

STATE OF WISCONSIN CLAIMS BOARD
AMENDED DECISION

On February 1, 2017, 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. Kurt & Suzanne Welke	Natural Resources	\$1,277.00
2. William Ludwig	Transportation	\$16,700.00

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
3. Ronald Fouts	Administration	\$48,637.73
4. Bill Ross	Transportation	\$3,286.00
5. Joel Wissmueller	Corrections	\$500.00
6. Mark Brown	Corrections	\$44.00
7. Terrence Hood	Corrections	\$221.29
8. Djuan LeBourgeois	Corrections	\$10.00
9. Bobbie Bowen	Corrections	\$284.31

With respect to the claims, the Board finds:

1. Kurt Welke & Susanne Ripple Welke of Madison, Wisconsin claim \$1,277.00 for damage to vehicle allegedly incurred while the claimant was acting within the scope of his employment. On 4/6/16 the claimant drove home a state truck with a boat on a trailer to facilitate an early start time the next day at a work site 25 miles west of Madison. The claimant states that it was standard procedure to drive state vehicles home if it would save time/mileage getting to work sites. The next morning the claimant felt a slight resistance as he was pulling the truck and trailer out of his driveway. He stopped to check and found that a bolt on the side of the boat trailer had dented and scratched the entire passenger side of his family van, which was also parked in the driveway. The claimant filled out an accident report and submitted two repair estimates to DNR. DNR risk management denied the claim stating that he was not acting within the scope of his employment at the time of the accident. The claimant believes that he was, because he was traveling in a state owned vehicle to a state work site. The claimant and his wife request reimbursement for the amount to repair the vehicle.

DNR recommends denial of this claim. Although the claimant did damage his own vehicle, he did so while driving a state vehicle as a DNR employee in the course of his employment. DNR therefore believes this could be a compensable claim. DNR notes that the claimants have insurance coverage on the vehicle with a \$250 deductible, so the most DNR would recommend reimbursing is \$250. However, DNR cannot recommend reimbursement of any amount. DNR points to the fact that the claimants have submitted repair estimates only and the vehicle has not been repaired. DNR also points to the age and pre-accident condition of the vehicle (11 years old with other scratches and rust) as evidence that it is unlikely to ever be repaired. DNR believes that because the claimants have realized no actual damages and are unlikely to, that this claim should be denied.

The Board concludes the claim should be paid in the amount of \$1,277.00 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 (4)(ma) Stats.

2. William Ludwig of Big Bend, Wisconsin claims \$16,700.00 for property damage allegedly caused by a road construction project. The claimant states that during the I-43 road construction project a lake formed in his and his neighbors' yards. The claimant contacted the DOT project engineer to discuss the impact of the construction project. The project engineer stated that he believed the flooding was caused by a changing water table in the area, not the I-43 project. The claimant then contacted the Big Bend Village Engineer. He walked the area around I-43 with the engineer, who found a dry catch basin northwest of I-43. The Village Engineer contacted DOT with this information. DOT later contracted with Waukesha County to fix a drain tile that ran north of I-43 to the catch basin. The water on the claimant's property receded after the tile was fixed. The claimant believes the I-43 project was responsible for the damage to his property. The claimant states his yard was under water for four years. The claimant lost grass, 25 trees, and soil from erosion. He wishes to restore his yard and requests reimbursement for the cost to do so.

DOT recommends denial of this claim. In April 2014 after the completion of the I-43 project, the Big Bend Village Engineer contacted DOT regarding the cause of rising water in the area. DOT staff reviewed as built plans of the area and found no record of tiles being placed or repaired with past highway projects. DOT believed the rising water was due to the failure of a private drain tile. DOT eventually found a tile running north of I-43 that drained the area near the claimant's property into a private drain tile. DOT did not immediately locate this tile because it was only indicated on one of five as built plans. DOT contracted with Waukesha County to locate and repair the tile. DOT notes the tile was not damaged by the I-43 construction project. It was simply clogged with sediment and tree roots, as is to be expected with an aging drain tile. DOT believes this was a partial cause of the claimant's flooding but that a failing private drain tile in the area also had an impact. DOT believes no compensation is warranted for 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.

3. Ronald Fouts of Madison, Wisconsin, claims \$48,637.73 for monies allegedly owed by DOA in relation to a 2008 flooding event in the City of Beaver Dam. The claimant owned four buildings that were flooded. The claimant states that his buildings were not damaged by the flood and passed inspections after they were cleaned up. The claimant alleges that the city wanted to create a TIF district for a condominium project and that the only way they could do so was by falsely labeling his buildings and others as blighted. The claimant alleges that the city and DNR made public announcements that the buildings were going to be torn down and that because of these announcements; he was unable to rent his buildings. The claimant states that the city told him he must either sell his buildings or be forced to tear them down at his own expense. He denies that the sale was voluntary or that he approached the city about selling the buildings. The claimant believes this was an unjust taking of his property. The claimant hired an attorney to protect his rights but was forced to sell the buildings to the city in 2009 at the 2008 appraised value. The claimant states that he was never informed of the availability of federal relocation funds. In 2012, the Department of Housing and Urban Development (HUD) contacted DOA, the claimant alleges, to correct DOA's illegal actions. The claimant notes that DOA's own staff person told them that what they were doing was illegal. DOA hired a contractor to determine if the building owners were eligible for federal relocation and acquisition funds. The claimant disputes DOA's assertion that this person was "independent," noting that he was paid money by DOA. Finally, the claimant points to HUD's 6/15/16 letter to DOA, which he alleges proves that DOA broke state and federal law.

DOA recommends denial of this claim. DOA states that following the June 2008 flooding, a group of building owners, including the claimant, approached the city regarding selling their flood-damaged buildings. The city agreed to purchase the buildings at the appraised value. In June 2009, the city received a grant which included federal monies to be used (in part) to reimburse the city for the property purchases. In December 2012, HUD informed the state that because the city received federal money, they should have made payments to the property owners pursuant to the Uniform Relocation Act (URA). In response to

this information, DOA hired an independent contractor to determine what additional monies were due to the building owners under the URA. Based on the contractor's work, DOA approved the maximum for all payments that were justified under the URA. The claimant received an additional \$20,000. DOA states that the current claim is for payment of expenses which the contractor determined to be ineligible for reimbursement. The claimant appealed this determination and the appeal was denied. The claimant could have petitioned for judicial review under Ch. 227 but failed to do so. DOA believes this claim exemplifies the old saying "no good deed goes unpunished." Had the city refused to purchase the flood-damaged properties, it would never have been obligated to pay relocation benefits to the claimant. DOA states that the claimant has received the full, pre-flood fair market value of his properties, plus all additional monies required by law. Finally, DOA points to HUD's 6/15/16 letter, which states "HUD is very pleased with the State's continued diligence in addressing the Beaver Dam acquisition and relocation project deficiencies. Actions taken by DOA to resolve the Findings have been excellent."

The Board finds that based on all of the information presented in the documents and at the hearing, the claimant unnecessarily expended payments for property taxes and building inspections due to the actions of state agents. The claimant's remaining request for relief is too speculative based on the submitted materials and the testimony provided at the hearing. The Board concludes the claim should be paid in the reduced amount of \$3,429.00 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Administration appropriation § 20.505 (7)(a), Stats. *[Member Green not participating.]*

4. Bill Ross of Greenfield, Wisconsin, claims \$3,286.00 for monetary damages allegedly caused by errors of DOT employees. The claimant's son is disabled and receives government assistance. The claimant established a trust with his son as the beneficiary in order to protect his son from his own poor decisions. In 2012, the claimant purchased a 1999 Honda and titled it in the name of the trust so that his son would have a vehicle he could drive that he would not be able to sell. In November 2013, the claimant's son applied for a replacement title in his own name. DOT employees made multiple errors during this transaction including not requesting a required form and not scanning a driver's license. With the new title, the claimant's son was able to obtain a \$1000 loan using the vehicle as collateral. He gambled away the \$1000. The claimant notified DOT of the errors they had made. In 2015, the claimant titled a 2004 Toyota in the name of the trust. In December 2015, the claimant's son applied for a new title to the Toyota. Again, multiple errors were made by DOT employees when processing the title application: a required form was missing the signature of the trustee, no driver's license was scanned, and the signature and the purchaser's name did not match. The claimant's son was again able to obtain a title in his own name and obtained a \$3000 loan using the vehicle as collateral. The claimant's son gambled away the \$3000. The claimant's son has very little income and is therefore unable to pay back the loan. In order to keep the vehicle from being repossessed, the claimant paid off the loan taken by his son. The claimant states that it was only due to errors by DOT employees that his son was able to obtain new vehicle titles not once, but twice. The claimant requests reimbursement for the \$3,286 spent paying off the loan against the 2004 Toyota.

DOT recommends denial of this claim. The claimant's son is the sole beneficiary of the trust. He filed an application to retitle a car titled to the trust into his own name and in doing so, made falsified applications to DOT. DOT believes these falsified applications may be a criminal offense. DOT notes that as the sole beneficiary of the trust, the claimant's son only harmed himself by deceiving DOT and the lenders from whom he obtained loans. DOT notes that the claimant was under no legal or moral obligation to pay off the loan taken out by his son and was therefore not harmed by DOT's actions. Regarding the errors made by DOT employees, the department does its best to establish practices that reduce the risk of fraud, however, those systems are not really set up to prevent individuals from stealing from themselves, as occurred in this case. DOT believes that any shortcomings in DOT's handling of the paperwork did not cause any injury to the claimant, it was the fraud committed by his son

which caused the problem. Therefore, DOT considers this to be a civil matter between a father and son and recommends denial of the claim.

The Board concludes the claim should be paid in the amount of \$3,286.00 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.

5. Joel Wissmueller of Wausau, Wisconsin claims \$500.00 for damage to vehicle. On 6/1/16 the claimant's vehicle was parked in a parking lot in Wausau. A state vehicle was parked next to him and hit his vehicle when pulling out of the adjacent parking spot. The claimant filed a police report. DOC admits their driver hit the claimant's vehicle. The claimant requests reimbursement for his \$500 insurance deductible.

DOC recommends denial of this claim. DOC admits the accident occurred as described by the claimant. However, despite being notified by DOC of the need to do so, the claimant failed to properly file a claim against DOC within 120 days as required by §§ 893.82 and 895.46, Stats. DOC notes that the claimant stated that his insurance company would contact DOC but that the insurer never did so. Therefore, DOC believes the claimant has provided insufficient evidence that DOC's negligence caused his damages. Furthermore, DOC notes that the claimant has only submitted estimates, and has provided no proof that he actually paid his insurance deductible.

The Board concludes the claim should be paid in the amount of \$500.00 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.

6. Mark Brown of Waupun, Wisconsin claims \$44.00 for property allegedly lost by DOC personnel. The claimant was an inmate at Redgranite Correctional Institution when he was transferred to segregation on 3/5/16. The claimant states that his property, which was secured in his locked footlocker, was packed up by a rookie officer upon his transfer to segregation. On 3/8/16 the claimant went through his property with the segregation officer and found that some property was missing. The claimant alleges that several witnesses told him they saw the rookie officer throw away some of the his property. The claimant states that none of his property was missing before he went to segregation and requests reimbursement for his missing property.

DOC recommends denial of this claim. DOC believes the claimant has failed to provide any evidence that the missing property was actually in his possession at the time he was transferred to segregation. DOC notes that the property could have been lost, stolen, or traded at any time prior to the claimant's transfer to segregation.

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. Terrence Hood of Waupun, Wisconsin claims \$221.29 for value of a TV damaged by DOC staff. The claimant is an inmate at Waupun Correctional Institution (WCI). In April 2016, he was placed in segregation and his property was packed up and placed in storage. While in segregation, he was informed by the property officer that his TV was damaged. The claimant filed an inmate complaint requesting reimbursement for the broken television. DOC admitted they were responsible for damaging the television, however, instead of reimbursing the claimant for the value of his TV, they provided him a replacement TV. The claimant alleges that the replacement TVs given out by DOC are old and in poor condition. He does not believe this is fair or reasonable compensation for his television, which was still under warranty. The claimant requests reimbursement for the value of his television.

DOC recommends denial of this claim. DOC has accepted responsibility for the damage to claimant's television. On April 26, 2016, WCI gave the claimant a replacement TV pursuant to DAI Policy and Procedures 310.00.03, which states, "The institution/center has the option

of either repairing or replacing a damaged or lost item.” DOC believes that the claimant has already been appropriately compensated for his loss.

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. Djuan LeBourgeois of Waupun, Wisconsin claims \$10.00 for refund of money inappropriately handled by DOC staff. The claimant is an inmate at Waupun Correctional Institution (WCI). In February 2014, the claimant decided to order three books from a non-profit vendor. The books were to be sent to the claimant’s brother as a gift. The claimant submitted the book order form and a \$10 disbursement request to WCI staff. The request was forwarded to the WCI chaplain. The chaplain denied the order of the books as a gift but forwarded the \$10 to the vendor as a donation. The claimant states that he never intended to make a donation to the vendor—the money was intended to purchase the three books for his brother. The claimant believes that if the purchase was denied, the money should have been returned to his account. The claimant filed an inmate complaint regarding this matter. The complaint was upheld by the corrections complaint examiner but overturned by the secretary.

DOC recommends payment of this claim. DOC agrees that the disbursement request was intended to facilitate a gift to the claimant’s brother, not to make a donation to the vendor. DOC recommends the claimant be reimbursed in the amount of \$10.

The Board concludes the claim should be paid in the amount of \$10.00 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.

9. Bobbie Bowen of Stanley, Wisconsin claims \$284.31 for value of a Bible allegedly damaged and tainted by DOC staff while the claimant was an inmate at the Milwaukee Secure Detention Facility (MSDF). The claimant states that he purchased the Bible at a raffle at his church and that it was a collector’s edition, signed by elite biblical scholars. The claimant states that when he received his Bible, it had been opened and approximately 50 pages were damaged and torn. The claimant states that because the Bible is a religious item, it should not have been opened until the claimant had a chance to pray over it and that the Bible is now tainted because it was opened with “unclean hands.” The claimant alleges that, as a religious item, the Bible should have been sent to the MSDF Chaplain, who would have contacted the claimant to open it in his presence. The claimant also alleges that he asked MSDF staff for a copy of his receipt for the Bible but that they admitted they had lost his receipt. The claimant notes that this dispute could have been resolved if MSDF had provided him with a replacement, institution Bible but that they failed to do so.

DOC recommends denial of this claim. DOC states that all incoming inmate property is inspected per policy in order to ensure no contraband enters a facility. The claimant’s Bible was opened and inspected pursuant to this policy. This inspection was conducted properly and the claimant has not provided any evidence that the Bible was damaged in any way. DOC also notes that because the Bible was an item purchased from an outside vendor, it was the claimant’s responsibility to maintain a copy of his receipt and that he failed to do so. DOC believes the claimant has provided no evidence of wrongdoing by DOC staff and 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.

The Board concludes:

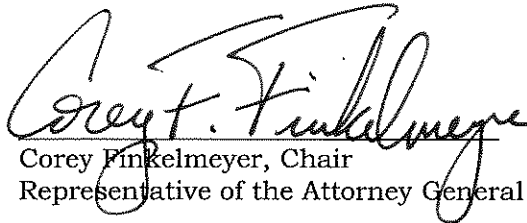
That the following identified claimants are denied:

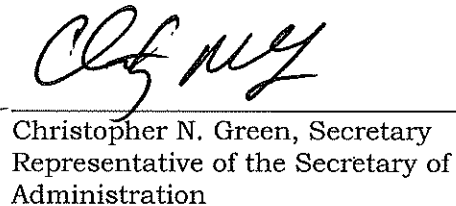
William Ludwig
 Mark Brown
 Terrence Hood
 Bobbie Bowen

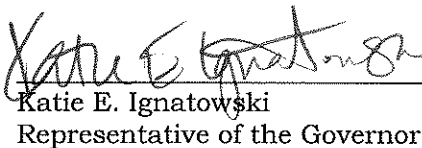
That payment of the amount below to the identified claimant from the following statutory appropriation is justified under § 16.007 (6)(b), Stats.

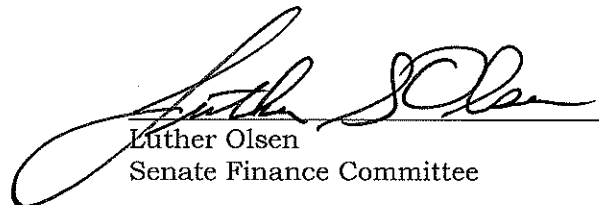
Kurt & Susanne Welke	\$1,277.00	§ 20.370(4)(ma), Stats.
Ronald E. Fouts	\$3,429.00	§ 20.505(7)(a), Stats.
Bill Ross	\$3,286.00	§ 20.395(5)(cq), Stats.
Joel Wissmueller	\$500.00	§ 20.410(1)(a), Stats.
Djuan LeBourgeois	\$10.00	§ 20.410(1)(a), Stats.

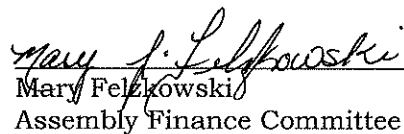
Dated at Madison, Wisconsin this 15th day of June, 2016


 Corey Finkelmeyer, Chair
 Representative of the Attorney General


 Christopher N. Green, Secretary
 Representative of the Secretary of
 Administration


 Katie E. Ignatowski
 Representative of the Governor


 Luther Olsen
 Senate Finance Committee


 Mary Felkowski
 Assembly Finance Committee