

STATE OF WISCONSIN CLAIMS BOARD

On April 6, 2023, the State of Wisconsin Claims Board met in the State Capitol Building and via Zoom videoconference to consider the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Stephen Brasch	Department of Natural Resources	\$1,510.56
2. Vonaire Washington	Innocent Convict Compensation	\$150,000,000.00

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
3. George Vukotich	University of Wisconsin	\$300,000.00
4. Rodac, LLC	University of Wisconsin	\$705,025.20
5. Jacquese Harrell, Sr.	Department of Corrections	\$1,750.43
6. Phil Keller	Department of Corrections	\$110.86

With respect to the claims, the Board finds:

(Decisions are unanimous unless otherwise noted.)

1. Stephen Brasch of Dousman, Wisconsin claims \$1,510.56 for damage caused by a tree that fell from DNR property. During a snow event on March 23, 2022, a tree limb originating from the Wolf River State Fishery Area (Pearson, WI) fell onto an overhead power line, causing an electrical service pole on adjacent property owned by Brasch to fall and cut power. The electrical service poll was approximately 40 years old and owned by Brasch, who was unaware of any other damage or rot to the pole itself. Brasch contends he was without power until May 27, 2022, and incurred costs from WPS and an electrician to repair damage. After contacting several electricians, Brasch was unable to locate a company to install a new private pole as that was no longer the norm. It was recommended he have new underground service installed, which he did. Prior to the March 2022 incident, a “major catastrophic storm” passed through the Pearson area on July 19, 2019, resulting in widespread tree damage. After the July 2019 storm, DNR had its property logged and salvaged but left some trees along the property line, which Brasch believes exposed surviving pines (including the subject tree) to increased weather elements. Brasch holds that DNR was negligent in how it left its property after the July 2019 logging operation, which contributed to the March 2022 damage. Brasch contends that he notified DNR of the subject tree when he signed a boundary cutting line agreement in 2019 and left a handwritten note stating, “please take tall aspens right up to the garage.”

DNR contends it is not liable for the damage and recommends the claim be denied. Liability for tree falls depends on whether a tree owner was negligent in causing the tree to fall onto a neighboring property, or whether the owner was aware of an unacceptable risk (i.e., nuisance) and failed to exercise due care. DNR uses best management practices to identify trees that constitute a nuisance. A tree is a nuisance when it becomes a “menace to the safety of others” through decay, structural changes, changes to surroundings, etc. Upon notification to the owner of a nuisance tree, the owner becomes responsible for resulting injuries. DNR holds that Brasch never provided notice that the subject tree was a nuisance. In July 2019, DNR hired a logging company to perform logging and salvaging activity, wherein it set out to remove trees known or suspected to be a nuisance – specifically, any pine that was down, root spring or leaning more than 30 degrees, or otherwise had 50% or more crown damage or split and broken crotches. The subject tree was within the salvage operation boundary and evaluated by the logging company. It was healthy; it had green needles and no obvious signs of decay and, therefore, was not removed. Brasch’s note in 2019 refers to aspens, however, the subject tree is

a white pine. DNR further indicates that after being notified of the damage in March 2022, it responded to Brasch's property and found the limb had already been removed by WPS. DNR staff was notified by WPS that the pole that supported the electrical line had evidence of rot. While it is unknown what role, if any, the condition of the pole played in this incident, it is possible that the limb fall would not have been sufficient on its own to cause the full extent of the damage. Again, because there was no notice, DNR had no duty of care. DNR holds that it was not negligent and is not liable under Wisconsin law.

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. *[Members Finkelmeyer, Dallman, and Wimberger dissenting.]*

2. Vonaire Washington. *The Board's conclusion for Mr. Washington's claim for innocent convict compensation will be issued in a separate decision.*

3. George Vukotich of River Forest, Illinois claims \$300,000 for an alleged breach of contract by the University of Wisconsin-Parkside (UWP). In January 2021, UWP hired Vukotich to run the new Center for Research in Innovation and Smart Cities. Vukotich requested a 5-year position because he was concerned about leaving his more lucrative private sector job without assurances that UWP was committed to the hire. UWP could not offer a five-year position but proposed a three-year fixed position, which Vukotich accepted. Vukotich alleges that under the terms of his employment contract and UWP's policies and procedures, he could only be terminated under limited circumstances, including termination for cause. In the fall of 2021, UWP placed Vukotich on leave in response to complaints about his communication style. UWP later refused to renew his contract, effectively terminating him on February 15, 2022. Vukotich alleges that his termination was unlawful because his contract guaranteed employment for three years subject only to "for cause" termination. Vukotich disputes UWP's assertion that his employment was subject to a renewal period after one year and requests payment for his remaining two years of salary.

UWP denies that it breached Vukotich's employment contract. UWP alleges that the contract provided for a three-year appointment, but reserved UWP's right to an annual review of the appointment. UWP notes that Vukotich's appointment letter clearly stated that his appointment was renewable annually at UWP's discretion and carried no expectation of re-employment. UWP began receiving complaints that Vukotich was unpleasant, demanding, and was bullying staff who did not work for him. Vukotich's supervisor, Provost Ducoffe, determined that Vukotich was not meeting performance expectations and placed him on administrative leave while Ducoffe gathered additional facts. Several weeks later UWP asked Vukotich to resign rather than face termination, but he declined to do so. UWP asked UW-System Administration to begin a formal disciplinary investigation but after a review of the appointment terms confirmed UWP's right of non-renewal, UWP canceled that request and asked UW-System to simply review the staff complaints. In November 2021, UW-System provided a report of that review, which UWP believed validated their concerns about Vukotich's performance. In accordance with UWP policies, Provost Ducoffe provided Vukotich the required 3-month notice of non-renewal on November 11, 2021. After Vukotich requested reconsideration, Chancellor Ford conducted a review and upheld Ducoffe's decision not to renew Vukotich's appointment.

The Board concludes that the Board of Regents did not breach its contract with Vukotich, and therefore 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.

4. Rodac, LLC of Green Bay, Wisconsin claims \$705,025.20 for allegedly excess construction costs in the amount of 640,932 plus a standard industry markup of 10%. RODAC was the general contractor for the UW-Whitewater Community Engagement Center project (CEC) which involved redevelopment of a property owned by the Warhawk Foundation and leased to the UW Board of Regents. RODAC alleges that the terms of the lease limited the lessor's cost for the property improvements to \$500,000, and that additional costs were the responsibility of the lessee. Before the project began, the Warhawk Foundation sold the property to WWHP, which

took over the lease with the Regents. WWHP later hired RODAC to construct the CEC. RODAC alleges that UWW staff demanded upgrades and additional features not included in the original project plans, which expanded the scope and cost of the project. RODAC alleges that the UW possesses records proving that they requested the additional work but has refused to provide those records to RODAC. RODAC contends that the terms of the lease require that the Regents reimburse RODAC for the increased cost of the CEC project.

The UW points to the fact that no contract exists between RODAC and either the Regents or the UW. The UW alleges that as the new property owner, WWHP was obligated under the lease to provide and pay for the property improvements. The UW believes that both WWHP and RODAC are sophisticated business entities who would have known how to make the Regents a party to the contract if they had wanted to do so. The UW notes that as a state entity, the Regents have no ability to enter into construction contracts without following applicable state law, including Wis. Stat. § 16.855. Although Whitewater staff attended some construction meetings and expressed desires for the project, the UW denies that staff made demands or construction requests that amounted to any sort of a contract with RODAC. The UW believes RODAC has failed to provide any evidence that a breach of contract occurred or that the Regents/UW are responsible for the claimed damages.

The Board concludes that RODAC's contractual relationship and potential remedies exist with WWHP, not the Board of Regents, and therefore 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. Jacquese Harrell, Sr. of Boscobel, Wisconsin claims \$1,778.83 for money deducted from Harrell's inmate account and related court fees and costs. Harrell's 2008 Judgment of Conviction (JOC) indicated that restitution was to be paid from "25% of funds." DOC withheld 25% of Harrell's wages for restitution until 2016 when it began withholding 50% from all of his funds, including gifted money sent by his family. Harrell alleges that DOC wrongly applied 2015 Act 355 retroactively to his conviction. Harrell contacted the court, which issued an amended JOC clarifying that restitution should be collected from 25% of his *prison earnings* (as indicated in the sentencing transcript). DOC reduced Harrell's wage deductions to 25% but continued to deduct 50% from gifted funds. After DOC denied his inmate complaint, Harrell petitioned the court, which agreed that DOC should not have withheld 50% of his gifted funds for restitution. DOC stopped those deductions but did not reimburse Harrell for the previous deductions. Harrell alleges that DOC's actions were arbitrary, illegal, and in violation of court orders. Harrell contends that DOC essentially forced his family members to pay the restitution, which they do not owe, therefore, his family are the victims in this situation. Harrell also alleges that he should be reimbursed for the cost of his court action, because would not have incurred those costs but for DOC's actions.

DOC recommends denial of this claim. DOC denies that the department retroactively applied 2015 Act 355. DOC contends that the deductions were based on Wis. Stat. § 973.20(11)(c), which gave the department authority to set deduction rates for restitution. DOC notes that in recent restitution related decisions, the courts have confirmed DOC's previous authority to set deduction rates for inmate restitution. To the extent that Harrell is correct that DOC should not have withheld 50% from his gifted funds, the department contends that it should not be required to reimburse him for several reasons. First, the money has already been disbursed to Harrell's victims who are entitled to restitution under Wisconsin law. Additionally, because DOC no longer has the money, awarding this claim would essentially result in taxpayers paying Harrell's restitution. Finally, DOC believes that Harrell is not entitled to reimbursement for filing fees and costs pursuant to Wis. Stat. § 814.25 (2)(b), which provides that prisoners are not entitled to costs when they prevail in certiorari actions involving prison or jail conditions.

The Board defers its decision on this claim at this time in order to obtain additional information from the parties.

6. Phil Keller of Winnebago, Wisconsin claims \$110.86 for damages related to property items allegedly lost or misplaced by DOC staff. Specifically, the unreimbursed value of property items above the depreciated amount paid by DOC (\$76.50), the full cost of envelopes and yarn not reimbursed by DOC (\$18.50) and copy and postage costs for filing this claim (\$15.86). Keller

states that he was in solitary confinement from 9/28/21 until 12/2/21, at which time he was placed in quarantine. He alleges that a DOC officer intentionally misplaced some of his property when packing up Keller's cell and that housing staff gave another inmate unsupervised access to the cell, which gave that inmate an opportunity to steal Keller's property. Keller filed inmate complaints about his missing property, but DOC only reimbursed him for some of the items at a depreciated value. Keller believes that he should not have to bear the additional replacement cost for his property because it was under DOC's control at the time of these incidents.

DOC recommends denial of this claim. DOC has already reimbursed Keller \$226.84 for property items for which he was able to provide receipts. DOC determined the appropriate reimbursement amount by calculating the property's actual value at the time of loss in accordance with DOC Policy DAI 301.00.03 and Wis. Admin. Code DOC 309.20(5). DOC believes Keller should not be reimbursed for items for which he has no receipt. DOC notes that an investigation into Keller's complaint regarding the missing envelopes determined that the vendor was at fault and would reship the order. Finally, DOC believes that Keller's request for costs is outside the scope of this claim and should 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.

The Board concludes:


That the following identified claims are denied:

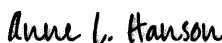
Stephen Brasch
George Vukotich
Rodac, LLC
Phil Keller


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

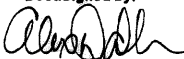
Jacquese Harrell, Sr.


Dated at Madison, Wisconsin this 25th day of April, 2023

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Corey Finkelmeyer, Chair
Representative of the Attorney General

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Anne L. Hanson, Secretary
Representative of the Secretary of
Administration

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Eric Wimberger
Senate Finance Committee

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Alex Dallman
Assembly Finance Committee

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Mel Barnes
Representative of the Governor