STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings in the State Capitol, Grand Army of the Republic Memorial Hall, Madison, Wisconsin, on October 20, 2000, upon the following claims:

Claimant	Agency	Amount
1. Larry & Joanne Buwalda	Department of Revenue	$1,907.00
2. Estate of Yvonne A. Ozzello	Department of Revenue	$46,840.00
3. Robert & Rebecca Duckworth	Department of Transportation	$21,726.70
4. Jane Pope	Department of Health and Family Services	$5,002.40

In addition, the following claims were considered and decided without hearings:

Claimant	Agency	Amount
5. Conlee Cox	Dept. of Ag., Trade & Consumer Protection	$10.00
6. Lori Ann Cygan	Department of Corrections	$177.00
7. Paula J. Habeck-Ihlenfeldt	Department of Corrections	$177.00
8. Duane Dorn	Department of Regulation and Licensing	$250.00
9. Thomas & Rosalie Mikich	Department of Revenue	$237.36

In addition, the following claim, which was considered at a previous meeting, was considered and decided without hearing:

Claimant	Agency	Amount
10. Michael R. Schon	Department of Revenue	$190.31

In addition, the board considered the question of whether or not to hold a hearing for the following claim prior to resolution of legal appeals.

Claimant	Agency
11. Anthony T. Hicks	Wrongful Imprisonment (s. 775.05, Wis. Stats.)

The Board Finds:

1. Larry and Joanne Buwalda of Waupun, Wisconsin claim $1,907.00 for partial 1997 Farmland Preservation Credit disallowed by the Department of Revenue. The claimants state that the DOR incorrectly determined that their 1997 farm depreciation exceeded $25,000 and therefore, only allowed them a credit of $1,062. The claimants state that they received a notice informing them of the DOR's decision on April 21, 1998. The notice stated that the claimants had 60 days to respond. The claimants state that on May 31, 1998, their farm was devastated by a tornado, which caused considerable damage to their farm buildings and home. Because of this disaster, the claimants were unable to respond to the DOR's notice in a timely fashion. The claimants allege that it was only due to these mitigating circumstances that they did not respond to the DOR's notice in a timely fashion. Due to the DOR's error and the undue hardship experienced by the claimants, they request that the board award the remainder of their 1997 Farmland Preservation Credit.

The Department of Revenue admits that it erred in adjusting the claimants' income and that the DOR incorrectly issued a Notice of Adjustment to the taxpayers. The claimants had claimed a Farmland Preservation Credit of $2,969 but because of its error the Department only allowed a credit of $1,062. Because the claimants did not file a timely appeal as allowed by statute, the adjustment is final and conclusive and the Department is unable to allow any additional credit for 1997. However,

the DOR acknowledges that it does appear that circumstances beyond the claimants' control could have been a significant factor in their not meeting the 60-day deadline.

The Board concludes the claim should be paid in the amount of $1,907.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Claims Board appropriation s. 20.505 (4)(d), Stats.

2. The Estate of Yvonne A. Ozzello of Madison, Wisconsin claims $46,840.00 for refund of overpayment of taxes for the years 1992 through 1995. Ms. Ozzello was diagnosed with terminal cancer and was very ill throughout this period. The claimant states that Ms. Ozzello's illness was so severe that it was difficult for her even to pay someone to prepare her tax returns. Ms. Ozzello died in November 1999. The claimant states that before her death, Ms. Ozzello made every effort to get her tax filing up to date, but that her illness prevented it. The claimant believes that the DOR's assessments were excessive, especially in consideration of the taxpayer's illness. The claimant points to section 71.74 (3), Stats., which states that an assessment "shall be assessed by the department according to it's best judgement." The claimant does not believe that the DOR used its best judgement in determining these excessive assessments. The claimant also believes that there is inequity regarding the 2-year versus 4 year statute of limitations for claiming refunds under section 71.75 (5), Stats. This taxpayer would have fallen under the 4-year statute of limitations for claiming refunds for the 1993-1995 assessments had the statute's effective date not been deferred. The claimant requests refund of the overpayments, plus interest.

The DOR recommends denial of this claim. Section 71.75 (5), Stats., prevents the DOR from refunding the amounts paid on the estimated assessments for the years 1992-1995, since no refund was claimed within the prescribed two-year statute of limitations. The DOR issued a $24,589.95 refund to the claimant for years that were still eligible for refund and has no authority to issue any further refunds because of the statute of limitations.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

3. Robert and Rebecca Duckworth of Mauston, Wisconsin claim $21,726.70 for various damages allegedly caused by Department of Transportation errors and delays in processing their house moving permit applications. The claimants needed to move a house 1.5 miles to another location in Mauston. Moving the house would require police escort and utility company personnel to move power and phone lines. The claimants had received an approved permit and were ready to move the house on 11/11/99. The claimants state that on 11/10, a State Patrol Officer inspected the moving equipment and stated that the house could not be moved because there were no brakes on the dolly wheels. The claimants allege that the mover had never been required to use dolly wheel brakes and that when they tried to find out what law required them, no one could give them an answer. They state that the Patrol Officer told them the law had only been on the books since March 1999. The claimants state that this delayed the move several weeks, which increased the chance of bad weather. On 12/9/99, the mover told them that they had the brakes and were ready to go. The claimants allege that they applied for another permit on 12/10, but that their permit application was not processed in a timely fashion because the office was closed for a retirement party. They claim that this delay caused them to have to cancel the move scheduled for 12/15. The claimants further allege that the move could not be scheduled again until 1/13/00, because the DOT does not process permits during the holidays. The claimants state that a move scheduled for 1/18 was canceled due to bad weather and that the State Patrol canceled a 1/25 move because of lack of personnel to provide escort. The claimants allege that they applied for another permit on 2/3, but that errors by the DOT caused another delay. A 2/16 move was canceled by the phone company for lack of personnel. The house was moved on 2/23. The claimants also allege that there was no need for the DOT to require that the house move occur in the early morning hours (2:30-5:30 AM). They point to the fact that two other homes in the area were

recently moved in the daytime and do not believe that a daytime move would have caused major disruption for the community. The claimants state that a requiring a nighttime move resulted in extra expenses for police escorts, utility personnel overtime, and damage to their house, when a tree was struck because the movers could not see. They request damages as follows: $3,899.90 additional cost to utilities. $11,250.00 lost time of three workers at 25 hours per week for 15 weeks. $100.00 damage to the basement caused by the house sitting unheated during the winter. $825.00 damage to exterior of house. $1,225.00 damage to interior of house. $4,231.80 difference in interest over life of loan caused by rate increases. $195.00 overtime charge for police escorts.

The Department of Transportation recommends denial of this claim. The DOT states that the dolly wheel brake law was not a new law, as the claimants allege, but an existing law, which was explained by the DOT in a meeting with a house moving association in 1998. The DOT states that the 11/10 inspection revealed a number of violations in addition to the missing wheel brakes, including the fact that the actual load size was 7' longer and 4' wider than stated on the permit application. The DOT states that this size change alone, was enough to stop the move. The application permit submitted by Elver Permit Service on 12/10 was incomplete and therefore faxed back to Elver. On 12/13, Elver returned the completed permit and did not request priority processing. The DOT states that the change of the size of the load required another review of the permit application, which was completed within 72 hours, the normal turnaround time for reviews. The DOT further states that the retirement party had no effect on the claimants' permit processing. The office was not closed, but staff did take an hour-long break to honor a retiring employee. When the completed permit was received at 2:49 PM on 12/13, the party was already over. The DOT states that there is no prohibition on issuing permits during the holidays. An inspection on 1/3/00 found new violations and the load failed inspection. The DOT states that the State Patrol has no records of a move scheduled for 1/25 and that the 2/17 move was canceled by the movers because of phone company problems. The DOT points to the fact that the majority of the move delays were caused by uncontrollable circumstances, such as the weather, or by problems with utility or police personnel availability, none of which can be attributed to any alleged DOT errors. The DOT states that the original permit application submitted by Elver Permit Service indicated that the house would be moving directly through downtown Mauston, a heavy traffic area, through which it would be impossible to do a daytime move without major disruption to the local community. Although the route for the move was eventually changed in a later permit, the DOT still found that the size of the home, which because of its unusual height required the removal of many power lines, necessitated a nighttime move. The DOT believes that any damage caused to the home because the movers ran the house into tree branches is the responsibility of the movers, not the state. The mover has experience with nighttime movers and should have exercised more caution. Finally, the DOT states that the two houses moved during the daytime received their permits in another district. DOT had recommended that they also be moved at night, in accordance with standard procedure, however, the City of Elroy had reasons to expedite the moves and put pressure on the DOT to allow a daytime move. These daytime moves were exceptions to DOT's normal procedures. The DOT believes that the claimants' damages were caused by errors by their permit service and their movers and recommends denial of the claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

4. Jane Pope of Osseo, Wisconsin claims $5,002.40 for expenses allegedly incurred for emergency mental health treatment. The claimant is a resident of Trempeleau County. She has been clinically diagnosed with a chronic mental illness and attempted suicide by means of a drug overdose in August 1997. She was transported by ambulance to Tri-County Memorial Hospital. The hospital did not have the capability to treat the claimant, so she was transferred by ambulance to the Mayo clinic and then by helicopter ambulance to another hospital. The claimant has sought compensation from Trempeleau County under Chapters 51 and 55 of the Wisconsin Statutes. The county paid for the air ambulance,

but denied the ground ambulance treatment, in-patient treatment at Gunderson Lutheran Hospital and post-care treatment at Franciscan Skemp Healthcare. The claimant believes that the county violated the law by denying coverage for this treatment. She believes that the county was acting as an agent for the State and that the State is therefore responsible for paying this claim. The claimant alleges that the claimed services are appropriate mental health charges under Chapters 51 and 55 of the Statutes. Finally, the claimant points to the claims of Linda Miller and Mary Cochran, previously approved by the Claims Board, as precedent for payment.

DHFS recommends denial of this claim. DHFS believes that the county correctly denied this claim because, under Chapter 51, county agencies are responsible for mental health services but not for emergency medical services. DHFS believes that all of the services for which the claimant seeks payment are medical in nature. The county paid for one day of hospital stay related to psychiatric treatment but denied the remaining bills because they involved medical services. DHFS states that Chapter 51 does provide for county payment of "treatment" and "emergency services" for mentally disabled residents, however, those terms are narrowly defined by statute. Under Chapter 51, "treatment" is defined as services "designed to bring about rehabilitation of a mentally ill.... person" and "emergency services" relate to the "emergency detention" sections of Wisconsin's mental health and protective service laws. The treatment received by the claimant was intended to address the physical, medical condition caused by her overdose, not to "rehabilitate" her mental illness and there were no emergency detention procedures in place for the claimant. DHFS also believes that the state is not responsible for payment of this claim, regardless of the actions of the county. The claimant cites two previous Claims Board cases; however, both of these claims involve the Medical Assistance Program, which is established on a different statutory basis than mental health programs. There is no language in statute providing that DHFS exercises responsibility for or has general supervision over the mental health program, although this language does exist for the MA Program. DHFS believes that this claim is more closely analogous to the claim of Nemec Barningham Foster Care, which was denied by the Claims Board in October 1999. Finally, DHFS points to the fact that the claimant has provided no documentation that she has actually paid the bills for which she seeks reimbursement.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

5. Conlee Cox of Madison, Wisconsin claims $10.00 for the cost of two car washes allegedly needed to remove residue of Gypsy Moth spraying from his vehicle. The claimant states that on two occasions in May 2000, his car was coated in the spray from a Gypsy Moth spraying plane that flew over Truax Field, where his vehicle was parked.

The Department of Agriculture, Trade & Consumer Protection recommends denial of this claim. Under the terms of its contract, the contractor responsible for spraying agrees to indemnify and hold the state harmless from all suits and claims for any injuries or damages. The Department expends considerable time and money notifying citizens of spraying dates and areas. The Department expects that concerned citizens will take personal responsibility to mitigate the predictable inconveniences caused by spraying, such as spotting of vehicles. Furthermore, DATCP points to the fact that vehicle washing is a predictable necessity of owning a vehicle and vehicles become soiled in other situations such as local road work or residential constructions projects. The DATCP does not believe that the state should be held responsible for washing the claimant's vehicle when on two occasions he chose to park it in the spray block area with full knowledge of the likely outcome.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

6. Lori Ann Cygan of Green Bay, Wisconsin claims $177.00 for costs associated with obtaining a restraining order against a fellow Department of Corrections employee. The claimant is a Correctional

Officer at Green Bay Correctional Institution. In October 1999, the claimant was contacted by her superior and told that a fellow Officer, Kim Pruitt, had made a death threat against the claimant and other Officers. The claimant was warned not to go out or open her door for any reason. The next day, Officer Pruitt made a suicide threat and was taken to the Brown County Mental Health Center. She was released the next day and the claimant obtained a restraining order against her. Two weeks prior to this incident, Officer Pruitt had called GBCI and threatened to ram her vehicle into the institution wall. The claimant believes that this incident should have alerted GBCI officials that Officer Pruitt was having psychological problems and that they should have taken some sort of action at that time. Because of Officer Pruitt's threats and irrational behavior, the claimant believed that a restraining order was necessary to protect herself. She further states that she never would have incurred the expense of obtaining the restraining order had it not been for her employment at GBCI.

The Department of Corrections recommends payment of this claim on equitable grounds. The DOC believes that the claimant incurred these expenses solely because of her employment with the state. The Department does not believe that Correctional Officers and their families should bear the financial burden of legal expenses incurred solely and directly because of their employment with the DOC. The Department feels that this would not only be unfair but that it would also undermine officer morale.

The Board concludes the claim should be paid in the amount of $177.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Correctionss appropriation s. 20.410 (1)(a), Stats.

7. Paula J. Habeck-Ihlenfeldt of Green Bay, Wisconsin claims $177.00 for costs associated with obtaining a restraining order against a fellow Department of Corrections employee. The claimant is a Correctional Officer at Green Bay Correctional Institution. In October 1999, the claimant was contacted by her superior and told that a fellow Officer, Kim Pruitt, had made a death threat against the claimant and other Officers. The claimant was warned not to go out or open her door for any reason. The next day, Officer Pruitt made a suicide threat and was taken to the Brown County Mental Health Center. She was released the next day and the claimant obtained a restraining order against her. Two weeks prior to this incident, Officer Pruitt had called GBCI and threatened to ram her vehicle into the institution wall. The claimant believes that this incident should have alerted GBCI officials that Officer Pruitt was having psychological problems and that they should have taken some sort of action at that time. Because of Officer Pruitt's threats and irrational behavior, the claimant believed that a restraining order was necessary to protect herself. She further states that she never would have incurred the expense of obtaining the restraining order had it not been for her employment at GBCI.

The Department of Corrections recommends payment of this claim on equitable grounds. The DOC believes that the claimant incurred these expenses solely because of her employment with the state. The Department does not believe that Correctional Officers and their families should bear the financial burden of legal expenses incurred solely and directly because of their employment with the DOC. The Department feels that this would not only be unfair but that it would also undermine officer morale.

The Board concludes the claim should be paid in the amount of $177.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Correctionss appropriation s. 20.410 (1)(a), Stats.

8. Duane Dorn of Middleton, Wisconsin claims $250.00 for damage to his personal vehicle. The claimant is a Licensing Examination Specialist with the Department of Regulation and Licensing. The claimant's job duties include conducting annual audits of various private testing sites for professional licensing exams. The claimant was assigned to audit a site in Wausau on April 22. This site was only open on the second and fourth Saturday of each month. The April 22 date was selected because the claimant planned to be at his parents' home in Shawano in advance of the Easter weekend. Because he would be visiting his parents' home, he took his personal car. On the drive from Shawano to Wausau

on April 22, a large bird flew into the side of the claimant's car, damaging the driver's side mirror and door. The claimant's insurance covered all but his $250 deductible.

The Department of Regulation and Licensing does not disagree with the facts relating to this claim as presented by the claimant, but does not take any position as to the legal obligation of the state to pay this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

9. Thomas and Rosalie Mickich of New Berlin, Wisconsin claim $237.36 for a 1999 Lottery and Gaming Credit. The claimants state that they were out of town from December 1999 through March 2000, so they had their son pay their 1999 property tax bill. The claimants state that, upon their return, they realized that they had not received their 1999 Lottery and Gaming Credit. The claimants went to their city treasurer's office and filled out a late form. They allege that the city treasurer's office told them that this was the appropriate form to file for anyone who had not received their credit after January 31, and that the DOR would send them a check. The claimants received a letter from the DOR stating that the Department did not have legal authority to pay late claims for this credit. The claimants believe it is wrong for the state to withhold this money based on this technicality and they request their $237.36 credit.

The Department of Revenue recommends denial of this claim. The Department states that it was unable to make any payments for late claims of the 1999 Lottery and Gaming Credit due to the absence of legal authority. The Department sought legislation to make direct payments on late claims but the legislation did not pass during the 1999-00 session. The DOR intends to introduce legislation seeking authorization to pay these claims in the next legislative session. The Department points to the fact that the claimants could have designated their son or another person to act as their legal agent to complete and timely file an application with the county for the credit. This person could also have filed a late claim with the local treasurer by January 31, 2000.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

10. Michael R. Schon of Franklin, Wisconsin claims $190.31 for a lottery and gaming tax credit for 1999. The claimant states that he owned a home in Muskego, Wisconsin from January 1, 1999 to June 30, 1999, when the home was sold. He states that from June 30, 1999 to December 31, 1999, he owned a condominium in Franklin, Wisconsin. The claimant states that he has been told by both the Muskego and Franklin Treasurers' offices that he can not claim a lottery gaming property tax credit. The claimant states that the Muskego Treasurer told him that the credit "goes with the property" and that since the claimant no longer owns the Muskego property that he can not claim the credit. The claimant states that the Franklin Treasurer told him that administrative procedures required that no credit could be issued for any property that was not occupied as of January 1, 1999, therefore, the claimant could not claim the credit for his Franklin condominium, which he did not own until June, 1999. The claimant points to the language of section 79.10(9)(bm) of the Statutes, which states "Except as provided in ss. 79.175 and 79.18, every owner of taxable personal property or a principal dwelling on a parcel of taxable real property is entitled to receive a lottery gaming credit..." The claimant believes that the language of this statute clearly expresses that every property owner is entitled to the credit. He feels that nothing in the statutory language states that the credit "goes with the property" and believes that it was the legislature's intent to provide every property owner with a credit. The claimant states that the administrative procedure requiring that the property is occupied as of January 1, 1999, is an arbitrary, internal procedure and that it is the result of an incorrect interpretation of the statute.

The Department of Revenue recommends denial of this claim. The Department's position is that the lottery and gaming credit is a property tax credit. Therefore, the credit goes to the property, not the individual. The credit is allocated to a parcel of property and is displayed on a property tax bill. The property must be used by the owner of the property as his primary residence as of January 1. The credit is paid by reducing the property taxes otherwise payable on that property. The DOR believes that the claimant has based his claim on one phrase selected from the entire Subchapter II of Chapter 70 of the statutes. The Department alleges that when the entire subchapter is reviewed, it becomes evident that the lottery and gaming credit is a property tax credit. The DOR points to the fact that a basic rule of statutory construction is that all statutes must be read in their totality to derive their specific legislative intent. In furtherance of its argument, the DOR points to a recently enacted provision of the lottery and gaming credit law, s. 79.10(10)(bn), Stats. This section provides a procedure whereby the purchaser of a property during the year may claim the lottery and gaming credit, provided that the previous owner had used the property as his primary residence on January 1. The legislature therefore clearly intended that the credit to be claimed by the new owner of the Muskego property. Finally, the DOR states that the requirement that a property be both owned and occupied as of January 1 in order to claim the credit is clearly stated in s. 79.10 (10) and s. 19.10 (9) (bm), therefore, the claimant is not entitled to any lottery gaming credit on his Franklin property.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Anthony T. Hicks of Madison, Wisconsin has filed a claim with the Claims Board for innocent conviction under section 775.05, Stats. At this time, he has an action for legal malpractice pending against his trial attorney. The claimant requests that the board consider his claim prior to the resolution of his outstanding legal action.

The Board concludes that it is premature to consider this claim until after the claimant has exhausted all other avenues of relief.

The Board concludes:

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

   Estate of Yvonne A. Ozzello
   Robert and Rebecca Duckworth
   Jane Pope
   Conlee Cox
   Duane Dorn
   Thomas and Rosalie Mikich
   Michael R. Schon

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

Larry and Joanne Buwalda	$1,907.00
Lori Ann Cygan	$177.00
Paula J. Habeck-Ihlenfeldt	$177.00

3. The claim of Anthony T. Hicks should not be considered until all outstanding legal appeals have been exhausted.

Dated at Madison, Wisconsin this 26th day of October 2000.

Alan Lee, Chair
Representative of the Attorney General

Edward D. Main, Secretary
Representative of the Secretary of Administration

Sheryl Albers
Assembly Finance Committee

Lawrence A. Wiley
Representative of the Governor