STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on November 15, 2007 upon the following claims:

	Claimant	Agency	Amount
1.	Russ Darrow Toyota	Transportation	$5,000.00

The following claims were considered and decided without hearings:

	Claimant	Agency	Amount
2.	Plant & Flanged Equipment Co.	Revenue	$3,151.44
3.	The Engineer Company	Revenue	$76,952.00
4.	Boyd Richter	Natural Resources	$100.00
5.	William J. Wachowiak	Agriculture, Trade & Consumer Protection	$3,153.00
6.	Timothy Oestreich	Health & Family Services	$307.46
7.	Dale L. Rovik	Transportation	$131.88
8.	Carl Savonne	Veterans Affairs	$3,675.76
9.	Mark Brown	Corrections	$89.99
10.	Mark Brown	Corrections	$30.57
11.	Mark Brown	Corrections	$25.75
12.	Jerry Frazier	Corrections	$65.00
13.	Johnny Sullivan, Jr.	Corrections	$159.75
14.	Johnny Sullivan, Jr.	Corrections	$62.55
15.	Tomas Barajas	Corrections	$13.50

The Board Finds:

1. **Russ Darrow Toyota** of West Bend, Wisconsin claims $5,000.00 for damages related to the DOT's failure to carry forward a "Flood Damaged" brand from an Illinois vehicle title. In November 2005, the claimant accepted a 2000 Volvo as a trade-in from Dana Baldukas. The Volvo's title was free of any brands and the claimant appraised the vehicle at $7500. The claimant had the opportunity to sell the Volvo approximately one week later for $8200. Prior to finalizing the purchase, the buyer ran a Car Fax Report and discovered a flood damage brand on the vehicle and backed out of the deal. The claimant investigated the vehicle history and discovered an error in processing when the vehicle was titled in Wisconsin. The claimant states that the vehicle eventually sold for $2500 at auction. The claimant requests reimbursement of $5000, the difference between the appraised value of the vehicle and the reduced value of the vehicle after discovery of the flood damage brand.

The Department of Transportation does find negligence by a DOT employee and therefore recommends payment of this claim. DOT records indicate that Dana Baldukas purchased the vehicle from a salvage dealership in April 2002. The dealership submitted the title application along with an Illinois title branded "Flood Rebuilt." When issuing Ms. Baldukas' Wisconsin title, the DOT erred in not carrying forward the brand. The claimant contacted the DOT about this issue in March 2006, and was given information about filing a claim with Risk Management. However, the claimant did not contact DOT Risk Management to request a Notice of Claim form until January 2007. The claimant's Notice of Claim was rejected by the Department of Justice for failing to meet the requirements of § 893.82, Stats., and the claimant was referred to the Claims Board.

The Board concludes the claim should be paid in the amount of $ 5,000.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation § 20.395(5)(cq), Stats.

2. **Plant & Flanged Equipment Co.** of Blaine, Minnesota claims $3,151.44 for sales tax refund. The claimant is a Minnesota company that sells to customers in Wisconsin and

therefore has a Wisconsin sales tax permit and files WI sales tax returns every month. The claimant states that its customers sometimes do not submit tax-exemption certificates until after the claimant has submitted its sales tax return for the month. The claimant then has to submit an amended return. The claimant states that it was notified by a customer that there were additional tax-exempt invoices for the claimant's amended February 2006 return. While reviewing the earlier amended return, the claimant discovered a number of errors. The claimant states that it contacted the DOR helpline to obtain information about how to prepare the new amended return and then instructed its tax preparer to start over and make sure the corrected return was completely accurate. The claimant states that it received the DOR's July 26, 2006, notice about appealing the denial of the refund, but the claimant believed that the notice was invalid because the return being denied was incorrect. The claimant thought that by correcting and re-filing the return, the refund problem would be rectified. The claimant now realizes that it should have contacted the DOR to keep them better informed. The claimant has also taken steps to ensure the accuracy of its returns in the future, including replacing its tax preparer. Finally, the claimant notes that upon receipt of an exemption certificate from its customers, it issues credits to the customers, therefore, if the claimant does not receive this refund it will be a loss for the company.

The Department of Revenue recommends denial of this claim. The DOR states that it asked the claimant to submit additional information to verify its February 2006 claim for refund. The claimant did not submit the requested information and the DOR denied the claim for refund. The claimant received the denial letter, which included a notice that the claimant had 60 days to appeal the determination or it would become final. The claimant filed its corrected, amended February 2006, return on November 30, 2006, well beyond the 60 day appeal deadline. The DOR believes the claimant's request for refund is untimely and should be denied. Finaly, the DOR points to the fact that a possible remedy available to the claimant would be for its affected customers to file claims for refund directly with the DOR for any tax paid to the claimant in 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.

3. **The Engineer Company** of New York, New York claims $76,952.00 for income taxes withheld but neither allowed as a credit for two partners of the claimant partnership, nor refunded to the claimant. The claimant was a touring musical production that performed in Milwaukee in July and August 1999. Pursuant to Wisconsin tax law, the theater operator withheld and remitted Wisconsin income taxes for the performance. The claimant timely filed its 1999 Wisconsin Partnership Return. The claimant partnership consisted of 16 partners, 3 of which were corporate entities. The 1999 Partnership Return allocated to each partner its share of the withheld income taxes related to the 1999 performance. The clamant states that it was its long-standing practice to pass tax withheld at the partnership level through to its partners. The claimant states that this also has long been the practice of numerous other theatre production companies. The claimant states that two of its corporate partners filed Wisconsin corporation income tax returns, claiming credit for the income tax passed through from the partnership. Both partners were denied the requested refunds by the DOR, which told them that Wisconsin did not allow pass-through of income taxes from a partnership to a corporation. The claimant points to the fact that the DOR never notified the claimant—only the two corporate partners were notified that the income tax credit must be made by the partnership and no procedures were given explaining how the partnership should do so. The claimant states that because it was never notified by the DOR, it never had an opportunity to make a claim for refund until after the statutorily proscribed period had expired. The claimant believes this is a matter of equity, as the tax withheld has never been credited or refunded to any taxpayer—neither the partnership, nor its partners. The claimant points to the fact that, had the DOR been a commercial entity, it would have been required to remit the withheld but not credited tax to the Abandoned Property Program under the state's escheat laws. As a matter of equity, the claimant requests reimbursement for the tax refunds disallowed for its two corporate partners.

The Department of Revenue recommends denial of this claim. DOR records indicate that in December 2006, the claimant filed a claim for refund of tax withheld for their 1999

performance. Pursuant to § 71.52(2), Stats., this claim for refund must have been filed within four years of the due date of the tax return, and therefore would have to have been filed by July 15, 2004. The two corporate partners attempted to claim the withholding passed-through by the claimant on their corporate income tax returns for April 1, 1999 through March 31, 2000. The DOR disallowed the withholding and notified the partners that the pass-through was not allowed and that the partnership must claim the payments. The DOR points to the fact that, although the partnership was not directly notified, the DOR did notify two of the partners with the largest ownership percentage that the partnership had to claim the payment. These two major partners had ample time prior to the expiration of the statute of limitations (from mid-2000 to mid-2004) to notify the claimant partnership that it needed to file a claim for refund. The two partners apparently failed to do so. Finally, the DOR states that it has never allowed Wisconsin income tax to be passed through from a partnership to its partners. The DOR has a long-standing position that income tax withheld cannot be passed through to another entity or individual.

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. Boyd Richter of Janesville, Wisconsin, claims $100.00 for the cost of a dog carrier that was damaged in the performance of a DNR Warden's duties. The claimant and another warden received a complaint that a white-tailed deer was running around a neighborhood in Beloit and that a citizen had captured the deer. At the time he received the complaint, the claimant was closer to his home in Janesville, so he picked up his personal dog carrier crate from his home to transport the deer, which was a yearling doe, weighing approximately 50 pounds. The claimant and the other warden were able to get the deer into the carrier and placed the carrier into the back of the claimant's state truck. During transport, the deer tipped over the carrier and kicked a hole in the side. The claimant was able to stabilize the carrier and proceeded to an area of public land where he planned to euthanize the deer pursuant to DNR policy. While unloading the carrier, the fawn broke through the hole it had kicked in the carrier and was euthanized by the claimant. The claimant requests reimbursement for the cost of replacing his dog carrier.

The Department of Natural Resources recommends payment of this claim. Not only was it more expedient for the claimant to pick up his personal carrier, since he was closer to home, but the DNR would not have had any carrier large enough or strong enough to accommodate a live fawn. The largest carrier available was a cat-sized carrier. (The DNR has been looking into purchasing crates large enough for deer, but has not yet done so.) The only other option for the claimant would have been to go to the DNR service center and get a cardboard box, which clearly would not have been sturdy enough—it was absolutely necessary and appropriate for the claimant to use his own carrier. The DNR believes that the claimant the claimant should be reimbursed for his $100 damages, which is less than the average insurance deductible.

The Board concludes the claim should be paid in the amount of $100.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Natural Resources appropriation § 20.370(1)(hs), Stats.

5. William J. Wachowiak of Mukwonago, Wisconsin, claims $3,153.00 for the cost to replace two Ash trees on the claimant's property that were inadvertently destroyed by DATCP personnel conducting an Emerald Ash Borer (EAB) survey on March 15, 2007. The claimant states that when he returned from work, he noticed a pile of brush near the road across the street from his house. When he went to investigate, the claimant found that one of his Ash trees had been cut down and removed and another had been girdled five feet up the trunk (this girdling will eventually kill the tree). There was a DATCP sign near the tree indicating that it was an EAB test site. The claimant contacted the number on the sign and informed the DATCP that the trees they had cut down were on his property, not in the right of way. (The right of way is 33' from the center line of the road and the trees were located approximately 39' from the center line.) The claimant believes he should be compensated for the loss of his two trees. He does not believe it is fair that the State can come onto his land and destroy his property,

mistakenly or not, without offering any compensation. He requests reimbursement for the cost of replacing the two trees.

The Department of Agriculture, Trade & Consumer Protection contests the amount of this claim and recommends no more than a token payment to the claimant. Although no EAB infestations have yet been found in Wisconsin, the potential threat to the state from the EAB is significant. In response to this threat, a multi-agency plan was created. As part of that plan, the DATCP began an EAB detection survey in late 2006. This survey is focused primarily on trees located in the public right of way along state and county roads. DATCP staff select trees based on various criteria, including the tree's health and size. Because the width of the right of way varies, tree locators attempt to find survey markers or some other indication of the right of way. If they are unable to do so, they look for other factors such as mowing patterns or whether it appears that the trees are intentionally planted or actively cared for. The DATCP notes that the trees in this instance were not obviously associated with a house and did not appear to be planted or cared for because they were in a mixed stand of various age and species, including invasive plants, and because the health of the trees was not optimum. It was therefore not obvious to the tree locators that these were not public trees. As for damages, the DATCP points to the fact that the courts have generally determined damages by comparing the difference between the market value of the land before and immediately after damage to trees. Additionally, the Wisconsin Supreme Court has stated that owners of non-ornamental trees may not recover the tree's individual value, but only damages equal to the decline in real estate value caused by the tree's destruction. The DATCP believes states that trees in this instance clearly were not ornamental and provided, at most, a negligible amount of additional benefits to the claimant such as shading, boundary and screening, or storm water control. The DATCP believes that the destruction of these two trees has had virtually no effect on the value of the claimant's property. The DATCP believes that the claimant deserves an apology from the State but recommends that the Board not award anything more than a token payment to the claimant.

The Board concludes the claim should be paid in the reduced amount of $2,000.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation § 20.115(7)(qc), Stats.

6. Timothy Oestreich of Oshkosh, Wisconsin, claims $307.46 for damages related to the theft of a motorcycle by an escapee from Winnebago Mental Health Institute on July 2, 2007. The claimant states that he returned home from work and discovered that the motorcycle was missing. The claimant states that the motorcycle had been in the claimant's attached garage, that the garage door was down and had no windows and that the back service door had been closed but not locked. The clamant states that he immediately called the police and was informed by the responding officers that there had been an escape from WMHI. The next day the Waukesha County Sheriff's Department contacted the claimant, confirmed that the WMHI escapee had been the one to steal his bike and informed him that the bike had been found near the escapee's home. (The escapee had committed suicide at his home that morning.) The motorcycle had been towed to the Waukesha Co. Sheriff's Dept., however, no one at the Sheriff's Dept. could confirm that the bike was not damaged. The claimant rented a trailer to go pick up the motorcycle in Waukesha and had his mechanic check the bike when he got it home. The claimant also had to pay a towing fee to the Waukesha Co. Sheriff's Dept. The claimant later learned that the WMHI escapee had been committed on suicide watch and that he had escaped while he was alone in the outdoor courtyard. The claimant believes that WMHI was negligent in allowing someone on suicide watch to go outside alone and that this negligence was the primary cause of his damages, not the fact that the door to his garage was unlocked. The claimant states that he has lived in his home for 23 years and has never had anything stolen or had any problems related to residents of WMHI or the nearby Winnebago Correctional Center Camp. The claimant requests reimbursement for the costs he incurred related to this theft.

The Department of Health & Family Services recommends denial of this claim. The claimant admits that the back door to his garage was unlocked and that the keys were in the motorcycle. The DHFS believes that the claimant's failure to secure his garage and motorcycle was a major contributing factor to the theft. The DHFS further states that it can find no

statutory or common law basis for assuming responsibility for the actions of a patient while he was not on WMHI premises. Finally, the DHFS believes that the expenses claimed were voluntarily incurred by the claimant and that the department should not be held responsible for those 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.

7. Dale L. Rovik of Racine, Wisconsin, claims $131.88 for reimbursement of vehicle towing charges. In July 2007, the claimant's motorcycle broke down near the Kenosha Department of Motor Vehicles Service Center. The claimant pushed the bike into the DMV parking lot to check it over. When he realized he could not quickly fix the problem, he went into the DMV and asked an employee if it would be possible for him to leave the motorcycle in the parking lot overnight. The claimant states that the employee told him it would not be a problem and that she took down information about his bike so that she could let the cleaning service know not to have it towed. The claimant states that the DMV employee apparently forgot to notify the cleaning service, because his bike was ticketed towed later that night. The claimant states that the DMV manager intervened to have the ticket reversed but that he still had to pay the towing fees. The claimant requests reimbursement for those fees.

Although the Department of Transportation does not believe there was any negligence on the part of its employees, it has no objection to payment of this claim. This DMV Service Center is a leased facility and the building owner had signs posted in the parking lot stating that vehicles in the lot for more than 24 hours may be towed. The DMV staffer did intend to specifically mention the claimant's vehicle to the maintenance crew and forgot to do so, however, it has always been the understanding of DOT staff at the facility that, as stated on the parking lot signs, a vehicle can remain in the lot for up to 24 hours without being towed. The DOT states that it was the building owner's maintenance staffer who ordered the vehicle towed prior to the 24 hour limit. The DOT notes that the building owner has refused to reimburse the claimant for his towing fees and has also changed the parking lot signs—removing the 24 hour time limit. The DOT believes that it was the actions of the building owner's staff that caused the claimant's losses, however, the DOT does not object to reimbursing the claimant for his losses.

The Board concludes the claim should be paid in the amount of $131.88 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation § 20.395(5)(cq), Stats.

8. Carl Savonne of Madison, Wisconsin, claims $3,675.76 for medical expenses incurred due to a slip and fall at the Wisconsin Veterans Home in King, Wisconsin. The claimant was walking on the sidewalk outside Olson Hall and slipped on a patch of black ice that was hidden under a puddle of water. He fell backwards and struck his head on the sidewalk. Medical staff at the home examined the claimant and, because he was on blood thinners and there was some concern about a clot forming, they suggested that an ambulance be called and that the claimant receive further examination at the hospital. The claimant requests reimbursement for the amount of his medical expenses. The claimant has health insurance with a $100 deductible, but does not feel the bills should be covered by his insurance, since the incident occurred on state property.

The Department of Veterans Affairs records relating to this incident confirm the facts as presented by the claimant and the DVA does not object to payment of this claim.

The Board concludes the claim should be paid in the reduced amount of $100.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Veterans Affairs appropriation § 20.485(1)(gk), Stats.

9. Mark Brown of Waupun, Wisconsin, claims $89.99 for the cost of clothing destroyed by the DOC. The claimant is an inmate at Waupun Correctional Institution. He alleges that in July 2007, another WCI inmate rushed into his cell with the intent of doing him harm. The claimant alleges that as the inmate rushed in, he hit his head on the claimant's sink. The

claimant states that he then placed the other inmate in a headlock in order to keep him from attacking him and that the inmate bled on the claimant's clothing and shoes. The DOC took the bloodstained clothing and shoes and destroyed them. The claimant believes that the DOC did not properly supervise the inmate who attacked him and that they should have known that he would be a danger. The claimant believes that the DOC should reimburse him for his destroyed clothing and requests reimbursement for his destroyed shoes, t-shirt and boxer shorts.

The Department of Corrections recommends denial of this claim. The claimant was issued a conduct report related to this incident and was found guilty of being involved in a battery. Because the claimant's bloodstained clothing and shoes were considered contaminated, they were destroyed. The claimant filed an Offender Complaint requesting reimbursement for his clothing, but that complaint was denied based on DOC 309.20(3)(g), Adm. Code, which states, "Loss or damage to property caused by another inmate is not the responsibility of the institution." Although the claimant alleges that the DOC was negligent in supervising the other inmate involved in the altercation, he provides no evidence to support that claim. Based on the fact that the DOC was not responsible for the damage to the claimant's property, the department recommends denial of this claim.

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

10. Mark Brown of Waupun, Wisconsin, claims $30.57 for the cost of property allegedly lost by the DOC. The claimant states that in June 2007, he was transferred from the Wisconsin Secure Program Facility to Waupun Correctional Institution. The claimant alleges that when he received his property after the transfer, several items were missing, including two brushes, two nail clippers, a pamphlet, three photos and a book. The claimant filed an Offender Complaint regarding the missing property. The Inmate Complaint Examiner recommended that he be reimbursed for his nail clippers, but denied the remainder of his complaint. The claimant requests reimbursement for the following items: 2 brushes ($4.62), 1 pamphlet ($1.00), 3 photos $6.00, and one book ($18.95) for a total claim of $30.57.

The Department of Corrections recommends denial of this claim. The claimant's property was inventoried shortly after his arrival at WCI. There were a number of items in the claimant's property that were not allowed at WCI because they were classified as contraband. At that time, the claimant chose to have 13 photos and 12 publications mailed out of the institution. The claimant filed an Offender Complaint regarding the other items allegedly missing from his property. The Institution Complaint Examiner reviewed the complaint and recommended that the claimant be reimbursed for his nail clippers. However, the ICE noted that there were no additional publications shown to be in the claimant's possession before he transferred to WCI. The DOC believes that the allegedly "missing" pamphlet and book were among the pictures and publications that the inmate elected to mail out after his arrival at WCI. The DOC points to the fact that that the WSPF inventory of the claimant's property never showed any brushes and the claimant has failed to produce any receipt showing the purchase of the brushes. The DOC believes that the claimant has already been reimbursed for the only items proven to be missing from his property, the two nail clippers, and that his claim for the remaining items should be denied.

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

11. Mark Brown of Waupun, Wisconsin, claims $25.75 for the cost of a fan allegedly broken by DOC staff. The claimant was transferred from Racine Correctional Institution to the Wisconsin Secure Program Facility in July 2006, and from WSPF to Waupun Correctional Institution in June 2007. The claimant states that the DOC had possession of fan from April 2006 to June 2007 because he was in segregation status during that time. The claimant alleges that his fan worked perfectly in April 2006, the last time he had it in his possession. The claimant states that when he was transferred from WSPF to WCI, WCI staff indicated that the fan was not working and was therefore not allowed. The claimant alleges that the WCI property officer told him that he had checked computer records and verified that the fan had

been intact and working and that WSPF staff must have broken it. The claimant filed an Offender complaint regarding the fan. The complaint was denied, as was the claimant's appeal. The claimant requests reimbursement for his broken fan in the amount of $25.75.

The Department of Corrections recommends denial of this claim. This matter was fully reviewed through the Offender Complaint Program and the decision to dismiss the claimant's complaint was upheld on appeal. The Institution Complaint Examiner found that, although the fan was broken when it arrived at WCI, records from other institutions reveal that there were issues with the fan prior to the claimant's arrival at WCI, including an instance where "the motor cowling had to be re-attached to the unit." The DOC points to the fact that in May 2006, while at RCI, the claimant himself noted that his fan only worked "a little bit". It is DOC's belief that the fan has not been working properly for over a year and that the motor simply failed. The department therefore recommends denial of this claim.

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

12. Jerry Frazier of Waupun, Wisconsin, claims $65.00 for the cost of headphones allegedly damaged by and then destroyed by the DOC. The claimant is an inmate at the Wisconsin Secure Program Facility. On March 23, 2007, he was transferred from a segregated unit at WSPF to the general population. At that time, he received property that he had not been allowed while in segregation. The claimant alleges that when he received his property, he noticed that his headphones were damaged and that he immediately informed Property Officer Sherman of the damage. On March 30, 2007, he also contacted Unit Manager Tim Haines about the damage. On April 3, 2007, the claimant filed an Offender Complaint, which was dismissed. The claimant alleges that DOC's assertion that he would not have been given the headphones if they were damaged is false and that inmates often receive damaged items from Property Officer Sherman. The claimant points to the case of Inmate Silva, who received damaged property, then later filed a complaint and was compensated by the DOC for the damage. The claimant further alleges that the DOC incorrectly destroyed the headphones without his consent and that he should have been given the opportunity to mail them out. The claimant states that the damage must have occurred while the headphones were in the possession of DOC staff and therefore requests reimbursement for their purchase price, $65.

The Department of Corrections recommends denial of this claim. The DOC states that the claimant received his property on March 23, 2007, but did not inform DOC staff (Unit Manager Tim Haines) that the headphones were damaged until March 30, 2007, one week later. The DOC states that if any damage had been noted when retrieving the claimant's property from storage, the headphones would not have been given to the claimant. The DOC states that the claimant's assertion regarding the complaint of Inmate Silva is false. Inmate Silva's headphones were never returned to him because the damage was noted by DOC staff while inspecting his property. The claimant's headphones were also inspected and no damage was noted by the staff. The headphones were returned to the claimant and were in his possession for a week prior to any damage being reported. The DOC points to the fact that the claimant has provided no evidence that DOC staff damaged his headphones. The DOC also notes that, pursuant to DOC 309.20(3)(g), Adm. Code, "Repair of inmate property shall be at the inmate's expense." Finally, the DOC states that the claimant's headphones were properly destroyed. On April 2, 2007, prior to the filing of his complaint, the claimant approved the destruction of the headphones, along with other property, by signing a property disposition form indicating the property should be destroyed. The DOC believes that there is no evidence that the damage to the claimant's property was cause by DOC staff or that the property was improperly destroyed and that the claim should be denied.

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

13. Johnny Sullivan, Jr. of Boscobel, Wisconsin, claims $159.75 for the cost of a television allegedly damaged by and then improperly destroyed by DOC staff. On November 7, 2006, the claimant was transferred from Fox Lake Correctional Institution to the Wisconsin Secure Program Facility. He states that when WSPF staff first inventoried his property on November

9th, no damage was noted to his television. The claimant states that he was later notified on November 28th that the housing unit on his TV was cracked and that the unit was therefore considered damaged and was not allowed. The claimant states that he requested that the television be mailed out but that DOC staff instead destroyed the TV without his permission. He requests reimbursement for the cost of his television.

The Department of Corrections recommends payment of this claim in the reduced amount of $105.44. The DOC states that the claimant's TV arrived at WSPF with a cracked housing unit. DOC records indicate that at the time of the claimant's arrival at WSPF, intake of a large volume of property was occurring and staffing was minimal, therefore, there was a delay in notifying inmates about damaged property. The claimant filed an Offender Complaint regarding the damage, the Inmate Complaint Examiner recommended dismissal of that complaint and the Deputy Warden reviewed and agreed with the dismissal. The claimant was given notice of his right to appeal the decision but did not do so. The claimant sent an Interview/Information request asking that his TV be sent out. The property officer responded with a request that the claimant complete the appropriate paperwork but he failed to do so and the TV was destroyed. The DOC states that a number of inmates filed complaints with the Corrections Complaint Examiner and both the CCE and Deputy Secretary Rick Raemisch made the decision to reimburse inmates with damaged televisions, after depreciation. Pursuant to DOC policy, TVs are considered to have a life of 10 years and are therefore depreciated 10% annually. The claimant's TV was 3.5 years old. The original cost of the TV was $159.75 minus 34% depreciation ($54.31) = $105.44. Based upon the fact that other WSPF inmates in similar situations have been reimbursed for their TVs, the DOC recommends payment to the claimant of $105.44.

The Board concludes the claim should be paid in the reduced amount of $105.44 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation § 20.410(1)(a), Stats.

14. Johnny Sullivan, Jr. of Boscobel, Wisconsin, claims $62.55 for the cost of food items designated as "excess" and destroyed by DOC staff. The claimant was transferred from Fox Lake Correctional Institution to the Wisconsin Secure Program Facility on November 7, 2006. The claimant states that he had numerous food items in his property that DOC staff said he could not have because they were "excess." The claimant states that he filed a complaint but that it was dismissed. The claimant also alleges that he wrote to Correctional Officer Sherman and asked that his property be mailed out, but that CO Sherman told him that any excess property had to be destroyed and never gave the claimant the option of mailing out the items. He requests reimbursement for the items confiscated and destroyed by DOC staff.

The Department of Corrections recommends denial of this claim. The DOC states that the claimant was placed in segregation upon his arrival at WSPF and therefore the amount of property allowed in his cell was limited. DOC records indicate that the claimant's property was inventoried on November 9, 2006, and that he was given notice that he had expired and excess items in his property. The DOC states that CO Sherman spoke to the claimant and told him that he would need to dispose of this property but that the claimant refused to sign the Property Receipt/Disposition form, indicating how he wished to dispose of the items. DOC records indicate that the property was eventually destroyed on December 14, 2006. The claimant filed an Offender Complaint, which was dismissed. The claimant was given notice of his opportunity to appeal the decision, however he failed to do so. Finally, the DOC notes that the claimant's November 9, 2006, Property Inventory form shows that CO Sherman did allow the claimant to keep some of the food items he had purchased. The department does not believe it is responsible for reimbursing the claimant for his destroyed food items.

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. Tomas Barajas of Boscobel, Wisconsin, claims $13.50 for damages related to property confiscated and destroyed after a cell search at the Wisconsin Secure Program Facility. The claimant, an inmate at WSPF, states that 14 catalogs and a tube of toothpaste were confiscated during a cell search on 2/5/07. The claimant states that the guards told him that he could not

have the items because he was in step program status and that the items would be destroyed. The claimant filed a complaint on 2/6/07, requesting that the confiscated property be placed in his property box until such time as he was able to have it again. The claimant states that he received the decision on his complaint on 3/5/07. The claimant believes that he should have been allowed 10 days from his receipt of that decision to decide whether to mail out his property or have it destroyed but that he received a notice on 3/6/07 that his publications had been destroyed. He believes that the DOC prematurely destroyed his property and requests reimbursement of $13.50 to cover the cost of the publications.

The Department of Corrections recommends payment of this claim in the reduced amount of $1.75. The DOC states WSPF staff conducted a random cell search and discovered property that the inmate was not allowed while in step status. In response to the claimant's 2/5/07 Offender Complaint, the DOC recommended that the claimant be reimbursed for his toothpaste, because it was a processing error that allowed him to order that item, which he should not have been allowed to order due to his restricted status. The DOC states that the claimant was notified that he had 10 days to appeal this decision, but he failed to do so. The DOC states that the claimant should not be reimbursed for his publications. Pursuant to DOC 303.10 Adm. Code, these items were contraband and were properly disposed of pursuant to DOC 303.10(2) Adm. Code and DAI Policy 309.20.01. Finally, the DOC points to the fact that WSPF policies and procedures state that it is an inmate's responsibility to notify the mailroom that a complaint has been filed and that, if he fails to do so, the items may be destroyed prior to the complaint answer. The claimant failed to notify the mailroom and DOC therefore destroyed the contraband items.

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

The Board concludes:

That the claims of the following claimants should be denied:

Plant & Flanged Equipment
The Engineer Company
Timothy Oestriech
Mark Brown (3 claims)
Jerry Frazier
Johnny Sullivan, Jr. (claim for $62.55)
Tomas Barajas

That payment of the following amounts to the following claimants from the following statutory appropriations is justified under s. 16.007, Stats:

Russ Darrow Toyota	$5,000.00	§ 20.395(5)(cq), Stats,
Boyd Richter	$100.00	§ 20.370(1)(hs), Stats.
William J. Wachowiak	$2,000.00	§ 20.115(7)(cq), Stats.
Dale L. Rovik	$131.88	§ 20.395(5)(cq), Stats.
Carl Savonne	$100.00	§ 20.485(1)(gk), Stats.
Johnny Sullivan, Jr.	$105.44	§ 20.410(1)(a), Stats.

Dated at Madison, Wisconsin this 27th day of November, 2007.

Robert Hunter, Chair
Representative of the Attorney General

Cari Anne Renlund, Secretary
Representative of the Secretary of Administration

Nate Zolik
Representative of the Governor

Mark Miller
Senate Finance Committee