STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on December 2, 2004, upon the following claims:

	Claimant	Agency	Amount
1.	Steven Avery	§775.05 Wis. Stats. (Innocent Convict)	$1,135,991.61
2.	Timothy M. Rupiper	Corrections	$3,603.94
3.	Jacob C. Basten Construction	Administration	$62,367.37
4.	Nicholas R. Schaid	Military Affairs	$687.81
5.	Penetrator Sound & Lighting	Wisconsin State Fair Park	$13,188.27
6.	Richard & Nancy Derauf	Revenue	$53,466.47
7.	Ken Seubert	Agriculture, Trade & Consumer Protection	$3,852.38

The following claims were considered and decided without hearings:

	Claimant	Agency	Amount
8.	Jason Peter Koenigs	Military Affairs	$640.20
9.	Roger L. Bollinger	Natural Resources	$200.00
10.	Steve Fields	Revenue	$2,346.79
11.	Matthew Neitzel	Military Affairs	$1,000.00
12.	Kraig Nelson	Military Affairs	$3,013.70
13.	Roy & Sandra Noack	Agriculture, Trade & Consumer Protection	$242.50
14.	J. O. Young	University of Wisconsin	$115.75
15.	Holcim, Inc.	Financial Institutions	$11,100.00
16.	Holcim, Inc.	Financial Institutions	$1,930.00

The Board Finds:

1. **Steven Avery** of Three Rivers, Wisconsin, claims $1,135,991.61 for compensation for wrongful conviction pursuant to §775.05, Stats. The claimant was convicted of the July 1985 rape and beating of a Manitowoc County woman. The victim erroneously identified the claimant as her attacker and, despite the testimony of 16 alibi witnesses, he was sentenced to 32 years in prison. The claimant states that he maintained his innocence at all times and vigorously pursued his defense and all available appeals. In 1995, the claimant requested DNA testing of the fingernail scrapings found on the victim. The tests found DNA that did not belong to the claimant, but were not conclusive and the Circuit Court and Court of Appeals denied the claimant's appeals for post-conviction relief. In 2003 the Innocence Project assisted the claimant in getting another round of DNA testing—this time of the public hairs collected from the victim's "rape exam." Using more advance testing, the tests conclusively proved that the hair did not belong to the claimant, but instead belonged to Gregory A. Allen, whose DNA profile was in the state databank. (Mr. Allen is currently incarcerated for a similar crime, committed after the claimant was wrongfully imprisoned.) In September 2003, the Manitowoc County Circuit Court ruled that this new DNA evidence provided irrefutable proof that the claimant was innocent of the crime for which he was convicted. The Manitowoc County District Attorney stipulated to the claimant's innocence and the claimant was released in September 2003, after serving over 18 years in prison.

The claimant does not believe that the statutory maximum of $25,000 allowed under §775.05, Stats., is sufficient compensation for the 18 years he wrongfully spent in prison. When the claimant entered prison, he was 23 years old and working as an automobile mechanic. The claimant is now 42 years old and has lost more than 18 years of earned income, social security earnings history, and retirement savings. The claimant has consulted with vocational experts, who estimate his lost wages at $799,000, his lost Social Security contributions at $28,300, and his lost retirement earnings at $79,000. In addition, the claimant lost the ability to advance his vocation, including the opportunity to become a partner with his brothers in their family's

business. The value of the lost opportunity to advance his vocation is estimated at $190,000. Based on the calculations and analysis performed by the experts consulted by the claimant, he estimates his total financial losses at $1,097,200. The claimant requests that the Claims Board provide him with immediate relief by granting him the maximum statutory compensation of $25,000, and that the board then request an additional $1,072,200 from the state legislature to compensate him for his remaining financial losses.

The claimant states that, as a result of his wrongful incarceration, he incurred $23,791.61 in post-conviction attorneys' fees and expenses. Some of these costs were paid by family and friends, to which the claimant is now indebted, and a portion of the fees are still owing to his attorneys. In addition to these services provided by private attorneys, the Wisconsin Innocence Project provided the claimant with *pro bono* legal services valued at $15,000. Although the Innocence Project does not charge for its services, the claimant wishes to fairly compensate them for their assistance so that they may use the resources to assist other wrongfully convicted individuals. The claimant therefore requests that the Claims Board award an additional $38,791.61 for his attorneys' fees.

In addition to his financial losses, the claimant's wrongful imprisonment has caused him enormous emotional and personal suffering. He lost his wife, the ability to develop a relationship with his young children, his freedom, his civil rights and his dignity. He therefore also requests compensation, in an amount deemed appropriate by the board and the legislature, for the emotional injuries he has suffered.

Finally, the claimant requests that the Claims Board set aside its usual policy of not deciding claims while a claimant is pursuing other avenues of relief. Although he has filed a civil rights action in federal court to seek compensation from Manitowoc County, this action seeks compensation on different ground and from different government entities than this current claim. This statutory claim seeks state compensation, regardless of fault, as provided for in §775.05, Stats. After his long imprisonment, the claimant is now destitute and needs prompt compensation in order to begin his life again. The claimant does not believe that there is anything in the language, purpose or history of §775.05, Stats., that justifies making him wait any longer to receive the statutory compensation to which he is entitled.

The claimant therefore requests that the Claims Board (1) directly award $63,791.61—the statutory maximum of $25,000, plus $38,791.61 in attorney's fees; and (2) make a recommendation to the legislature requesting compensation in the amount of $1,072,200 for the claimant's remaining financial losses, plus any additional amount deemed appropriate compensation for the his non-financial injuries and losses.

The Board is constrained by §775.05, Stats., to a maximum of $25,000, plus attorney's fees. The Board therefore concludes the claim should be paid in the amount of $25,000, plus attorney's fees in the amount of $23,791.61, for a total award of $48,791.61. The Board further concludes, under authority of §16.007 (6m), Stats., that payment should be made from the Claims Board appropriation §20.505 (4)(d), Stats. The Board declines at this time to recommend additional payment to the legislature because a legislative committee is presently considering a range of issues concerning innocent convicts. The committee may make recommendations on the issue of compensation for innocent convicts.

2. **Timothy M. Rupiper** of Lena, Wisconsin claims $3,603.94 for damage to vehicle and personal property incurred when a tree fell on his truck. The incident occurred on June 24, 2004, while the claimant's truck was parked at Green Bay Correctional Institution where the claimant is employed. The claimant states that the tree was almost entirely rotted away inside, with 10% or less of the trunk still alive when the tree fell. The claimant believes that the Department of Corrections should have been aware of the diseased condition of the tree prior to the incident, because the tree was only 65% leafed out, according to a statement made by the maintenance person who oversaw tree trimming on the grounds. The claimant disputes Corrections' assertion that they would have promptly removed the tree had they know it was diseased. He points to the fact that, although several months have passed since this incident, another tree with obvious signs of disease and dead branches remains right next to the very same parking lot. The claimant states that, at the time of the incident, several immediate supervisors told him that his damages would be covered by the state because the tree was obviously diseased. The claimant also states that, were it not for these assertions, he would have taken additional steps to document the condition of the tree at the time of the incident. The claimant states that he only carried liability insurance on the vehicle, but he does not believe that should be a factor, since he believes that the state is clearly at fault for failing to remove the diseased tree. Finally, the claimant alleges that Corrections has repeatedly provided false information to the Claims Board in its responses to this claim and the claimant believes that Corrections is attempting to deceive the board. The claimant requests

reimbursement as follows: $2200 book value for his 1991 Toyota pickup truck, $600 for his fiberglass topper, and $60 for a car seat which was also destroyed. The claimant also requests reimbursement for travel time and expenses incurred pursuing this claim in the amount of $743.94.

The Department of Corrections recommends denial of this claim. The Department apologizes for having provided some incorrect information in its original response to this claim and for any confusion that information may have caused. Despite some confusion regarding whether or not the tree had been recently trimmed prior to the incident, the Department maintains that there was no outward sign of disease or rot and that the tree was leafed out and appeared healthy. The Department states that, had there been any sign of disease, the tree would have been removed. Although it appears that, at the time of the incident, several individuals may have made statements to the claimant in support of paying his claim, none of these individuals had any authority to authorize any payment of the claimant's damages. The Department does not believe that statements of support made by co-workers form any basis for granting this claim. Corrections also states that it has no way of independently confirming the value claimed by the claimant for his vehicle. Furthermore, the Department believes that the claimant bears some responsibility for his loss, due to his failure to maintain insurance coverage for his vehicle. The Department does not believe it had any advance warning that the tree was a danger and does not believe that the claimant has proven any negligence on the part of the state.

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. **Jacob C. Basten Construction Company, Inc.** of Green Bay, Wisconsin claims $62,367.37 for additional costs allegedly incurred due to the delay of the start date for claimant's contract with the state. The claimant was the low bidder for the Wisconsin Resource Center Administration Building project in Oshkosh, Wisconsin. The claimant submitted its bid on February 25, 2003. The claimant states that the standard delay in awarding the contract is 30 days from the bid opening. The claimant states that it did not receive a Notice to Proceed until August 19, 2003. The claimant alleges that, due to this delay, it incurred additional material and subcontractor costs and that the delay forced the project to be built through the winter, which added further costs. The claimant alleges that it first notified the state of its claim for additional costs on June 2, 2003, and then in writing on June 30, 2003. The claimant filed a formal claim for reimbursement with the Department of Administration on April 21, 2004. The claimant requests reimbursement for the additional costs it incurred due to the delay of the project.

The Department of Administration recommends denial of this claim. The bids for this project were due on February 25, 2005, and pursuant to the standard bidders' instructions, bid prices were valid for 30 days. However, during that 30-day period, the new gubernatorial administration requested that all construction projects be reviewed prior to inclusion in the budget, due to the budget shortfalls the state was experiencing. In March 2003, the project A/E requested, and the claimant granted, a 30-day price extension. No further bid extensions were offered or requested. The required project review was completed on May 23, 2003, and the project was approved to proceed. Processing of the construction contract began on June 9, 2003, and the claimant received the contract on June 17 and signed and returned it on June 24, 2003. It was not until June 30, 2003, that the claimant submitted a letter to the Department for delay of claim based on the period between the February 25 bid opening and the expected issue date of the Notice to Proceed. Upon receipt of the signed contract, the Department processed it following the normal procedure through channels from the division administrator, to the Department of Administration Secretary, to the Governor's Office for final approval. The Department issued the Notice to Proceed on August 19, 2003. The Department points to the fact that the claimant had three opportunities throughout this process at which it could have opted to mitigate against any delay costs. First, §16.855(4), Stats., provides that a contractor may withdraw its bid (with proper justification) without consequences within 72 hours of the bid opening. Second, pursuant to §16.855(2)(b), Stats., the claimant could have simply refused to extend its prices when asked to do so in March. Finally, and most importantly, the Department points to the fact that the claimant could have refused to sign the contract it was offered in June. The Department believes that by signing the contract which made no provision for this additional reimbursement, the claimant was bound by its terms and relinquished any clam relating to earlier delays.

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 Rothschild not participating.]*

4. **Nicholas R. Schaid** of Whitewater, Wisconsin claims $687.91 for vehicle damage and loss of personal property. The claimant is a member of the Wisconsin Army National Guard. While he was attending mandatory annual training at Ft. McCoy on 8/29/04, his personal vehicle was parked at the Richards Street Armory in Milwaukee. Although the armory lot is fenced and gated, a number of vehicles, including the claimant's, were broken into during this time period. The claimant states that his driver's side window was smashed and that his CD player and personal property was stolen. The claimant states that he was told that he would be fully reimbursed for his stolen property and that he did not need to file a claim with his insurance company. The claimant has a $500 deductible for the damage, however he requests reimbursement for the entire amount of his loss. The vehicle damage amounted to $225.91. The radio and other stolen property totaled $432.00.

The Department of Military Affairs recommends payment of this claim in the reduced amount of $500.00. Although Military Affairs does not believe that there was any specific negligence on the part of the state, the damage to the claimant's vehicle and property was inflicted while he was ordered to be at training and was all but required to leave his vehicle at the armory parking lot. Military Affairs states that the Richards Street Armory parking lot is fenced and gated and the fence surrounding the lot has an anti-scaling top, however, as is shown by this incident, it is possible to gain access to the lot when personnel are not present for extended periods of time. The Department recommends payment of the claimant's deductible in the amount of $500.00.

The Board concludes the claim should be paid in the amount of $687.91 based on equitable principles. The Board further concludes, under authority of §16.007 (6m), Stats., payment should be made from the Department of Military Affairs appropriation §20.465(1)(a), Stats.

5. **Penetrator Sound and Lighting, Inc.** of Greenfield, Wisconsin claims $13,188.27 for services and equipment allegedly provided under contract with State Fair Park. The claimant states that when State Fair Park took over control of Milwaukee Mile, State Fair Park told the claimant to send invoices directly to State Fair Park. The claimant states that State Fair Park refused to pay an invoice for six headsets provided for use at the Milwaukee Mile race, even though State Fair Park used the headsets and did pay the invoice for the wiring for the headsets. The also claimant requests payment for staffing costs at the 2003 State Fair. The claimant states that State Fair Park has denied these costs based on the fact that the claimant had not invoiced staffing services in the past under the contract. However, SFP is acting contrary to its own past practice under the contract by denying the claimant use of a sound room. The claimant does not believe that State Fair Park should be allowed to disregard past practice under the contract only when it is to State Fair Park's benefit. The claimant requests reimbursement of: $2,819.52 for six headsets provided to Milwaukee Mile, and $10,368.75 for staffing costs at the 2003 State Fair.

State Fair Park recommends denial of this claim. In March 2003, State Fair Park offered the claimant a contract extension beyond their 3-year contract to provide services from April through December 2003. The claimant replied by letter requesting changes that they wanted to see on the contract addendum. State Fair Park states that a meeting was held between the claimant and the Park and that the changes agreed upon in that meeting were put into a letter which was attached to the addendum and agreed to by the claimant. State Fair Park points to the fact that new rates for certain events were specified in the letter and that there is no mention of additional charges for staff on site during these events. The six headsets for which the claimant is requesting payment were delivered to Milwaukee Mile on May 20, 2003. It was not until May 28, 2003, that State Fair Park assumed control of the Milwaukee Mile from Carl A. Haas Racing Teams, Ltd. Through a "Lease Termination and Asset Purchase Agreement." That agreement included a list of vendors for which State Fair Park agreed to fulfill the contract obligations of Carl A. Hass Racing Teams. The claimant is not listed on this list of vendors and, therefore, State Fair Park believes that it is not responsible for payment for this equipment.

The Board concludes the claim should be paid in the reduced amount of $5,000 based on equitable principles. The Board further concludes, under authority of §16.007 (6m), Stats., payment should be made from the Wisconsin State Fair Park appropriation §20.190(1)(h), Stats.

6. **Richard and Nancy Derauf** of Madison, Wisconsin claim $53,466.47 for refund of overpayment of tax assessments for the years 1996 through 1999. Beginning in May 2000, the Department of Revenue began garnishing 25% of Mr. Derauf's wages, which continued until June 28, 2004. The claimant's filed their income tax returns for 1995 through 2003 on June 28, 2004. The claimants state that, based on their actual returns, they overpaid their tax liability for 1996-1999 by $53,466.47. The claimants do not object to being denied their 1995 refund but they do not believe that the statute of limitations applies to their overpayments because the statue does not address garnishments and doomage assessments.

The Department of Revenue recommends that this claim be denied. The Department states that the claimants failed to file taxes for 1995 through 1999, while allowing Revenue to garnish Mr. Derauf's wages continually for 3 ½ years. Revenue issued an estimate assessment for 1995 and 1996 on November 9, 1998; and estimated assessments for 1997-1999 on September 17, 2001. The claimant's filed their 1995-2003 returns on June 28, 2004. According to the Department's records, the claimant contacted the agency in March 1999 and indicated that the 1995-1997 returns were ready to be filed but failed to file the returns. Revenue began wage certification in December 2000 to collect the estimated assessment for 1995-1996. The certification remained in place for over three years. In January 2004, the Department again contacted the claimants and informed them that the certification amount would be increased if they did not file the outstanding returns. The claimants allege that the Department was "unwilling to discuss [their] issues," however, Revenue points to the fact that from Mr. Derauf's first contact with the department in March 1999 until his returns were actually filed in June 2004, neither the claimants nor anyone representing them ever contacted the Department to try and resolve the matter. All of the claimants' returns were filed with a tax due except for 1995. The Department's records indicate that three assessments totaling $9,411.51 for the years 2000 through 2002 remain unpaid. Revenue states that §71.75(5), Stats., prohibits the claimants request for refund of the amount collected on the delinquent 1996-1999 assessments because the claim was filed more than two years after the dates of the assessments.

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. **Ken Seubert** of Marshfield, Wisconsin claims $3,852.38 for damages allegedly related to a quarantine imposed by the Department of Agriculture, Trade & Consumer Protection. In September 2003, one of the claimant's cats unexpectedly attacked his wife and daughter. The cat was euthanized and tested positive for rabies. The claimant alleges that he was contacted by a DATCP rabies veterinarian but that a USDA veterinarian inspected his farm and found no reason to quarantine his herd. The claimant alleges that Dr. Bellay harassed him and threatened him with quarantine. The claimant alleges that, after he complained to Senator Herb Kohl's office, Dr. Bellay retaliated by quarantining his herd for six months. The claimant believed that the quarantine was excessive in length and appealed the quarantine. He alleges that at the administrative hearing, Dr. Bellay was proven wrong on several of her assumptions, including the claimant's ability to sell newborn calves during the quarantine. The claimant states that he was required to purchase extra feed for his cattle because of the lengthy quarantine. The claimant believes that trying to sell cattle during the state-imposed quarantine would have been difficult and would have adversely impacted the reputation of his herd. He requests reimbursement of $31 veterinary bills, $1,935 for hay, $665 for combining cost, and $1,221.38 in medical bills for rabies treatment for his family.

The Department of Agriculture, Trade & Consumer Protection recommends denial of this claim. §93.07(10), Stats., makes it the duty of the Department to protect animal and human health by employing "the most efficient and practical means for the prevention, suppression, control and eradication of communicable diseases among animals." This section also authorizes the Department to establish quarantines. It was based on this statutory duty and authority, that a quarantine was issued for the claimant's premises and the quarantine was upheld by an Administrative Law Judge. The Department states that a 6-month quarantine is not unusual for rabies. The Department states that it made efforts to cooperate with the claimant in order to avoid financial loss. Among other efforts, Dr. Tim DeVeau, a USDA veterinarian, worked with the claimant to develop a plan that would allow for sale of animals during the quarantine. The Department does pay indemnity for animals destroyed for disease control, however, in this instance, no animals were destroyed. Finally, the Department disputes some of the claimant's damages. The Department

believes that the combining costs the claimant submitted would have been incurred regardless of the quarantine. The Department also points to the fact that the claimant is requesting reimbursement for the medical bills incurred for his family's rabies treatment and that these costs did not result from any action of the state relating to the quarantine. The Department believes that, even if the claimant did incur some additional expense, the state has no responsibility to compensate owners for production loss, animal care, or market changes that occur during quarantine.

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. **Jason Peter Koenigs** of Menomonee Falls, Wisconsin claims $640.20 for vehicle damage and loss of personal property. The claimant is a member of the Wisconsin Army National Guard. While he was attending mandatory annual training at Ft. McCoy 8/1/04, his personal vehicle was parked at the Richards Street Armory in Milwaukee. Although the armory lot is fenced and gated, a number of vehicles, including the claimant's, were broken into during this time period. The claimant states that his vehicle was damaged and a number or CDs were stolen. The claimant indicates that he does not have insurance coverage for these damages. He requests reimbursement for his vehicle damage, which amounted to $250.50, and 30 stolen CDs, which totaled $389.90.

The Department of Military Affairs recommends payment of this claim in the reduced amount of $500.00. Although the Department does not believe that there was any specific negligence on the part of the state, the damage to the claimant's vehicle and property was inflicted while he was ordered to be at training and was all but required to leave his vehicle at the armory parking lot. The Department states that the Richards Street Armory parking lot is fenced and gated and the fence surrounding the lot has an anti-scaling top, however, as is shown by this incident, it is possible to gain access to the lot when personnel are not present for extended periods of time. The Department does not believe that the claim should be paid in full, because the claimant knowingly chose not to insure his property and therefore assumed any risk associated with its loss. The Department does however recommend payment of a reasonable deductible amount of $500.00.

The Board concludes the claim should be paid in the amount of $640.20 based on equitable principles. The Board further concludes, under authority of §16.007 (6m), Stats., payment should be made from the Department of Military Affairs appropriation §20.465(1)(a), Stats.

9. **Roger L. Bollinger** of Cochrane, Wisconsin claims $200.00 for the value of a 3-day-old calf killed and eaten by an unknown animal. The claimant found the carcass of the calf on Easter weekend and contacted the local authorities. Natural Resources Conservation Warden William Engfer was visiting the claimant's neighbor and offered his assistance when the claimant came to the neighbor's house to tell them of the incident. Mr. Engfer came over to the claimant's property and inspected the carcass and surrounding area and took photographs. Neither the claimant nor Mr. Engfer were able to identify what type of animal killed the calf. Mr. Engfer reported his findings to the local wildlife manager, Dave Linderud. The claimant was later contacted by DeWayne Snobl of the USDA, who stated that the attack was most likely made by a coyote. The claimant points out that, by the time Mr. Snobl became involved, the claimant had disposed of the carcass and Mr. Snobl was only able to examine the photographs taken of the original scene, and even stated that it was impossible to make any conclusive determination based only the photographs. The claimant does not believe that a coyote attacked the calf because he has never had a problem in the past. He believes that some other type of predator must have been passing through the area. The claimant believes that Dave Linderud did not refer the matter to the USDA in a timely fashion and that, because of the alleged delay, Mr. Snobl was not able to examine the carcass. The claimant requests the value of the calf at the time it was killed, which he places at $200.

The Department of Natural Resources recommends denial of this claim. The Department states that the claimant found the animal on Easter Sunday and went to a neighbor's house to tell them of the incident. Natural Resources Warden Engfer was visiting the neighbor and suggested that the claimant take pictures of the carcass and contact the local Natural Resources wildlife manager. The claimant indicated that he did not have a camera and Mr. Engfer, even though he was off duty, offered to come the claimant's farm to take pictures and inspect the area. The Department states that Mr. Engfer searched the area and

determined that, due to the number of cattle tracks in the area, it was impossible to find any evidence or tracks of the animal that had killed the calf. The Department states that shortly thereafter, Dave Linderud contacted the USDA Wildlife Services office, which contracts with the Department to investigate whether claims of damage caused by wild animals are covered under state law. Mr. Snobl indicated to the Department that, based on the location and spacing of the puncture wounds, and the condition of the skeleton, which was not torn apart or broken, he believed that an animal smaller than a wolf killed the calf, most likely a coyote. The Department states that the claimant would be eligible for reimbursement if he could provide evidence that the calf had been killed by a wolf or a bear, however, the evidence in this case does not support a wolf or bear attack and the state has not provided any reimbursement programs for livestock killed by other types of wild animals. The Department also points to the fact that, while infrequent, livestock attacks by domestic dogs are not unheard of. The Department believes that the cause of the calf's death is, at best, unexplained and that the state should not be held responsible for the 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.

10. **Steve Fields** of Shiocton, Wisconsin claims $2,346.79 for overpayment of personal income taxes for the years 1990 through 2003. The claimant states that he has been homeless for most of his adult life and, therefore, it has been difficult for him to resolve his tax situation. The claimant states that he lived in Alaska from 1973 – 1984. The claimant further alleges that he was not required to file Wisconsin taxes for the years 1985-1989. The claimant also states that, because he was homeless, he never received many of the letters sent by the Department of Revenue. The claimant states that he would have been willing to pay his taxes but was unable to find out how much he owed. The claimant's wages were garnisheed by Revenue and the claimant alleges that, once his actual tax returns were filed, he had overpaid by $2,346.79.

The Department of Revenue recommends denial of this claim. The Department believes that the claimant intentionally attempted to avoid paying taxes for several years. In 1990, the Department was contacted by the claimant's employer, who stated that Mr. Fields was claiming to be tax exempt on his W-4 form. The Department sent two letters to the claimant inquiring as to his alleged tax exempt status and received no reply. In March 1991 the Department sent another letter requesting that the claimant file a 1989 return. No reply was received and an estimated assessment for 1989 was issued in May 1991, with a due date of July 22, 1991. The claimant paid that assessment voluntarily throughout 1991 and 1992 without filing a 1989 return. The Department later learned that the claimant had also claimed to be tax exempt on his 1990-1993 W-4 forms. The Department issued additional requests that the claimant file returns for 1990-1995 and again for 1996-1998. The claimant did not respond to these requests. The Department issued estimated assessments for 1990-1998 in December 1999 with a due date of February 14, 2000. On February 11, 2000, the claimant appealed the assessments. His appeal was denied in March 2000 because he failed to file the requested returns. Between 2000 and 2004, the Department actively attempted to resolve the delinquent assessments and certified the claimant's wages at various employers. On May 10, 2004, the claimant finally filed his 1990 through 1998 returns. Although the claimant's income was below the filing requirement for 1993, 1995 and 1996, the claimant did have tax liabilities for 1990, 1991, 1992, 1994, 1997 and 1998. The Department's calculations indicate that, after imposing penalties, late fees, and interest, the department over-collected by $380.49 on the assessments, not $2,346.79 as the claimant alleges. On May 25, 2004, the claimant filed his 1999-2003 returns. The Department states that the 1999 and 2000 returns have a tax due that is presently being assessed; the 2001 return has a refund due, and the 2002 and 2003 returns have neither a tax due nor a refund. The Department states that §71.75(3) Stats., prohibits them from refunding the amount overpaid on the original assessment since no refund was claimed within the two-year statute of limitations, which expired on December 13, 2001.

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.

11. **Matthew Neitzel** of Milwaukee, Wisconsin claims $3,643.78 for vehicle damage and loss of personal property. The claimant is a member of the Wisconsin Army National Guard. While he was attending mandatory annual training at Ft. McCoy from 7/30/04 to 8/7/04, his personal vehicle was parked

at the Richards Street Armory in Milwaukee. Although the armory lot is fenced and gated, a number of vehicles, including the claimant's, were broken into during this time period. The claimant states that his vehicle's window, door, moon roof and hood were all damaged and that his radio and other personal property was stolen. The claimant states that his lieutenant colonel told him that he would be fully reimbursed for his stolen property. The claimant also alleges that he was told to file a claim with his insurance company and that the state would also reimburse his insurer for its costs. The claimant is upset that he has now been told that his insurance company will not be reimbursed and he is afraid that he will have to bear the cost of higher insurance premiums as a result. The claimant states that, had he known his insurer would not be reimbursed, he might not have filed a claim with them and risked increased premiums. The claimant has a $500 deductible for the vehicle damage and a $500 deductible for the contents of the vehicle, however he requests reimbursement for the entire amount of his loss. The vehicle damage amounted to $2,214.91. The radio and other stolen property totaled $1,428.87, for a total claim of $3,643.78.

The Department of Military Affairs recommends payment of this claim in the reduced amount of $1,000. Although the Department does not believe that there was any specific negligence on the part of the state, the damage to the claimant's vehicle and property was inflicted while he was ordered to be at training and was all but required to leave his vehicle at the armory parking lot. The Department states that the Richards Street Armory parking lot is fenced and gated and the fence surrounding the lot has an anti-scaling top, however, as is shown by this incident, it is possible to gain access to the lot when personnel are not present for extended periods of time. The Department does not believe that the claimant should be reimbursed for damages covered by his insurance, and therefore recommends payment of the claimant's deductibles in the amount of $1,000.

The Board concludes the claim should be paid in the reduced amount of $1,000.00 based on equitable principles. The Board further concludes, under authority of §16.007 (6m), Stats., payment should be made from the Department of Military Affairs appropriation §20.465(1)(a), Stats.

12. **Kraig Nelson** of Milwaukee, Wisconsin claims $3,013.70 for vehicle damage and loss of personal property. The claimant is a member of the Wisconsin Army National Guard. While he was attending mandatory annual training at Ft. McCoy from 7/28/04 to 8/6/04, his personal vehicle was parked at the Richards Street Armory in Milwaukee. Although the armory lot is fenced and gated, a number of vehicles, including the claimant's, were broken into during this time period. The claimant states that his vehicle was damaged and that a variety of stereo equipment was stolen. The claimant states that he only carries liability coverage on the vehicle. He requests reimbursement for his vehicle damage, which amounted to $1,248.70, and his stolen stereo equipment, which totaled $1,765.00, for a total claim of $3,013.70

The Department of Military Affairs recommends payment of this claim in the reduced amount of $500.00. Although the Department does not believe that there was any specific negligence on the part of the state, the damage to the claimant's vehicle and property was inflicted while he was ordered to be at training and was all but required to leave his vehicle at the armory parking lot. The Department states that the Richards Street Armory parking lot is fenced and gated and the fence surrounding the lot has an anti-scaling top, however, as is shown by this incident, it is possible to gain access to the lot when personnel are not present for extended periods of time. The Department does not believe that the claim should be paid in full, because the claimant knowingly chose not to insure his property and therefore assumed any risk associated with its loss. The Department does however recommend payment of a reasonable deductible amount of $500.00.

The Board concludes the claim should be paid in the reduced amount of $1,248.70 based on equitable principles. The Board further concludes, under authority of §16.007 (6m), Stats., payment should be made from the Department of Military Affairs appropriation §20.465(1)(a), Stats.

13. **Roy and Sandra Noack** of Oconto, Wisconsin claim $248.32 for repair of a broken receive jar which was damaged during a routine inspection of the claimants' dairy farm. During the March 25, 2004, inspection, Department of Agriculture, Trade & Consumer Protection food safety inspector Victor Boudreaux attempted to help disassemble the receiver jar and, in the process, broke the jar. The claimants' request reimbursement for the cost of repair and installation of the broken jar. ($192.50 jar repair, $50 installation, $5.82 finance charge.)

The Department of Agriculture, Trade & Consumer Protection has no objection to payment of this claim. Inspector Boudreaux admits to breaking the receiver jar during the inspection. The Department states that its Division of Food Safety discourages its inspectors from dissembling fragile equipment during inspections for precisely this reason.

The Board concludes the claim should be paid in the amount of $248.32 based on equitable principles. The Board further concludes, under authority of §16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation §20.115(1)(a), Stats.

14. J. O. Young of Racine, Wisconsin claims $135.75 for vehicle damage allegedly caused by a parking stop at a University of Wisconsin-Parkside parking lot on July 2, 2004. The claimant states that when he backed out of a parking stall behind Ranger Hall, two large rods protruding 5-6 inches above the parking stop tore off the splashguard on the underside of his vehicle. The claimant contacted the university police and was told to contact the Claims Board. The claimant does not believe that the university inspects parking lots on a monthly basis as they allege, otherwise they would have found the rods. The claimant requests reimbursement of $110.35 for repair of his vehicle, $5.50 for film and film processing for pictures, and $20 for two hours time preparing this claim. The claimant is willing to accept elimination of this final damage amount, reducing his claim to $115.75. The claimant does have insurance coverage but his deductible is $500.

The University of Wisconsin recommends denial of this claim and does not believe there was any negligence on the part of the state or that there is any equitable reason for payment. The parking lot at Ranger Hall contains heavy recycled plastic parking stops at each parking space. The stops are secured in place by thick metal rods. The University states that these stops are not intended to be used as bumpers and that repeated forceful impacts by vehicles can occasionally cause the metal rods to protrude. The University states that, even assuming that the facts as presented by the claimant are true, there is no negligence on the part of the University. The University inspects the lot in question on a monthly basis, and the most recent inspection of the lot prior to this incident did not reveal any rods protruding from parking stops. In addition, no one had reported any protruding rods after the inspection and, therefore, the University had no notice of any problem. The University further states that it does not have the resources to inspect the lots more frequently. The University also states that it is possible that, instead of being a pre-existing condition, the rods could have protruded as a result of the forceful impact of the claimant's own vehicle at the time he pulled into the stall. Finally, although the University does not believe there is any basis for payment of this claim, should the Claims Board decide to award payment, the University believes it is not appropriate to reimburse the claimant for supplies and time spent in filing his claim with the Claims Board.

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.

15. Holcim, Inc., of Waltham, Massachusetts claims $11,100.00 for refund of an alleged overpayment in connection with the filing of the claimant's 2002 Foreign Corporation Annual Report. The claimant states that in section 10 of the report, its total assets were incorrectly listed as $132,189,562 and its total Wisconsin assets were incorrectly listed as $655,800. The claimant filed articles of correction for the 2002 report and requests a refund of the $11,100 overpayment that resulted from the incorrect figures that appeared in the original report.

The Department of Financial Institutions recommends against payment of this claim because the Department has no means by which it can verify the accuracy of the figures provided in either the original report or the articles of correction. The Department points to the fact that the claimant has exclusive control over all of the information on which these figures are based. The Department states that it made no error in processing the claimant's report and does not believe that the state should be held responsible for any alleged errors made by the claimant. The Department points to the fact that the Claims Board has a history of denying these types of claims because it cannot be established that the state committed any error.

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.

16. **Holcim, Inc.,** of Waltham, Massachusetts claims $1,930.00 for refund of an alleged overpayment in connection with the filing of the claimant's 2003 Foreign Corporation Annual Report. The claimant states that in section 10 of the report, its total assets were incorrectly listed as $124,574,028 and its total Wisconsin assets were incorrectly listed as $424,094. The claimant filed articles of correction for the 2002 report and requests a refund of the $1,930.00 overpayment that resulted from the incorrect figures that appeared in the original report.

The Department of Financial Institutions recommends against payment of this claim because the Department has no means by which it can verify the accuracy of the figures provided in either the original report or the articles of correction. The Department points to the fact that the claimant has exclusive control over all of the information on which these figures are based. The Department states that it made no error in processing the claimant's report and does not believe that the state should be held responsible for any alleged errors made by the claimant. The Department points to the fact that the Claims Board has a history of denying these types of claims because it cannot be established that the state committed any error.

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:

1. **The claims of the following claimants should be denied:**

   Timothy M. Rupiper

   Jacob C. Basten Construction Company, Inc.

   Richard and Nancy Derauf

   Ken Seubert

   Roger L. Bollinger

   Steve Fields

   J. O. Young

   Holcim, Inc. (2 claims)

2. **Payment of the following amounts to the following claimants from the following statutory appropriations is justified under s. 16.007, Stats:**

Steven Avery	$48,791.61	§20.505(4)(d), Stats.
Nicholas R. Schaid	$687.91	§20.465(1)(a), Stats.
Penetrator Sound and Lighting, Inc.	$5,000.00	§20.190(1)(h), Stats.
Jason Peter Koenigs	$640.20	§20.465(1)(a), Stats.
Matthew Neitzel	$1,000.00	§20.465(1)(a), Stats.
Kraig Nelson	$1,248.70	§20.465(1)(a), Stats.
Roy and Sandra Noack	$248.32	§20.115(1)(a), Stats.

Dated at Madison, Wisconsin this 14th day of December 2004.

Alan Lee, Chair
Representative of the Attorney General

John E. Rothschild, Secretary
Representative of the Secretary of Administration

Stan Davis
Representative of the Governor

Scott Fitzgerald
Senate Finance Committee

Dan Meyer
Assembly Finance Committee