STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on December 9, 2010, upon the following claims:

	Claimant	Agency	Amount
1.	David W. Bateman	Employee Trust Funds	$3,245.61
	Daniel J. Bertler		$2,500.09
	James Flitter		$2,500.09
	Thomas K. Froehlich		$2,500.09
	Raymond Heiting		$126.11
	Steve E. Hoogester		$2,500.09
	Edward Lehmann		$126.11
	Peter J. Lieven		$2,500.09
	David Rettler		$2,500.09
	Duane R. Sawyer		$2,500.09
	Clarence A. Schwartz		$126.11
	James R. Shane		$3,200.09
	Tony R. Spaeth		$2,866.11
	Gordon Stowers		$126.11
	Paul Thiesen		$2,500.09
	Michael Towler		$2,500.09
	Lloyd R. Uelmen		$2,500.09
	William P. Vandenberg		$2,500.09
	James E. Vetter, Jr.		$2,500.09
2.	James Kroll	Natural Resources	$1,057.77
3.	Brett E. Williams	Revenue	$70,866.00
4.	David Turnpaugh	Innocent Convict (s. 775.05, Wis. Stats)	$18,682.89
5.	Robert Lee Stinson	Innocent Convict (s. 775.05, Wis. Stats)	$129,000.00

The following claims were considered and decided without hearings:

	Claimant	Agency	Amount
6.	Bill Karrels	Natural Resources	$1,150.92
7.	Pamela M. Kramer	Natural Resources	$1,287.04
8.	Jean A. Rygiel	Natural Resources	$195.89
9.	Speich Oil, Inc.	Agriculture, Trade & Consumer Protection	$312.52
10.	Rachel M. Conway	Corrections	$166.63
11.	Martin V. Elliott	Corrections	$98.70
12.	Carl Barrett	Corrections	$32.06
13.	Shafiq Imani	Corrections	$51.18
14.	Robert Kowalkowski	Corrections	$40.40
15.	Robert Kowalkowski	Corrections	$616.03
16.	Aquan Mobley	Corrections	$56.98

The Board Finds:

1. David W. Bateman et al. claim $39,817.33 for attorney's fees incurred due to legal action brought by the former part-time West Bend Police Officers against the City of West Bend regarding Wisconsin Retirement System (WRS) contributions. In 2002, claimant David Bateman became aware that the City of West Bend (City) had underreported his hours to WRS. Other part-time officers discovered the same error and in 2003 the officers hired an attorney and appealed to the Department of Employee Trust Funds (ETF). In 2004 the officers requested an administrative hearing and in January 2006, the hearing examiner ruled in favor of the officers. The City appealed to ETF and in July 2006, ETF ruled in favor of the officers.

The City appealed to the Circuit Court pursuant to Chapter 227, Wis. Stats. In March 2007, the Circuit Court affirmed ETF's decision in favor of the officers. The City paid back contributions and interest into the WRS. The claimants state that three of the officers involved in the original action were unable to receive any increase in their annuity because they were either "maxed out" for retirement or on Duty Disability. The portion of the City's payment for these three officers totaled $82,586.88. The 19 officers pursuing this claim request reimbursement for their attorney's fees from this amount. The claimants believe that ETF was enriched by obtaining these contributions for which they will not have to make any pay-outs and which the WRS would not have received were it not for actions pursued by these officers.

ETF recommends denial of this claim. The actions pursued by the claimants were against the City of West Bend. The final ruling by the ETF Board, which was affirmed by the Circuit Court, found that the City's prior practice was "unfair and unreasonable." ETF was not a party to these proceedings and was never found guilty of any wrongdoing in this matter. ETF states that, had it been a party to the proceedings, the claimants would have been able to make a claim for attorney's fees as part of the administrative hearing process. However, because ETF was not a party, no claim was possible. ETF notes that the legislature has not provided any other statutory basis for claiming attorney's fees against state agencies when there is an administrative hearing process. ETF further notes that contributions are often made on behalf of individuals who are at the statutory maximum or on Duty Disability. This occurs because the statutes require the contributions even though some individuals cannot receive an increased annuity. ETF does not believe that the fact that the original annuitants were unable to receive benefit from their action entitles the claimants to receive this money. Finally, ETF notes that the money the claimants are requesting is now part of the WRS. The Supreme Court has held that specific legislative action requiring a payment from the WRS is a violation of the Constitution. Therefore, the Legislature and Claims Board are prohibited from taking money from the WRS.

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.

2. **James Kroll** of Muscoda, Wisconsin claims $1,057.77 for cost of cleaning buildings and vehicles after his property was allegedly inundated with smoke during an April 2009 DNR prescribed burn. The claimant alleges that DNR had issued a "no burn" order on the date of the prescribed burn, which he heard announced on the radio. He states that the winds were high, which carried smoke to the claimant's property and made his family sick. The claimant states that he was not personally notified of the burn despite the fact that, after a similar circumstance 10 years earlier, he had been assured that he would be personally notified of any future burns. The claimant does not believe DNR should have conducted a burn on a day that they had issued a burn restriction. The claimant also objects to the large scale of these burns and believes that if DNR burned smaller areas, the smoke would not be such a problem. The claimant states that it is a lot of work to clean up the smoke after these burns and he does not want this to happen again. The claimant is requesting compensation for 53 hours time at $18 per hour for cleaning the interior and exterior of his home, shed and four vehicles, as well as the cost of cleaning supplies.

DNR recommends denial of this claim. DNR conducted a prescribed spring burn in the Snow Bottom State Natural Area on April 17, 2009. DNR denies the claimant's allegation that there was a burn ban in place on that day for DNR staff. DNR states it would not have been able to obtain a burn permit if a ban had been in place. DNR states that, contrary to the claimant's allegations the winds were not high, on the contrary, the weather conditions were highly conducive for the burn, with south winds at 5 mph and gusts up to 10 mph. DNR also notes that the burn did not occur "close to" the claimant's property, but in fact his property is over a mile away and at a higher elevation than the burn area, therefore it is unlikely that there would have been debilitating smoke at the claimant's property. DNR notes that there were no complaints regarding smoke or clean up costs from any of the property owners adjacent to the burn area. Although it is certainly possible that some smoke reached the claimant's property, it is unlikely it would cause damage to the extent claimed. Prior to the burn the department issued a press release, sent a letter to the Castle Rock Township Chair and notified the eight landowners adjacent to the burn. DNR states that the promise of

personal notification of future burns provided to the claimant over ten years ago was the result of a private landowner burning incident. Furthermore, the promise was made by a state legislator who is no longer in office and DNR had no record of this promise. DNR states that it did not notify the claimant because his property was over a mile away from the burn site. DNR notes that personnel and equipment costs for these burns are same per day regardless of the size of the burn; therefore, burning smaller parcels of land would not be cost effective. Finally, DNR notes that the claimant has submitted no evidence of the alleged damages or costs of clean up. The department believes that, even if some clean up was necessary, the costs alleged by the claimant are either too high or reflect items that would have been unavoidably impacted, such as exterior surfaces of vehicles or buildings. DNR states that this burn was conducted in full compliance with the law, appropriate notifications were provided, and given the distance of the claimant's property from the burn site, it is unlikely there was any measurable damage to his property.

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

3. Brett E. Williams of Oconomowoc, Wisconsin claims $70,866.00 for refund of overpayment of taxes. The claimant states that he was a successful owner of a general contracting business for over 15 years. The claimant states that in the 1990's, he developed financial difficulties relating to the economy and personal issues. Eventually, the IRS liquidated all of the claimant's business and personal assets and he lost his livelihood. The claimant states that his accountant also retired at this time and that due to his financial difficulties the claimant was unable to hire another accountant. The claimant states that he was unable to handle filing the complex business returns without an accountant and admits that he stopped filing tax returns for a number of years (1994-1999). In 2000, the claimant found employment and DOR began garnishing his wages. The claimant states that between the DOR garnishment and his child support payments he was left with little to live on and was unable to hire an accountant. The claimant had several contacts with DOR to discuss lowering the amount of the garnishment. The claimant states that he was never informed that there was a statute of limitations regarding claiming a refund for any tax overpayment resulting from the garnishment. In 2008, the claimant was finally able to hire and accountant and began to file his late tax returns. At that time he discovered that he had overpaid by over $70,000 and yet DOR alleged he still owed money for two of the tax years. The claimant does not object to paying penalties and interest on his late taxes, however, he believes an additional "penalty" of over $70,000 is usurious. He requests reimbursement of his overpayment.

DOR recommends denial of this claim. DOR states that this claimant has been a consistent late filer and notes that all of the tax returns relating to his claim (1994-2000) were filed over four years after the original notice of assessment. DOR states that the claimant was informed of the statute of limitations for claiming a refund by the department's collection agent. DOR states that the statute of limitations prohibits the department from refunding the overpayments for the years 1994-1996 and 1999-2000. DOR notes that there were taxes owed for the 1997 and 1998 tax years and that the department has been collecting on the current balance for those years. The department is willing to compromise and reduce the balance for these years to zero.

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. David R. Turnpaugh of Milwaukee, Wisconsin claims $18,682.89 for attorney's fees and compensation as an innocent convict pursuant to § 775.05, Stats. In March 2006, the claimant was convicted of one count of Prostitution in violation of § 944.30(1), Wis. Stats., and one count of Bail Jumping in violation of § 946.49(1)(a), Wis. Stats. The claimant was sentenced to 60 days in Milwaukee County Jail for the prostitution charge and ultimately served three days in custody and 57 days on electronic monitoring. The claimant served 12 months probation for the Bail Jumping charge. In September 2006, the claimant appealed his conviction on the grounds that there was insufficient evidence to support the prostitution

charge. The Court of Appeals ruled in his favor and reversed the conviction. In 2007, the Circuit Court entered a judgment of acquittal on both counts and ordered that the claimant be reimbursed by Milwaukee County and the DOC. The claimant requests $5,000 compensation pursuant to § 775.05, Stats., for the time he served on both counts. While on electronic monitoring, the claimant was only allowed to leave his residence for work-related activity. He states that this restriction had a substantial negative impact on his computer networking business, of which he was the sole employee. The claimant also requests $13,682.89 reimbursement for attorneys' fees relating to his initial defense, appeal and Claims Board claim.

The Milwaukee County District Attorney's Office believes that the jury transcripts from the claimant's original conviction speak for themselves. The DA's Office has no recommendation regarding this claim.

The Board concludes that the claimant has not presented clear and convincing evidence that he was innocent of the crime for which he was convicted. The Board further concludes that the claimant has failed to show that he was imprisoned, under the meaning of s. 775.05, Wis. Stats., as a result of this conviction.

5. Robert Lee Stinson of Milwaukee, Wisconsin claims $115,000 compensation as an innocent convict pursuant to § 775.05, Stats., and $14,000 attorney's fees on behalf of the Innocence Project for the 200 hours spent on his case at a rate of $70 per hour. In November 1984, the body of Ione Cychosz was found in Milwaukee. Ms. Cychosz had been beaten to death and there were numerous bitemarks on her body. In December 1985, the claimant was tried and convicted of Ms.Cychosz's murder. There were no witnesses against him and the only physical evidence was expert witness testimony purporting to "match" the claimant's dentition to the bitemarks found on the victim. The claimant notes that this bitemark "match" testimony was obviously incorrect, even at the time of his trial. It is plain from the images used at the trial that the claimant was missing a tooth where the perpetrator had an intact tooth and that the claimant had a tooth where the perpetrator was missing a tooth. The claimant's trial attorney failed to raise this obvious flaw in the bitemark testimony. Furthermore, the claimant notes that modern forensic odontology has debunked the bitemark analysis techniques used by the experts at the claimant's trial. After his conviction, the claimant obtained a reexamination of the bitemark evidence using more modern forensic odontological techniques. This new analysis actually excluded the claimant as a possible perpetrator. The claimant also requested DNA analysis of blood and saliva samples found on the victim's clothing. The State Crime Lab found and examined eight samples and conclusively excluded the claimant as the source of all eight samples. The claimant has always professed his innocence, stating that at the time of the murder he was at a party with friends, a story which has been corroborated by no less than five people, one of whom is a City of Milwaukee Police Officer. In January 2009, based on the new bitemark analysis and DNA evidence, the circuit court vacated the claimant's conviction and sentence. In July 2009, the State dismissed all charges against him. Finally, in May 2010, the DNA of convicted murderer Moses Price was matched to the scene and Mr. Price confessed to the murder of Ms. Cychosz. The claimant requests reimbursement for 23 years wrongfully spent in prison at the statutory reimbursement of $5,000 per year ($115,000).

The Milwaukee County District Attorney's Office very strongly supports Mr. Stinson's claim.

The Board concludes that there is clear and convincing evidence the claimant was innocent of the crime for which he was convicted and that pursuant to s. 775.05, Stats., the claim should be paid in the amount of $25,000.00, from the Claims Board appropriation s. 20.505(4)(d), Stats. The Board believes that this maximum amount of compensation allowed under s. 775.05, Stats., is not adequate in this case and therefore also recommends to the Legislature an additional payment to the claimant of $90,000.n

6. Bill Karrels of Port Washington, Wisconsin claims $1,150.92 for damage to a field caused by DNR warden's vehicle. On Thanksgiving Day 2009, the claimant found a conservation warden's truck mired in one of his farm fields. The warden told the claimant he was conducting hunting patrols and that he had followed vehicle tracks into the claimant's field and his vehicle became stuck in the wet soil. The warden's truck was towed out of the field but there were deep ruts remaining in the field. The claimant believes the wet conditions

should have been obvious to the warden because there was standing water in the field. The claimant states that this field (1.3 acres) was seeded with alfalfa. The claimant states that the wet conditions and heavy, clay soil in the field did not allow him to just fill in the ruts but that he had to plow under and replant the entire field because of the damage. The claimant requests reimbursement for costs relating to preparation of the field ($88.71), fertilizer ($338.32), seed ($107.64), loss of the first cutting of the field ($536.25), and 4 hours additional labor and time to prepare this claim ($80).

DNR believes the claim should be paid in the reduced amount of $300. The department states that the warden involved in the incident was conducting routine patrols during the gun deer season when he discovered what appeared to be fresh tire tracks entering the claimant's field and traveling towards a wooded area. The warden entered the field, following the already existing tire tracks but approximately 22 yards into the field the truck became stuck in the soft soil. DNR notes that another individual had already driven into the field and caused damage, therefore all of the damage is not attributable to the department. DNR also questions whether it was necessary for the claimant to replant the entire field, when only about 10% of the field was damaged. DNR also believes that several of the cost estimates provided by the claimant are either too high or unnecessary. The department does acknowledge that there was some damage caused by this incident but believes that given the pre-existing damage and the limited area of the damage that the claimant should be reimbursed in the reduced amount of $300.

The Board concludes the claim should be paid in the reduced amount of $300.00 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 s. 20.370(3)(mi), Stats.

7. Pamela M. Kramer of Gleason, Wisconsin claims $1,287.04 for damage to her vehicle caused by vandals at Big Arbor Vitae Boat Landing and picnic area. The claimant states that she and her husband went fishing at the Big Arbor Vitae Boat Landing for the first time on August 1, 2010. She states that they arrived at 6 AM, launched their boat and parked their vehicle and boat trailer in the parking lot. She states that there were no other vehicles parked in the parking lot and that there were no parking space lines painted. They therefore pulled their vehicle and trailer up to one of the concrete parking curbs placed around the outside of the parking area. The claimant states that when they returned to their vehicle at 7 PM, other vehicles were parked in the middle of the lot, which left their vehicle blocking the turn-around area for the boat launch. They found a note under the windshield of their vehicle chastising them for parking in the middle of the drive and the words "Fuck You" keyed into the driver's side door of their vehicle. The claimant believes that had there been parking lines painted in the lot, this never would have happened. The claimant notes that the DNR has since added painted lines to the lot. The claimant states that she had purchased her vehicle just before this incident and requests reimbursement for the damage. She has received an estimate of $1282.04 to fix the damage and was charged $5.00 for a copy of the police report of this incident. The claimant has vehicle insurance with a $250 deductible.

DNR recommends denial of this claim. The department points to Wisconsin's Recreational Immunity Law, s. 895.52, Stats., which holds DNR harmless for property damage suffered by recreational park users, unless DNR has committed a malicious act. DNR states that the lack of lines in the parking lot was certainly not a malicious act and that there was no requirement that such lines be in place. DNR notes that very few of the approximately 50 parking lots associated with boat ramps in that area have lines painted. DNR staff also notes that regular users of boat landings know to park in the middle of the lot and use the outside to maneuver. DNR states that a reasonable person would have been able to figure this out regardless of the lack of parking lines. The claimant made a mistake which was not only costly to her, but also inconvenienced all the other boat users at Big Arbor Vitae that day, who had difficulty launching their boats because of her parking error. DNR believes there is no legal or equitable basis for payment of this claim.

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

8. Jean A. Rygiel of Chippewa Falls, Wisconsin claims $195.89 for damage to her personal vehicle. The clamant is employed by the DNR in Eau Claire, Wisconsin. On Friday, April 30, 2010, she left her personal vehicle at the Eau Claire office and took a state vehicle home so that she could pick up a coworker in Ladysmith and drive to a meeting in Wausau early Monday morning. The claimant's home is 25 miles closer to Ladysmith than the Eau Claire office, which made bringing the state vehicle home more practical. While the claimant's personal vehicle was parked at the Eau Claire office, vandals struck, damaging her vehicle as well as 14 other vehicles and the office itself. The claimant's windshield was smashed by the vandals. The claimant states that she has liability coverage only and is therefore requesting reimbursement for the full cost of replacing her windshield.

DNR recommends payment of this claim. While it is usually DNR policy to deny claims by employees for damaged personal property, the department believes that the circumstances of this case warrant an exception to that policy. DNR states that it is common practice to leave a personal vehicle overnight at the office while making use of a state vehicle for business purposes. DNR notes that this is a classic "but for" situation—but for the claimant's work related trip and the common practice of leaving personal vehicles at work in such situations, her vehicle would not have been damaged. DNR notes that 12 state vehicles at the Eau Claire office were vandalized, leading to the conclusion that if the claimant had taken her personal vehicle to the meeting and left the state vehicle behind, it would have been vandalized instead. Either way, the department would have sustained a loss. DNR believes that the claimant should be reimbursed based on equitable principles

The Board concludes the claim should be paid in the amount of $198.89 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 s. 20.370(1)(ea), Stats.

9. Speich Oil, Inc. of Brodhead, Wisconsin claims $312.52 for property damage caused by a DATCP inspector. On May 24, 2010, DATCP inspector, Stephen Peters was inspecting meters on the claimant's fuel oil delivery trucks. While inspecting one of the truck meters, the nozzle handle broke off in Mr. Peters' hand. The claimant requests $312.52 to replace the broken nozzle.

DATCP has no objection to payment of this claim. While there is no evidence that Mr. Peters was negligent, the nozzle did break while he was using it. DATCP therefore has no objection to payment of the replacement cost for the equipment.

The Board concludes the claim should be paid in the amount of $312.52 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 and Consumer Protection's appropriation s. 20.115(1)(j), Stats.

10. Rachel M. Conway of New Berlin, Wisconsin claims $166.63 for out-of-pocket expenses relating to an incident of vandalism to her vehicle. The claimant is a probation agent employed by DOC. She states that on June 30, 2009, she drove her personal vehicle to a meeting at Horizon Halfway House in Milwaukee. The claimant states that she only used her personal vehicle because there were no state vehicles available. The claimant states that as she and her co-worker, Agent Arbogast, pulled out of the parking stall after the meeting, they heard a loud sound and the claimant's rear windshield shattered. The agents left the parking lot quickly due to the possibility they were being shot at. They pulled over after several blocks to call the police and discovered a rock in the back seat, which had apparently been thrown through the claimant's windshield. The claimant had the rear windshield replaced at a cost of $295.63. The claimant's co-workers took up a collection to help her with the expense and raised $129.00. The claimant has a $500 insurance deductible. She requests reimbursement for her remaining out-of-pocket cost of $166.63.

DOC recommends denial of this claim. DOC Fleet Policy states that "[d]amages to the employee's personal vehicle are covered by the employee's own auto insurance and the employee is responsible for the insurance deductible. Under no circumstances will the State's property program pay for the employee's vehicle repairs. It is the employee's responsibility to carry personal auto liability insurance." DOC points to the fact that at no time was the claimant's vehicle under the care, custody or control of DOC and the claimant makes no

allegation that the damaged was caused by a DOC employee or agent. This incident appears to be the result of random vandalism. Based on the facts giving rise to this incident and the clear DOC Fleet Policy regarding damage to personal vehicles, DOC believes this 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.

11. Martin V. Elliott of Green Bay, Wisconsin claims $98.70 for the value of property allegedly lost by DOC staff. The claimant is an inmate at Green Bay Correctional Institution. He was placed in segregation on June 23, 2009, following a fight with his cellmate. DOC staff inventoried his property on June 25, 2009, and placed it in a locked storage unit. The claimant states that he made several requests for a copy of the property inventory but never received one. He also states that while he was in segregation, he received letters from several inmates in the general population telling him that his former cellmate was trying to sell two pair of the claimant's shoes. The claimant contacted DOC staff, who informed him that they recovered both pair of shoes. The claimant was released from segregation and received his property back on November 11, 2009. The claimant states that the officer returning his property pushed the claimant into signing the inventory form without checking all of his property. The claimant states that when he finished searching his property, he realized immediately that there were items missing. The claimant alleges that a DOC employee, Sgt. Pagel, witnessed that he was missing property. The claimant filed an inmate complaint on November 13, 2009. The claimant's complaint was denied and he does not believe that DOC conducted a thorough investigation. The claimant believes that the fact his former cellmate had possession of his shoes is proof that DOC staff was negligent in storing his property while he was in segregation. The claimant requests reimbursement for his missing property.

DOC recommends denial of this claim. DOC believes there is no evidence to support the claimant's assertion that DOC staff is responsible for his lost property. DOC notes that the claimant was not in segregation status and had access to his property between June 5th and 25th. DOC points to the fact that a comparison of the February 26 and June 25, 2009, property inventories show that several of the items in question went missing prior to the claimant going to segregation on June 25th. DOC also notes that the claimant's property was returned to him on November 11th but he did not complain of missing items until November 13th. DOC Sgt. Pagel states that on November 11, 2009, the claimant signed his property inventory without going through all of his boxes of property. DOC believes that the claimant had ample opportunity to lose, trade or discard the property before or after he was placed in segregation. DOC believes that his former cellmate's possession of the claimant's shoes is evidence that the cellmate pilfered some of the claimant's property before he was placed in segregation. DOC denies that the department's investigation was inadequate. DOC states that both the claimant and his former cellmate were interviewed several times and searches conducted for the missing property. DOC simply found no evidence that staff was responsible for the property loss.

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. Carl Barrett of Boscobel, Wisconsin claims $32.06 for the cost of 5 books allegedly lost by DOC and one kufi cap allegedly stolen by a DOC Officer. The claimant states that he purchased the books in 2008 and that they were missing from his property on October 16, 2009. The claimant notes that other books purchased at the same time were not missing from his property. The claimant filed a complaint about the missing books. The claimant's complaint was denied as being past the 14-day time limit. The claimant states this is not true and that the only delay was caused because DOC did not send a requested receipt copy in a timely manner. The claimant also requests reimbursement for an Islamic prayer cap (kufi). The claimant alleges that his kufi was in his cell prior to a cell search but missing after the search and several of the claimant's personal photos were ripped in half. The claimant alleges that the officer who conducted the search has a long history of harassing him and other inmates. The claimant states that he filed a complaint about the officer's conduct but that

DOC always sides with its officers and never really investigated his complaint. The claimant requests reimbursement for his allegedly lost and stolen property.

DOC recommends denial of this claim. DOC states that the claimant was in Administrative Confinement Status on September 23, 2009, and was housed in Echo Unit. The claimant had control of his property in his cell in Echo Unit. The claimant was moved to a new cell in Alpha Unit on October 16, 2009. At that time, his property was packed up and he was given a property receipt. DOC notes that the books claimed as missing are not listed on that property receipt. Thus, during the time frame the claimant alleges the books went missing, they were under his control in his cell, not under the control of DOC staff. DOC states that there is no evidence that the claimant's kufi was stolen and/or pictures damaged by a DOC officer during a cell search. Finally, DOC notes that the claimant has a long history of falsely accusing staff members of misconduct and the department believes that this claim is simply a continuation of that pattern.

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. Shafiq Imani of Portage, Wisconsin claims $51.18 for the unreimbursed value of a typewriter lost by DOC staff. The claimant is an inmate at Columbia Correctional Institution. In January 2010, the claimant was placed in segregation and his property, including his typewriter, was inventoried and stored by DOC staff. When the claimant was released from segregation status in April 2010, his typewriter was not returned with the rest of his property. DOC staff searched property storage for the typewriter but determined it had been lost. The full purchase price of the typewriter in 2007 was $127.97. The claimant was reimbursed $76.79 based on the institution's depreciation schedule. The claimant believes he is entitled to be reimbursed for the full purchase price of the typewriter under replevin law. The claimant does not believe the DOC depreciation schedule is legal because DOC staff was clearly negligent in losing his typewriter. The claimant requests reimbursement for the remainder of the purchase price of his typewriter.

DOC believes the claimant has already been fairly compensated and recommends denial of this claim. DOC does not dispute that staff lost or misplaced the claimant's typewriter while it was in storage. The Wisconsin Administrative Code DOC 309.20(5) provides "In case of loss or damage caused by the staff of an institution, the value of an inmate's personal property shall equal its value at the time of loss or damage, not to exceed its purchase price." DOC has established a Depreciation Schedule to determine the values of various items of property. Given the large number of inmates housed by DOC, it is inevitable that personal property will sometimes be misplaced. The Depreciation Schedule provides a fair and uniform method to determine the value of inmate property at the time of the loss. The schedule gives a typewriter a value of 5 useful years, therefore its value depreciates 20% per year. The claimant's typewriter was depreciated by 40% and his reimbursement was calculated based on that depreciation. DOC does not believe he is entitled to any further compensation.

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.

14. Robert Kowalkowski of Green Bay, Wisconsin claims $40.40 for the value of property allegedly lost by DOC staff when the claimant was transferred from Oshkosh Correctional Institution (OSCI) to Green Bay Correctional institution (GBCI). The claimant notes that a GBCI property staff member admitted that he "failed to completely fulfill his responsibilities" in inventorying the claimant's property upon receipt at GBCI. The claimant states that he did everything he could to get his property back, including filing an inmate complaint, which was denied. The claimant objects to DOC's statements regarding his criminal history or "poor institutional adjustment." He believes that those issues have nothing to do with this claim and that because the property was lost while under DOC control, he should be reimbursed.

DOC recommends denial of this claim. The claimant was transferred from OSCI to GBCI on January 15, 2010. When he was received at GBCI, the property provided to him was inventoried. DOC states that an inventory staff member has admitted that he did not fully document all items that came to GBCI with the claimant. However, DOC notes that records

indicate that the claimant received a significant amount of property that did not belong to him when he arrived at GBCI. DOC states that this appears to show that there was property mix-up of some kind but notes that at no time did the claimant report that he received excess property. DOC also points to the claimant's long history of rule breaking and poor institutional adjustment. DOC notes that the claimant waited a month to file a complaint regarding his allegedly missing property and the department believes that this delay was an attempt to avoid calling the staff's attention to the extra property received by the claimant. DOC properly denied the claimant's inmate complaint as untimely. Finally, DOC believes that if the property was lost by DOC staff, the claimant's delay in filing a complaint and bringing this claim place the department at a disadvantage. Had the claimant timely reported the missing property, the matter would have been investigated promptly, giving staff a better chance of finding the property. DOC believes that the claimant's delay and his "unclean hands" caused by his willingness to keep another inmate's property, warrant 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.

15. Robert Kowalkowski of Green Bay, Wisconsin claims $616.03 for the value of property allegedly improperly destroyed by DOC staff after the claimant was transferred to Green Bay Correctional institution (GBCI). On January 15, 2010, upon arrival at GBCI, the claimant received a property receipt/disposition form from staff, informing him of property that was not allowed at GBCI. The form stated that the claimant needed to provide an address to which he wanted the property mailed within 10 days of a denial of his inmate complaint. The claimant filed an inmate complaint on February 1st but it was returned by the Inmate Complaint Examiner (ICE) for clarification. The claimant filed again on February 16th and the ICE again returned the complaint, this time telling the claimant he needed to attempt to work out the issue with property room staff. On March 3rd the claimant wrote the ICE asking when the 10 day time limit to provide an address began. The examiner replied "Once a decision is made by the ICE the property room sends the item in question out." On March 7th the claimant sent the mailing address to the property room staff. Staff responded that on February 10th, the ICE had informed them that the claimant had failed to file an inmate complaint and therefore property staff destroyed the excess property on February 24th. The claimant believes the destruction of his property was in violation of DOC property rules. He believes that staff violated DOC 309.20 by not providing him with 10 days notice prior to the destruction of his property. He also believes that the rules state that absent a specific address provided by the claimant, excess property should have been mailed out to an individual on his visiting list. The claimant denies that any of the property in question was stolen. He filed a complaint and appeal regarding the destruction of his property, both of which were dismissed.

DOC recommends denial of this claim. At the time of his transfer to GBCI, the claimant possessed an unusually large amount of property, including several items that were clearly altered and therefore declared contraband. The claimant received notice of his disallowed property on January 15th. DOC rules provide that an inmate complaint must be filed within 14 days of the incident, which in this case would have been the receipt of the property notice. The claimant twice filed a complaint but each time it was rejected as improperly filed. The claimant failed to timely file a proper complaint. In addition, the claimant failed to provide an address to which he wished his property mailed within the required 10 day time period. Although the claimant did eventually provide an address, it was well after the expiration of the time limit and the claimant's property had already been destroyed. DOC notes that even if the 10 day limit had not elapsed, GBCI policy gives the institution the right to determine how to dispose of contraband and non-allowable property and the destruction of the property was in compliance with DOC 303. Finally, DOC states that the claimant has a long history of disregard for the property rights of others and clearly does not come before the board with clean hands, since some of the property in question was almost certainly stolen.

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. Aquan Mobley of Fox Lake, Wisconsin claims $56.98 for the value of tennis shoes allegedly lost by DOC staff while the claimant was an inmate at Kettle Moraine Correctional Institution. On July 17, 2009, inmate Markese Jones was disciplined for unauthorized possession of the claimant's tennis shoes. The disciplinary decision indicates "Return shoes to Mobley, Aquan" however DOC staff incorrectly destroyed the shoes as contraband on July 16, 2009. On August 13, 2009, the claimant filed an inmate complaint because his shoes had not been returned. The complaint was rejected as past the 14 day time limit. The claimant appealed and the appeal was denied. The claimant believes he should be reimbursed for the shoes which were improperly destroyed by DOC staff.

DOC recommends reimbursement of the claimant in the reduced amount of $7.18. DOC notes that the claimant's inmate complaint and appeal were correctly denied because the claimant failed to follow correct procedures for filing his complaint. However, DOC does not dispute that the shoes were destroyed in error and should have been returned to the claimant. DOC notes that the shoes were purchased in November 2006 and that the original purchase price was $59.83. DOC uses a property depreciation schedule to establish fair and uniform guidelines for reimbursing inmates. The depreciation schedule provides that tennis shoes have a useful life of 3 years and therefore depreciate by 33% for each year of use. Based on the purchase date, the claimant's shoes had depreciated by approximately 88% at the time they were destroyed. DOC therefore recommends reimbursement to the claimant of $7.18, 12% of the original purchase price.

The Board concludes the claim should be paid in the reduced amount of $7.18 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 s. 20.410(1)(a), Stats.

The Board concludes:

That the following identified claimants are denied:

Carl Barrett
David W. Bateman
Daniel J. Bertler
Rachel M. Conway
Martin V. Elliott
James Flitter
Thomas K. Froehlich
Raymond Heiting
Steve E. Hoogester
Shafiq Imani
Robert Kowalkowski (2 claims)
Pamela M. Kramer
James Kroll
Edward Lehmann
Peter J. Lieven
David Rettler
Duane R. Sawyer
Clarence A. Schwartz
James R. Shane
Tony R. Spaeth
Gordon Stowers
Paul Thiesen
Michael Towler
David R. Turnpaugh
Lloyd R. Uelmen
William P. Vandenberg
James E. Vetter, Jr.
Brett E. Williams

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

Bill Karrels	$300.00	s. 20.370(3)(mi), Stats.
Jean A. Rygiel	$195.89	s. 20.370(1)(ea), Stats.
Speich Oil, Inc.	$312.52	s. 20.115(1)(j), Stats.
Aquan Mobley	$7.18	s. 20.410(1)(a), Stats.

That payment of the below amounts to the identified claimants from the following statutory appropriations is justified under s 775.05, Stats:

Robert Lee Stinson	$25,000.00	§ 20.505(4)(d), Stats.

The Board recommends:

Payment of $90,000 to Robert Lee Stinson for Innocent Convict Compensation pursuant to s. 775.05, Ststs.

Dated at Madison, Wisconsin this 27th day of December 2010.

Steve Means, Chair
Representative of the Attorney General

Dave Hansen
Senate Finance Committee

Susan Crawford
Representative of the Governor