STATE OF WISCONSIN CLAIMS BOARD

On February 10, 2025, the State of Wisconsin Claims Board met in the State Capitol Building and via Microsoft Teams to consider the following claims:

Hearings were conducted for the following claims:

Claimant	Agency	Amount
1. Kenneth Kingsby	Transportation	$18,640.82
2. Golf Construction	Administration	$501,900.00

The following claims were decided without hearings:

3. Pao Choua Vue	Corrections	$4,659.66
4. Howard Grady	Corrections	$600.00
5. Cory Welch	Corrections	$100.00
6. Christopher Smith	Corrections	$100.00
7. Brandon Porter	Corrections	$381.59
8. Maxwell Wisnefske	Natural Resources	$1,445.00
9. David Voegeli	Transportation	$2,643.18
10. Anthology, Inc.*	Lakeshore Technical College	$4,687,234.94

*The Board only considered whether to hold this claim in abeyance.

With respect to the claims, the Board finds:

(Decisions are unanimous unless otherwise noted.)

1. Kenneth Kingsby of Milwaukee, Wisconsin claims $18,640.82 for vehicle damage and medical costs incurred as a result of a traffic collision in the City of Milwaukee on November 28, 2023. Claimant asserts he was travelling westbound on Hampton Avenue when he approached the intersection of Hopkins Street. There were temporary traffic signals in place at the intersection and according to Claimant, the specific placement/location of the temporary signals caused confusion and both temporary signals displayed a green light. Claimant alleges that these factors resulted in a collision between his vehicle and a vehicle travelling southbound on Hopkins Street. Claimant indicates there were other collisions in the area around the same time, and that the responding police officer also expressed confusion over placement of the traffic signals. Claimant alleges he sustained vehicle damage and incurred medical costs as a result of the collision. He seeks compensation in the amount of $18,640.82. ($16,957.70 vehicle damage plus $1,683.12 medical costs). Claimant did not have car insurance at the time of the incident, as noted in the crash report.

DOT recommends denial of this claim. DOT notes that the intersection was undergoing construction as part of WisDOT Local Program Project ID 2545-03-72. These projects are mostly funded with Federal Highway Administration resources with some participation by the local municipality; DOT administers the project but does not participate in funding. As part of this project, the contractor – Rock Road Companies, Inc. – removed the existing traffic signals and installed temporary traffic signals. Because the traffic signals were property of the City of Milwaukee, the traffic signal plans were designed and approved by the City. The contractor was then responsible for installing, maintaining, and removing the temporary signals at the completion of the project. DOT asserts it was not negligent and that any claims of negligence should be directed to the contractor pursuant to the hold harmless agreement in all of DOT's construction contracts. In further support of denial, DOT points to the crash report, which indicates that the Claimant disregarded a red light; both lights were not green as he alleges.

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

2. Golf Construction of Waukesha, Wisconsin claims $501,900.00 for additional costs incurred on a construction project caused by alleged ambiguity in the interpretation of bid documents. Claimant successfully bid Department of Administration (DOA)-Division of Facilities Development (DFD) Project 23A1B (Joint Repairs and Membrane Replacement, Parking Ramp 75 – UW Madison). In October 2023, the parties entered into a construction contract for $256,860.00. Claimant contends that during performance of work, it was directed to perform work beyond what was included in the bid documents.

Claimant indicates that the project required bidders to submit a lump sum dollar amount for "all work" as well as unit pricing for all phases of the work depicted in specific sections of the bid document. (Claimant specifically points to the third column of its bid, which reads "Quantity Included in All Work (Lump Sum Base Bid))." Claimant interprets this to mean that the "all work" lump sum bid amount of $256,860 was quantified in the unit prices based upon set specifications. Further, Claimant alleges that DOA-DFD estimated in the unit price section the amount of anticipated materials and types of repairs needed to complete "all work" for each area of the project.

On November 20, 2023, Claimant sought confirmation from DOA-DFD whether beam-plate assemblies were to be installed in 42 specific locations. After an affirmative response from DOA-DFD, Claimant again sought direction whether to "install 18 (B/E2) and 6 (A/E2) assemblies, which the contract drawings indicate to be a type 'D3' repair. As indicated within submittal package #2, this would require 42 type 'D3' repairs to be provided. The unit price breakdown on the project includes 2 type 'D3' repairs. Therefore, a contract modification would be required to proceed with the additional 40 assemblies." It was DOA-DFD's contention that the bid provided on September 12, 2023, was for all work and was not related to unit prices. DOA-DFD noted that the work was described on the plans and expressed in the specifications. DOA-DFD allegedly directed Claimant to provide the required steel beams as indicated on the "marked-up shop drawings" and "to proceed with all work." DOA-DFD noted that if Claimant had a dispute and wanted to file a claim, to follow the process outlined in the contract. Claimant contends it followed all dispute procedures to no avail and seeks compensation for the work performed. ($501,900.00 = 42 brace frames at $11,950/frame.)

DOA-DFD recommends denial of this claim. DOA-DFD asserts it is not responsible for the additional cost of 42 beam assemblies that Claimant failed to account for in its base bid, when those were included in the original project plans. DOA-DFD asserts that the locations of the 42 beam assemblies were explicitly illustrated on the project plans at the time Claimant submitted its bid. DOA-DFD holds there was no ambiguity in the plans and the cost of the beams should have been part of Claimant's base bid.

DOA-DFD asserts that the bid instructions provided an equitable process for bidders to seek clarification on the plans prior to the bid deadline. DOA-DFD contends that Claimant could have raised any issues or questions and received clarification. No such clarification was sought.

Further, DOA-DFD holds it is entitled to remove the cost of items from the original bid that were part of the unit price chart but not actually used for the project. DOA-DFD indicates that unit pricing is used in conjunction with base bid pricing when costs may be unknown at the time of bidding. An estimate of the number of units is provided and the bidder is to indicate the price per unit to be paid should those units be used on the project. DOA-DFD notes that this project involved both known and unknown quantities and therefore, a base bid price and unit pricing was necessary. DOA-DFD asserts it is entitled to a $41,590 refund due to quantities of items not used on this project that were contained in the bid. The contract total was $256,860. The contract provided notice to Claimant that DOA-DFD may adjust the total compensation through change orders when unit pricing is used on a contract. DOA-DFD holds contractors to the amount bid on a project (base bid), subject to change orders and adjustments made when unit pricing is part of a project.

DOA-DFD holds Claimant to the amount bid on the project and making unit price/quantity adjustments as outlined in the contract. DOA-DFD believes Claimant is responsible for the full scope of work for the project, which includes the 42 beam assemblies.

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

3. Pao Choua Vue of Black River Falls, Wisconsin claims $4,659.66 for money deducted from his inmate account by DOC. Claimant explains that his 2012 Judgment of Conviction (JOC) orders payment of $61,492.37 restitution, along with other obligations. According to Claimant, the JOC directs financial obligations "to be paid from all funds received into defendant's prison accounts in accordance with the prison policy not to exceed 25% of gross." Claimant asserts that from November 2012 to 2016, DOC deducted restitution at 25% of his prison income in addition to 10% from his release account, for a total of 35% of all income. When 2015 Wisconsin Act 355 was enacted in 2016, Claimant notes that DOC modified the deduction to 50% of his prison income, along with 10% from his release account, for a total of 60%. In August 2023, Claimant filed a writ of certiorari in circuit court to address this matter, which he asserts prompted DOC to revert the deductions back to 25% as outlined in the JOC. The writ was therefore dismissed as moot. In October 2023, Claimant alleges that he sought reimbursement from the business office for the money that was improperly deducted but never received a clear response. Claimant filed an inmate complaint regarding this matter, which was ultimately dismissed. Claimant contends that DOC's actions were illegal and in violation of a court order. He seeks reimbursement of the incorrect deductions ($4,421.49) and the cost of filing the writ of certiorari ($238.17).

DOC recommends denial of this claim. DOC indicates that money deducted from Claimant's account to pay his court-ordered restitution was in good faith. There was allegedly some uncertainty at the time due to Act 355, which allowed DOC to determine the amount of withholding. DOC believes that the 50% deduction was not in violation of the JOC; the JOC gave DOC discretion to determine the amount withheld. DOC notes that while the JOC directs financial obligations "to be paid from all funds . . . not to exceed 25% of gross[,]" that section does not mention restitution. It is merely a "comment." At the end of the JOC is an "order," which relates to restitution. It states, "[I]f the defendant is in or is sentenced to state prison and is ordered to pay restitution, it is ordered that the defendant authorize the department to collect, from the defendant's wages and from other monies held in the defendant's inmate account, an amount or a percentage which the department determines is reasonable for restitution to victims." DOC holds there has been no showing of negligence and that reimbursing Claimant would unjustly enrich him as the funds have been applied to his debt and disbursed to victims. With regard to reimbursement for filing the writ, DOC contends that Wisconsin law prohibits inmate recovery of litigation expenses.

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.

4. Howard Grady of Oshkosh, Wisconsin claims $600.00 for money deducted from his inmate account by DOC. Claimant notes that his 2014 Judgment of Conviction (JOC) directs DOC to deduct 25% of inmate earnings for restitution, until it is paid. Claimant indicates that at some point, DOC modified the deduction to 50%, which caused his federal stimulus payments to also be withheld at 50%. Claimant alleges that inmates were advised via a memo dated November 9, 2023, not to file an inmate complaint or contact the business office regarding the change, and that DOC was reviewing all court-ordered obligations. Claimant alleges that at some point, deductions were reverted back to 25%. Claimant seeks reimbursement for half of the withholding of his federal stimulus payments (the difference between 25% and 50%), which he contends was improperly deducted. Claimant asserts he did not fully complete the inmate complaint process based on the direction provided by DOC staff in the November 2023 memo to not file a complaint or contact the business office. Claimant alleges that he did inquire as to the deductions and reimbursement, to which he received no response.

DOC recommends denial of this claim. DOC indicates that Claimant's stimulus payments were withheld as follows: $700 was withheld on 4/9/21 and $481.73 withheld on 8/27/21. (DOC notes that Claimant seeks reimbursement for "half" of the withholdings, which totals $590.87, not $600.) DOC contends that its decision to apply 50% of the stimulus payments to Claimant's debt was for his own benefit. Per DOC, the stimulus payments were intended to provide financial assistance for survival expenses during the pandemic. Given Claimant's

incarceration, his basic living expenses were already covered. DOC contends that reimbursing Claimant would unjustly enrich him as the deducted funds were applied to his debt and have been disbursed to the victim. Additionally, DOC holds that the claim should be denied because Claimant did not properly exhaust his administrative remedies.

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. Cory Welch of Fox Lake, Wisconsin claims $100.00 for the value of headphones, tablet cover, and a TV connector allegedly damaged or taken during a search at Fox Lake Correctional Institution (FLCI). Claimant explains that around May 13, 2024, there was a mass search conducted at FLCI by "over 150 correctional officers not from FLCI." Claimant contends there was no contraband found in his cell during the search, but upon return to his cell he discovered his tablet case was ripped and items were missing. Claimant believes DOC failed to follow policy and did not complete a written report (WICS Incident Report) regarding his cell search. Claimant filed an inmate complaint regarding this matter, which was ultimately dismissed. The institution complaint examiner (ICE) noted that no incident report documenting the alleged tablet cover damage was located, which Claimant believes corroborates his assertion that staff did not follow policy. Claimant holds that the search officers were negligent, reckless, and disrespectful when handling his property, and should be liable for damages.

DOC recommends denial of this claim. Contrary to Claimant's assertion that no contraband was found in his cell, DOC notes that the connector and headphones were seized as contraband. Per the inmate complaint investigation, the headphones were damaged in such a way that items could potentially be hidden inside, and the connector was simply not an allowed item. DOC does not believe Claimant should be reimbursed for contraband that was confiscated from his cell. With regard to the tablet cover that was allegedly ripped, DOC contends there is no evidence it was ripped by DOC staff, or evidence as to what extent it was ripped. Given the tablet cover was purchased in 2019, it likely has already exceeded its normal lifespan. DOC further notes that all inmate tablets are in the process of being replaced, so Claimant's tablet and cover will soon be obsolete, if not already. Lastly, DOC points to the amount of Claimant's claim. Based on the documentation provided, the three items at issue total $29.24, not $100. (TV Quick Connect, $2.00; Koss headphones, $23.24; and MP3 Silicone Tablet Cover, $4.00.)

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. Christopher Smith of Fox Lake, Wisconsin claims $100.00 for the value of books allegedly taken by Fox Lake Correctional Institution (FLCI) staff during a search on May 15, 2024. Claimant alleges that all inmates were sent to the gym to be searched while cells were searched. Around 3:30 p.m. the same day, inmates were told not to ask unit officers about any missing property; that inmates would be called to the property room as necessary. Claimant indicates he was called to the property room on May 28, 2024, related to items not relevant to this claim. Claimant filed an ICRS complaint regarding this matter, which was ultimately dismissed. Although the ICRS complaint references *three* books, in his reply submission, Claimant clarifies that *two* books were missing from his cell after the search and provides documentation as follows: (1) Winning Habeas Corpus, purchased in July 2018 for $59.50; and (2) Legal Thesaurus, property receipt from July 2011 showing price as $29.95. Claimant alleges that his books were properly labeled with his name and property receipts, and that there was no reason these should have been removed from his cell.

DOC recommends denial of this claim. DOC contends that the Institution Complaint Examiner (ICE) conducted a thorough investigation when reviewing the ICRS complaint. The ICE spoke with staff who searched the cell and the property sergeant, none of whom indicated that books were taken from the cell. The ICE also spoke with the librarian who confirmed the books had not ended up there. DOC notes that Claimant filed another ICRS complaint relating to the

same May 15th cell search, which included documentation of items that were, in fact, confiscated. No books were mentioned as being confiscated, or that they even existed prior to the search. DOC contends there is no evidence of negligence by DOC staff and the claim should be denied. If the claim is paid, however, DOC believes the claim is actually for $89.95, not $100 as requested, and that the value of the books should be depreciated to their current value. DOC notes its policy is that publications are depreciated at 50% regardless of age.

The Board concludes the claim should be paid in the reduced amount of $44.98, based on equitable principles. This reduced amount represents a 50% depreciated value of the two books at issue ($89.95). The Board further concludes, under authority of Wis. Stat. § 16.007(6m), payment should be made from the Department of Corrections appropriation Wis. Stat. § 20.410(1)(a). *[Representative Dallman not participating.]*

7. **Brandon Porter** of Waupun, Wisconsin claims $381.59 for the value of an electric razor and books allegedly confiscated by DOC staff. Claimant indicates that on April 14, 2023, he was transferred from Green Bay Correctional Institution (GBCI) to Waupun Correctional Institution (WCI). When WCI staff inventoried his property, they took an electric razor and 22 books/magazines, claiming they weren't his, his name wasn't in them, or he had no receipt. Claimant indicates he filed an inmate complaint regarding this matter, where it was determined the items should be returned to him. Claimant notes he understood the above items would be returned and that he was to notify the property department what to do with other contraband items. Claimant later learned that the razor and books were destroyed. He filed another inmate complaint. Claimant received $169.64 reimbursement for the razor and books he was able to provide documentation for, which represents the depreciated value per DOC policy. Claimant believes $169.64 is an unreasonable amount due to the fact that some of the books were only purchased a month or two prior, and none should have been destroyed in the first place. Claimant believes his property should be reimbursed at the full value and is seeking the remaining amount of $133.78. (The full amount depicted in the Institution Complaint Examiner's (ICE) affidavit minus $169.64 already reimbursed.)

DOC recommends denial of this claim. DOC notes that several items were confiscated as contraband when Claimant transferred to WCI. Claimant filed an inmate complaint, wherein it was recommended that the books and razor be returned. The property department sent a form to Claimant asking him what to do with the confiscated contraband (which should not have included the books and razor). Claimant sent the form back indicating the contraband should be destroyed. However, the property department destroyed all of the property. Claimant then filed another inmate complaint, on August 28, 2023, seeking reimbursement for the books and razor, which is the subject of this claim. As a result of the second inmate complaint, the Secretary's Office ordered that Claimant be reimbursed for the razor and any books for which he could provide a receipt. DOC notes that the Secretary's Office ordered "reimbursement," but not a specific amount. The ICE calculated the amount using receipts provided by Claimant and depreciated by 50% per DOC policy. On December 21, 2023, Claimant was reimbursed $169.64 for the razor and books. DOC further notes that although Claimant requests compensation for the book "Chess Tactics Workbook," documentation shows that item was destroyed at Claimant's request on a Property Receipt/Disposition form signed on April 20, 2023 (prior to filing his first inmate complaint). DOC contends that staff were not negligent, and Claimant has already been 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.

8. **Maxwell Wisnefske** of Wausau, Wisconsin claims $1,445.00 for damage caused by a tree that fell on his vehicle at Lake Wissota State Park. Claimant alleges that on August 16, 2024, he was camping with family when a tree fell on his vehicle around 4:30 a.m. The tree caused damage to his vehicle and equipment attached thereto – two kayaks, kayak racks, and roofrails/crossbars. (Claimant only seeks reimbursement for the equipment, not his vehicle.)

After falling, Claimant indicates that the tree was positioned on top of his vehicle and also damaged nearby tents occupied by his family members. Claimant's written statement at the time of the incident notes his belief that "the crotch of the tree located at ground level is rotted." He further notes throughout his submissions that the tree split at the crotch located mostly within the ground. In addition, Claimant contends that the Conservation Warden (Richard Maki) verbally agreed the State would provide new kayaks. Claimant believes DNR was negligent and failed to properly inspect the campsite. Claimant believes that the crotch of the tree within the soil surface should have provided enough evidence for proper tree inspection. Claimant alleges his photos show the crevice was covered in thick mosses and fungi, showing that specific location was regularly damp. In Claimant's view, the size, age, and location of the tree should have warranted more care and attention. Claimant contends that the situation could have been much worse had his vehicle not taken most of the weight of the tree, and that his request for payment is appropriate.

DNR recommends denial of this claim, though it does not dispute the facts. Claimant's vehicle was parked at the campsite; the tree was located on state property and owned by the state; and the vehicle, kayaks, and accessories were damaged as a result of the tree fall. DNR does not dispute the fair market value of the claimed items or Claimant's documentation of the same. DNR notes that Lake Wissota State Park campsites are routinely inspected, including for hazardous trees. The most recent inspection report and site notes show that no issues with the specific tree were identified. Per the Spring 2024 checklist and site notes, other hazard trees were identified on other campsites and promptly removed. Per the DNR incident report, the tree fell after a night of rain and wind. It is DNR's opinion that the tree appeared healthy as depicted by the full green foliage. After the tree fell, it was evident that the rootball of the tree had begun to decay underground. This condition had not presented visual symptoms that could be identified during site inspections. Immediately after this incident, DNR notes it assisted in removing the tree and inspected the property to determine if any other hazard trees were present. DNR contends it is not liable for these damages as there is no evidence it knew or should have known the tree was in a partial state of decay, a nuisance, or hazardous to injury. DNR contends it was not aware or notified of the potential hazard and had no duty of care to remove the tree. DNR also believes that the recreational immunity statute applies and bars payment 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.

9. David Voegeli of Janesville, Wisconsin claims $2,643.18 for property damage that occurred on July 14, 2024, due to flooding. Claimant indicates there is a drainage ditch adjacent to his property in the City of Janesville, which drains under I90 and into a green space. Claimant alleges that on July 14, 2024, the grate was plugged with debris, which caused water to rise and flood the interior of the residence on his property. Claimant contends this is not a flood zone and is not covered by insurance. Claimant alleges that he contacted the City of Janesville multiple times to notify them of the issue with the grate–on June 24th and July 15th–as did the tenant residing at his property. On September 3, 2024, the City of Janesville notified Claimant this is state property and the state's responsibility. Claimant alleges that a government agency (who he initially believed to be the City of Janesville) did eventually unplug the grate so that it could drain properly. Claimant believes DOT was negligent in maintaining the ditch and that he should be reimbursed for the damage to his property.

DOT recommends denial of this claim. Upon receipt of this claim, DOT notes it completed a field review. DOT concluded, among other things, that "the draining course flows from the 64" and 16" inch City outlet pipes to the inlet 48" City pipe that goes underneath Ontario Drive through a lengthy drainage way to the department's inlet 48" pipe going under I39." DOT contends that any number of factors could have led to the flooding of Claimant's property, including the rain event (3.5 inches of rain per hour) combined with the proximity of Claimant's property to the drainage way. Further, DOT notes that even if debris slowed the flow of DOT's pipe during this storm, Claimant has shown no evidence that it caused the flooding. Further, DOT notes that per statute, the local county highway departments perform highway maintenance

on state highways. DOT entered into a Routine Maintenance Agreement (RMA) with Rock County for 2024, which was signed on December 27, 2023. Per that agreement, Rock County agreed to clean, repair, and replace drainage structures as well as maintain roadside drainage. DOT contends it was not made aware of this issue until contacting the City of Janesville after receiving this claim. Had the City contacted DOT, DOT could have contacted Rock County per the RMA to inspect the drain and clean out the debris. DOT contends there is no evidence that DOT's pipe caused damage to Claimant's property.

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

10. Anthology, Inc. of New York, New York claims $4,687,234.94 in damages related to a contract dispute against Lakeshore Technical College. Anthology, Inc. (Anthology) objects to characterizing Lakeshore Technical College (Lakeshore) as a state agency. The parties are currently involved in litigation in federal court – *Lakeshore Technical College v. Anthology, Inc.*, Case No. 24-CV-355 (Eastern District of Wisconsin). The parties indicate they have briefed the issue of whether Lakeshore is a state agency or "arm of the state," and are awaiting a decision from the federal court judge.

Lakeshore requested that the Board hold this claim in abeyance pending conclusion of the federal court matter. After initially objecting, Anthology "consented" to the claim being held in abeyance.

The Board concludes this claim will be held in abeyance pending conclusion of the federal court action evaluating whether Lakeshore Technical College is an "arm of the state." The Board makes no decision on the threshold jurisdiction question or the merits of the claim at this time.

The Board concludes:

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

Christopher Smith	$44.98	Wis. Stat. § 20.410(1)(a)

That the following claims are denied:

Pao Choua Vue
Howard Grady
Cory Welch
Brandon Porter
Maxwell Wisnefske
David Voegeli

That decision on the following claims is deferred to a later date:

Kenneth Kingsby
Golf Construction

That the following claim will be held in abeyance:

Anthology, Inc.

Dated at Madison, Wisconsin this 3rd **day of** March **, 2025.**

Signed by:
Lara Sutherlin
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Lara Sutherlin, Chair
Representative of the Attorney General

Signed by:
Mel Barnes
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Mel Barnes
Representative of the Governor

Signed by:
Eric Wimberger
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Eric Wimberger
Senate Finance Committee

Signed by:
542FC46E5D0B459...

Alex Dallman
Assembly Finance Committee