens and two pairs of insoles were missing from his property after the transfer. He filed a complaint with the DOC relating to the damaged and missing property. A DOC investigation concluded that the TV was damaged during the transfer but the department depreciated the value of the television and only reimbursed the claimant $18. The claimant states that he originally paid $169 for the TV. The department denied the claimant's complaint regarding his missing pens and only reimbursed him $2 for one pair of insoles. The claimant appealed the decision but the DOC destroyed his TV during the appeal process. The claimant believes that the department's $18 TV reimbursement is not sufficient because the unit was in very good condition. The claimant believes he had a right to have the TV repaired and that it was a violation of due process for the DOC to destroy the TV during his appeal. He requests reimbursement for the full value of the TV, his insoles and his pens.

The Department of Corrections recommends denial of this claim. The department agrees that the television was damaged during the transfer from RGCI to WSPF. The DOC reimbursed the claimant $18 for the TV. The department states that damaged property is considered contraband and that pursuant to department policy, contraband must be held for 30 days prior to disposal and/or until the institution Warden makes a final decision regarding a complaint about the property. The DOC states that the claimant's TV was not destroyed until after the Warden made his decision. The department also notes that WSPF does not allow inmates to send electronics out to be repaired unless they are still under warranty, which the claimant's TV was not. The department found that there was no evidence that the allegedly missing pens were in the claimant's property when he was at RGCI. The DOC further notes that the receipt provided by the claimant for the pens is almost two years old. The DOC was able to document that one pair of insoles was incorrectly disposed of by RGCI staff and reimbursed the claimant $2 for those insoles. The department states that it has established a depreciation schedule for inmate property and that the amounts reimbursed to the claimant were correctly calculated according to that schedule. The department does not believe the claimant is entitled to any further reimbursement.

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 Sherman not participating.]

20. John H. Jones of Boscobel, Wisconsin, claims $221.12 for reimbursement of restitution money taken from his account at Redgranite Correctional Institution in 2005. The claimant states that in May 2005 another inmate took a swing at him and that he punched back in self-defense, striking the other inmate on the chin. The other inmate required stitches for his injury. The claimant alleges that he struck out only as a reflex because the other inmate tried to hit him first. In June 2005, a disciplinary hearing was held relating to this incident. The claimant states that the only punishment handed down was 180 days of separation. The claimant states that it was not until he was back in his cell that an officer told him that he also would have to pay $221.12 restitution—half of the emergency room bill for the other inmate. The claimant states that Department of Corrections' rules require that punishment can only be given during a hearing when the inmate is present and that it was outside the authority of the Hearing Officer to add restitution after the hearing was over. The clamant states that he has a right to challenge the amount and reasonableness of the restitution and that he was unable to do so because it was added after the hearing. The claimant appealed the late addition of the restitution and was denied.

The Department of Corrections recommends denial of this claim. The claimant was found guilty of fighting at the June 2005 disciplinary hearing. As a result, he received 180 days segregation and was ordered to pay restitution. Although the Hearing Officer did not mention the restitution during the hearing, the claimant was notified of the restitution within 5 minutes of leaving the hearing room. The DOC believes this is no different than giving a postponed or delayed decision, which is allowed under department rules. The department states that, even if this was an error, it was a harmless one. The department notes that the claimant failed to seek certiorari review of the discipline or file a Notice of Claim against the

state and that the claimant's conviction for fighting was never reversed. The restitution was paid in full in 2005 and the DOC does not believe the claimant should now be able to bring a claim for reimbursement three and one half years later.

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 Sherman not participating.]

21. Jovanni Lopez of Boscobel, Wisconsin, claims $50.30 for wages allegedly owed by the Department of Corrections. The claimant is an inmate at the Wisconsin Secure Program Facility, where he works as an inmate barber. The claimant states that he was not paid for 30 hours of work from October 5 – 18, 2008, and for 112 hours of work from October 19 – November 1, 2008. The claimant requests reimbursement for these unpaid wages.

The Department of Corrections recommends denial of this claim. The department states that during the claimed time periods the claimant was out to court (OCO) and therefore could not have performed his barber duties. DOC records indicate that the claimant was OCO for a portion of both of the pay periods in question but that he was paid wages for the days during those pay periods when he was not OCO. Pursuant to institution policy, inmates can not be paid wages while they are out to court and the department 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. [Member Sherman not participating.]

22. Robert Osowski of Waupun, Wisconsin, claims $40.75 for the full purchase price of television damaged by Department of Corrections' staff. In December 2008, the claimant was transferred from Redgranite Correctional Institution (RGCI) to Waupun Correctional Institution (WCI). The claimant's television, which was in good working order at RGCI, was broken when it was moved to WCI. The claimant notes that the DOC does not deny that the TV was broken while under staff control. The claimant filed an administrative complaint with the department requesting reimbursement for the $116.75 purchase price of the television. The claimant was only reimbursed $76 because the DOC depreciated the value of the TV, which was purchased in 2005. The claimant appealed the depreciation of the television but was denied. The claimant states that the department's depreciation schedule was not effective until April 2006. The claimant alleges that at the time he purchased his TV, DOC policy was to reimburse inmates for the full value of their damaged property. He believes his claim should be evaluated under that policy. He requests reimbursement for the remainder of the purchase price, $40.75.

The Department of Corrections recommends denial of this claim. The department does not deny the television was damaged while under staff control. The DOC states that it has established a policy to fairly reimburse inmates for property damaged by staff. This policy creates a depreciation schedule for various types of property and the claimant was reimbursed according to this schedule. The department notes that the claimant's television was 45 months old and the DOC does not believe the claimant is entitled to be reimbursed for the cost of a brand new TV. The DOC notes that the predecessor rule to which the claimant refers was virtually indistinguishable from the rule under which the claimant was reimbursed. This prior rule was effective June 1, 2004, and therefore would have been in effect when the claimant purchased his television. The department further states that the purchase date of the television is only relevant for determining its depreciated value. It is the date that property is damaged which determines the rule that is in effect pursuant to which an inmate will reimbursed.

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 Sherman not participating.]

The Board concludes:

That the following claims are denied:

Craig G. Bucholz
Jerome Franke
Stephen Kramer
Joseph M. Huber
Michael and Tammy Reynolds
Kim L. Polinski
Timothy Schimmel
William Wachowiak
Dennis and Diana Denman
Milton Smith
Myron E. Edwards (2 claims)
Victor Edmondson
John H. Jones
Jovanni Lopez
Robert Osowski

That payment of the below amounts to the identified claimants from the following statutory appropriations is justified under § 16.007, Stats:

Kelly Westphal	$50.00	§ 20.370(3)(mi), Stats.
Joshua J. VanMinsel	$1,033.50	§ 20.395(5)(cq), Stats.
Barbara A. Bichler	$50.00	§ 20.370(1)(ea), Stats.
Glendon P. Krouse	$40.00	§ 20.410(1)(a), Stats.
Monty Contreras	$2,472.52	§ 20.505(4)(d), Stats.

The Board recommends:

Payment of $30,000.00 to Mark Stillmunkes d/b/a Stillmunkes, Inc. for damages related to brush removal and forestry services in the Yellowstone Wildlife Area and that this payment be taken from the Department of Natural Resources appropriation § 20.370(1)(ht), Stats.

Dated at Madison, Wisconsin this 14th **day of September, 2009.**

Steve Means, Chair
Representative of the Attorney General

Dave Hansen
Senate Finance Committee

Cari Anne Renlund, Secretary
Representative of the Secretary
of Administration

Gary Sherman
Assembly Finance Committee