

## STATE OF WISCONSIN CLAIMS BOARD

On March 16, 2016, at the State Capitol Building in Madison, Wisconsin, the State of Wisconsin Claims Board considered the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Clontech Laboratories	Financial Institutions	\$38,909.00
2. Craig S. Geiger	Revenue	\$3,407.96
3. Donna Cvetan	Revenue	\$6,487.12+

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
4. Susan Roloff	Transportation	\$673.31
5. Terry Miller	Milwaukee Co. District Attorney	\$5,982.00
6. Mekious D. Bullock, Sr.	Corrections	\$40.48
7. David W. Orr	Corrections	\$280.25
8. Cornelius R. Reed	Petition for Rehearing of Innocent Convict Compensation Claim Denied by Claims Board on December 15, 2015.	

With respect to the claims, the Board finds:

**1. Clontech Laboratories, Inc.**, of Mountain View, California claims \$38,909.00 for refund of an alleged overpayment of fees due to an error on their 2011 Foreign Corporation Annual Report. The claimant states that the amount of capital representation in Wisconsin reported on the form was taken from its 2010 Wisconsin tax return, based on advice from its accountant. The claimant later realized that the amount reported on its tax return included other state assets and revenue, resulting in a significant over-reporting of capital on the 2011 Annual Report. The claimant alleges the correct capital representation should have been approximately \$850,000 but the incorrectly reported amount was in excess of \$12 million. The claimant was charged a fee of \$33,909 based on the incorrect capital representation. The claimant was also charged the maximum penalty of \$5,000 for transacting business without a Certificate of Authority because the size of the penalty is based on the amount of capital representation. The claimant understands this overpayment could be taken as a credit against fees for future annual reports, however, it does not anticipate sufficient annual growth in its Wisconsin capital to utilize the credit in a reasonable amount of time.

DFI recommends denial of this claim. DFI notes that it has no means by which to verify the accuracy of the information provided by the claimant, because the claimant has exclusive control over the information on which the Annual Report's calculations are based. DFI points to the fact that there was no error by DFI or any of its employees. DFI notes that the Claims Board has a history of denying similar claims and recommends that the board deny this claim as well.

The Board concludes the claim should be paid in the reduced amount of \$4,770.00 (the amount of the increased penalty caused by the incorrect capital representation) based on equitable principles. The Board further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Department of Financial Institutions appropriation § 20.144(1)(g), Stats. *[Member Ignatowski not participating.]*

**2. Craig S. Geiger** of Oregon, Wisconsin claims \$3,407.96 for overpayments and refunds related to 2003, 2009, and 2010, late filed income tax returns. Claimant states that he was homeless during the years in question, surviving with the help of family and friends, and receiving EBT benefits. He incorrectly assumed that he did not have to file taxes for those years

due to his lack of income. The claimant also states that he believed that his settlement with the IRS included any state tax obligations. The claimant states that he was unaware there was a statute of limitations to claim refund of any overpayments. The claimant filed the missing returns in April and June of 2015 with the assistance of an accountant. He requests reimbursement for the amount overpaid for 2003 and the refunds denied for 2009 and 2010.

DOR recommends denial of this claim. DOR records indicate that multiple notices were issued to the Claimant regarding the missing returns, including Requests to File, Notices of Estimated Tax, Notices of Overdue Tax, and Notices of Intent to Offset federal refunds. DOR states that all of these notices warned of the consequences of not filing the missing returns. DOR issued estimated assessments for 2003 on October 9, 2007, and for 2009 and 2010 on June 26, 2013. DOR records indicate the claimant informed his DOR agent that he would pick up forms to file the returns on March 20, 2014, and was provided with forms and information about volunteer income tax assistance sites. The 2009 and 2010 returns were filed on April 27, 2015, and the 2003 return was filed on June 27, 2015. DOR states that § 71.75(5), Wis. Stats., prohibits DOR from refunding the overpayment for the 2003 assessment because no refund was claimed within four years of the assessment date. DOR also points to § 71.75(2), Wis. Stats., which prohibits DOR from allowing the refund claimed on the 2009 and 2010 returns because the returns were not filed within four years of the original un-extended due dates.

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. Donna Cvetan** of Sheboygan, Wisconsin claims \$6,487.12+ for return of amounts garnished from her wages for a tax liability for which the claimant believes she is not liable. The claimant and her husband entered into a Marital Property Agreement in 1994, which clearly states that D&M Plumbing & Heating, which claimant's husband owned for many years prior to the marriage, was his individual property. The claimant points to Section 4.1.b. of the Agreement, which provides that "without any obligation or liability on the part of the other" party, each party is responsible for "debts, obligations, taxes, assessments, and expenses at any time incurred...relating to the acquisition, holding, disposition, operation, management, or administration of his or her solely owned property." The claimant states that during a routine audit of D&M, it was discovered that some sales and use taxes had inadvertently not been paid. The claimant states that she has never had any involvement whatsoever in D&M and points to Section 4.4. of the Agreement, which states that "each party shall have full and exclusive powers of management and control over the property classified as his or her individual property...free from all rights, claims, or property interests of the other..." The claimant points to the fact that the Agreement also provides "that the classification of [her husband's] W-2 wages as marital shall not constitute a 'mixing' of marital and individual property" (Section 2.1.a.). D&M Plumbing & Heating closed in February 2015. DOR began garnishing 25% of the claimant's wages in June 2015 to recover the sales and use taxes owed by D&M. The claimant believes that the Marital Property Agreement clearly states that she is not responsible for payment of these taxes. She requests reimbursement of all monies garnished by DOR and that DOR cease any further garnishment of her wages for payment of this debt. As of the date this claim was filed, October 28, 2015, the DOR garnishment totaled \$6,487.12.

DOR recommends denial of this claim. DOR points to section 4.6.b. of the Marital Property Agreement, which states that W-2 wages earned by both parties "shall be owned equally by both parties." DOR takes the position that since W-2 wages are not classified as individual property, they are considered marital property under § 766.31, Wis. Stats.

The Board defers decision of this claim at this time so that additional information may be obtained from DOR.

**4. Susan Roloff** of Stillwater, Minnesota claims \$673.31 for car damage allegedly caused by a road defect in St. Croix County. On October 4, 2015, the claimant was traveling on Hwy. 35/64 towards the Stillwater Bridge. The claimant states that the area was under construction and traffic was limited to one lane, moving about 48-53 mph., when her vehicle hit a large

pothole. The claimant states that the vehicle's ABS and Trac Off warning lights came on shortly thereafter. The next day the claimant brought her vehicle to a mechanic, who had to replace the left front ball joints, replace a hub bearing, and do a front-end alignment. The claimant states that she contacted St. Croix County and DOT, but that each entity assumed the other was handling her claim. The claimant has a \$500 insurance deductible. She requests reimbursement for the damage to her vehicle.

DOT recommends denial of this claim. The area where this incident occurred was under construction as part of a project related to the St. Croix Crossing. As part of that project, traffic was shifted to STH 35/64. DOT states that it has a contract with St. Croix County for maintenance of state highways, including STH 34/64. DOT notes that when the county was notified about the pothole, they responded in a timely manner to fill it and continued to make repairs as needed. DOT states that because of the severity of the pothole, it was decided to use the project construction contractor to remove and repave the asphalt shoulder in the area where the incident occurred. This work was added to DOT's existing construction contract for the project, which contains a clause relieving the state of any responsibility for damages.

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

**5. Terry Miller** of Milwaukee, Wisconsin claims \$5,982.00 for lost wages due to an allegedly excessive and unlawful sentence. In 1985, the claimant was sentenced to 12 years imprisonment for Burglary, Party to a Crime. The claimant points to the fact that this charge was a Class C felony and that the penalty for a Class C felony is "imprisonment not to exceed 10 years" pursuant to § 939.50(3)(c), Wis. Stats. The claimant believes his sentence exceeded the statutory maximum and requests reimbursement for lost wages during the two additional years he served in prison.

The Milwaukee County District Attorney's Office (DA) recommends denial of this claim. The DA points to the fact that the claimant was charged and convicted of burglary as a habitual criminal. The habitual criminality penalty enhancer allowed for a sentence up to 16 years, therefore, the 12 year sentence was not excessive. The DA notes that the claimant's original judgement of conviction did not reflect the habitual criminality enhancer, which was corrected in 2014 by the court.

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. Mekious D. Bullock, Sr.** of Waupun, Wisconsin claims \$40.48 for the cost of a Norelco razor allegedly damaged by DOC staff. The claimant is an inmate at Waupun Correctional Institution (WCI). He alleges that WCI property staff routinely invent reasons for seizing property they either don't want inmates to have or that inmates can no longer purchase. He alleges that when staff inventoried and inspected his property in June 2015, his razor was in good working condition. However, WCI staff seized the razor as contraband, declaring it altered because the trimmer blades would not stay in the trimmer. The claimant contacted property staff to get more details regarding what was wrong with the razor and staff then responded that the trimmer blades were "missing." The claimant believes that the fact that WCI staff gave two different answers regarding the trimmer blades proves that staff was negligent in handling his property. The claimant filed an Inmate Complaint regarding the razor on June 19, 2015. The claimant states that DOC rules require a response within 20 working days, however, DOC did not respond to his complaint until November 3, 2015, almost four and a half months later. The claimant believes this shows that DOC does not follow its own rules and that WCI staff likely broke his razor and then lied about it. He requests reimbursement for the cost of the razor.

DOC recommends denial of this claim. DOC records indicate that during an inspection, WCI staff found that the razor's trimmer blade would not stay in the trimmer. DOC denies that staff mishandled the razor; when staff opened the trimmer, the trimmer blade simply popped out because it was not secure and would not stay in place. DOC notes that if staff had inadvertently damaged the razor, they would have written an incident report, which they did

not. DOC policies state that altered or damaged property items are deemed to be contraband and must be either disposed of or sent out by the inmate. Finally DOC points out that the claimant did not appeal the institution's decision regarding his complaint and has therefore failed to exhaust his administrative remedies. DOC believes the claimant has submitted no evidence that WCI staff damaged his property and requests 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.

**7. David W. Orr** of Waupun, Wisconsin claims \$280.25 for value of property allegedly lost due to DOC negligence. The claimant is an inmate at Waupun Correctional Institution. On February 19, 2015, the claimant was moved from the general population to temporary lock up (TLU). Upon transfer to TLU, DOC staff is responsible for inventorying and packing an inmate's property. The claimant alleges that his property was properly stored in his locked footlocker at the time of his transfer to TLU. He believes DOC staff did not take custody of his property in a timely fashion, thus allowing his cellmate to steal some of his property. The claimant states that it is common knowledge among inmates that there is often a delay of hours or days before staff packs up property when an inmate goes to TLU, therefore, those who wish to steal another inmate's property have ample opportunity to do so because of DOC's lax protocols. The claimant believes that DOC staff has a duty to compare the property in an inmate's cell with the Property Inventory Form when packing an inmate's property. This form would show what property the inmate possessed when he arrived at the institution, allowing staff to document any property subsequently received by the inmate. The claimant states that DOC staff failed to do this when they packed his property. Finally, the claimant refutes DOC's allegation that he has failed to exhaust his administrative remedies. The claimant filed an inmate complaint, however DOC took no action on his complaint until four or five months after he had filed this Claims Board claim. Rather than appeal DOC's decision, the claimant chose to simply continue with this claim. Because the Claims Board is not a court of law, the claimant does not believe he is required to exhaust his administrative remedies prior to filing a claim with the Claims Board. He requests reimbursement for items he believes were stolen by a third party due to DOC's negligence.

DOC recommends denial of this claim. When inmates are placed in TLU, their property is taken under staff control, packed, and sent to the institution's property department for inspection and inventory. DOC points to various property inventory forms which show what property was in the claimant's cell when he was transferred to TLU, what he was wearing when transferred, and the items in his cell at the time of his transfer that were designated contraband and destroyed. DOC states that any property not listed on those forms would not have been under staff control. DOC notes that the claimant admits that his own cellmate stole the property before it was under staff control. DOC believes it cannot be held liable for the actions of an inmate who steals another inmate's property. DOC notes that the claimant did not appeal the institution's decision of his inmate complaint, and therefore has not exhausted his administrative remedies. DOC believes the claimant has presented no evidence of negligence on the part of DOC staff and recommends the claim be denied.

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

**8. Cornelius R. Reed** of Stanley, Wisconsin petitions the board for a rehearing of his Innocent Convict Compensation claim, previously denied by the board on December 15, 2015.

The Board concludes that the petition for rehearing fails to meet the criteria for granting a rehearing under § 227.49(3)(a)-(c), Wis. Stats., and is therefore denied.

**The Board concludes:**

**That the following identified claimants are denied:**

Craig S. Geiger  
Susan Roloff  
Terry Miller  
Mekioius D. Bullock, Sr.  
David W. Orr  
Cornelius R. Reed (Request for Rehearing)

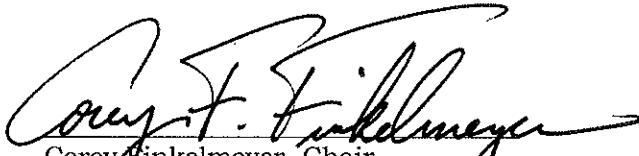
**That decision of the following claim is deferred to a later date:**

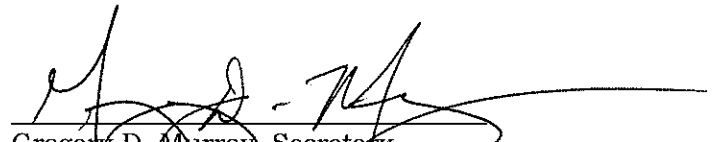
Donna Cvetan

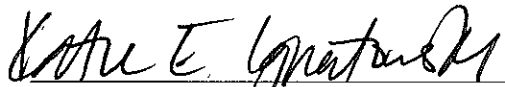
**That payment of the amount below to the identified claimant from the following statutory appropriation is justified under § 775.05, Stats:**

Clontech Laboratories, Inc.                      \$4,770.00    § 20.144(1)(g), Wis. Stats.

Dated at Madison, Wisconsin this 5<sup>th</sup> day of April, 2016

  
Corey Finkelmeyer, Chair  
Representative of the Attorney General

  
Gregory D. Murray, Secretary  
Representative of the Secretary of  
Administration

  
Katie E. Ignatowski  
Representative of the Governor

  
Luther Olsen  
Senate Finance Committee