

STATE OF WISCONSIN CLAIMS BOARD

On April 20, 2021, the State of Wisconsin Claims Board met via Zoom videoconference and considered the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. David Martens	Transportation	\$2,143.95
2. Andrew Pelkey	Transportation	\$150.00
3. Sam Hadaway	Innocent Convict Compensation	\$25,000.00

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
4. Lauren Coffey & Shannon Cook	University of Wisconsin	\$9,811.70
5. Frank Davidson	Corrections	\$177.85
6. Wesley Renard	Corrections	\$842.13
7. Ronald Lane	Corrections	\$234.03
8. Victor Robinson	Corrections	\$607.14

With respect to the claims, the Board finds:

(Decisions are unanimous unless otherwise noted.)

1. David Martens of Chippewa Falls, Wisconsin claims \$2,143.95 for vehicle damage allegedly related to an incident in Chippewa County. Martens states that on 6/23/19 he was driving east on Melby Road in the Village of Lake Hallie when his vehicle “bottomed out” hard in a large dip in the road just before the bridge over Highway 53. Martens states that he was going the speed limit and had no time to slow down before hitting the dip in the roadway. He did not realize at the time that there was any damage to his vehicle. He did notice small wet spots under his car after the incident, but thought it was just moisture coming from the air conditioner. Approximately 2 months after this incident, Martens moved the vehicle into storage for the winter. In April 2020 he brought the vehicle out of storage and took it for an oil change. The mechanic told him there was a small leak in the top of the radiator where the brackets connect. Martens mentioned the earlier incident to the mechanic, who said it was the likely cause of the damage. Martens contacted the City of Chippewa Falls, Village of Lake Hallie, and Chippewa County trying to resolve this claim and Chippewa County told him he needed to pursue the claim with the State of Wisconsin. Martens is frustrated by the fact that neither the county nor the state will take responsibility for this incident and points to the fact that the dip in the road was repaired shortly after his accident as evidence the road was not properly maintained.

DOT states that the area where this incident occurred was not a construction zone and was maintained by Chippewa County. DOT contracts with each county for the maintenance of state and interstate roads. DOT notes that approaches to bridges sometimes settle and when that happens, the county will place a thin layer of asphalt on the approach in order to smooth the transition to the bridge (spray patching). Counties will also sometimes perform mudjacking, which is a more expensive but longer-lasting repair. It appears that this approach to the Hwy. 53 bridge began to settle sometime after 2014. DOT records indicate that Chippewa County mudjacked the area in 2014 and applied spray patching 2 to 3 times per year thereafter as the approach continued to settle. The county intended to mudjack the approach again in Fall 2019, however, that repair was delayed until Spring 2020 for budgetary reasons. DOT states that Chippewa County is responsible for maintaining the roadway where this incident occurred there was no negligence on the part of the state.

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

2. Andrew Pelkey of Franklin, Wisconsin claims \$150.00 for refund of hybrid vehicle registration surcharges. Pelkey states that the additional registration fee is a privilege tax and violates Article I, § 13 and Article VIII, § 1 of the Wisconsin Constitution. Pelkey states that the surcharge was proposed as part of the 2019 biennial budget at the behest of DOT and the governor. He alleges that both DOT and the governor were negligent because they failed to ensure that the surcharge was constitutional before submitting the proposal to the legislature. Pelkey filed a lawsuit in small claims court regarding this matter; but DOJ filed a motion to dismiss and told him he had to bring the matter to the Claims Board before he could sue the state. Pelkey notes that DOT, DOJ, and the Governor's Office have all denied the surcharge is unconstitutional but have failed to explain their reasoning to him. Pelkey believes the surcharge is unconstitutional and requests reimbursement for the \$75 surcharges he paid in 2019 and 2020. He also asks that the Claims Board exempt him from paying the surcharge in the future until the law is corrected.

DOT alleges that the hybrid vehicle surcharge is required by Wis. Stat. § 341.25(i)(L), and was properly assessed by DOT. The surcharge was first created in the 2017 Budget Act, however the definition of hybrid vehicle relied on battery capacity, which is unknowable to DOT. The department did not implement the surcharge until the hybrid vehicle definition language was modified in the 2019 Budget Act. DOT notes that the surcharge is not discretionary. State law does not allow DOT to register a vehicle until the required registration fee is paid, therefore DOT is not negligent in assessing the fee. Finally, DOT believes the Claims Board does not have the authority to invalidate a statute as unconstitutional or waive a statute's applicability to a specific individual such as the claimant.

The Board concludes that DOT properly assessed the surcharge according to statute, that there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees, and that 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 also concludes that it is not the appropriate forum to challenge the constitutionality of a Wisconsin statute and directs Mr. Pelkey to the Uniform Declaratory Judgments Act at Wis. Stat. § 806.04.

3. Sam Hadaway. *The Board's conclusion for Mr. Hadaway's claim for innocent convict compensation will be issued in a separate decision.*

4. Lauren Coffey of Menomonie, Wisconsin and her mother, **Shannon Cook** claim \$9,811.70 for medical expenses related to a slip and fall accident at UW-Stout on 2/23/20. Coffey, a UW-Stout student, exited her dorm around 3 a.m. that morning and slipped on a patch of ice on the sidewalk at the bottom of the stairs. Coffey states that the ice had been melting all day but re-formed when the temperature fell. She states that it was around 20 degrees at the time of the accident and that the sidewalk had not been treated. Coffey hit her chin and face when she fell, and she required medical evaluation and stitches as a result of her injuries. At the time of the accident, Coffey was covered by her mother's insurance, but the policy only provided catastrophic coverage. Coffey and Cook believe the UW was negligent in maintaining the sidewalk around the dorm and request reimbursement for their uninsured medical costs.

The University of Wisconsin states that UW-Stout grounds staff is diligent in clearing and treating campus walkways during the winter and tracks all slip and fall incidents for the purpose of providing special attention to any problematic areas. Although Cook told UW staff that others had previously slipped on ice in the same location, including a prior incident involving Coffey, UW-Stout found no record of any other accidents in that location since 2015. The UW believes there is no evidence of staff negligence and 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.

5. Frank Davidson of Green Bay, Wisconsin claims \$177.85 for the value of a television allegedly damaged due to DOC negligence. On 3/17/20 Davidson was moved to a new cell in Green Bay Correctional Institution. He noticed the desk in the new cell was "a little ragged" and immediately requested that it be repaired. He alleges that around 2:30 AM on 3/19/20, the desk broke, and his TV and other property fell to the floor. Davidson claims that the TV worked perfectly before this incident but would not turn on afterwards. He states that he reported the broken TV to multiple DOC staff members. On 3/25/20 DOC maintenance staff came to fix the desk and told him to file an inmate complaint about his television. Davidson filed the complaint, which DOC denied. Davidson believes DOC did not properly investigate his complaint because the examiner did not speak to the officers to whom he had reported the broken television. Davidson alleges he had no way of knowing that the desk would break. He believes DOC bears responsibility for the damage because the department forced him to share a single-person cell with another person and the desk was the only place available to put his television.

The Department of Corrections points to the fact that Davidson chose to put his television on a desk that he knew was in need of repair. Although Davidson mentioned the desk issue to several correctional officers, he did not notify any staff at the time the TV was allegedly damaged so they could document that it fell from the desk as he claimed. Davidson's own statements indicate that he did not speak to any DOC staff until first and second shift and that he told other officers about the incident a few days later. DOC notes that a later inspection of the TV revealed no visible damage. DOC believes that it is likely the television simply stopped working because it was at least 10 years old. DOC notes that the TV had reached the end of the age limit on the department's depreciation schedule and therefore has no real value. DOC believes Davidson has provided no evidence of DOC staff negligence and 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.

6. Wesley Renard of Waupun, Wisconsin claims \$842.13 for the cost of a bill charging him for time he spent at the Brown County Jail due to a probation hold and revocation. Renard states that he was placed on the probation hold due to rule violations. He alleges that Wis. Stat. § 302.33, requires that DOC reimburse county jails for the cost of maintaining DOC detainees. He points to the fact that § 302.33 (2)(a), uses the word "shall," which makes the reimbursement mandatory. Renard also notes that neither § 302.33 (2)(a)1 or 3, exempt the department from its obligation to reimburse counties for these costs. Renard disputes DOC's assertion that he was required to pursue this claim through the Inmate Complaint Review System (ICRS). He believes the ICRS is not relevant to this matter because his claim has nothing to do with institution conditions, environment, or employees as described by Wis. Admin. Code Ch. 310. Finally, Renard disputes DOC's argument that he lacks standing to bring this claim. He believes the concept of standing does not apply because the Claims Board is not a court of law. He also notes that the Brown County bill has been referred to collections against him, so he will be responsible for paying it.

The Department of Corrections states that Wis. Stat. § 302.33, does not require the department to reimburse Brown County Jail under these circumstances. Wis. Stat. § 302.33 (2)(a)2, requires that DOC reimburse detentions in county jails "where the offender is held solely because of conduct which violates the offender's supervision, *and which would not otherwise constitute a criminal offense.*" DOC initiated the probation hold because Renard engaged in actions that would constitute a crime (drug related activity), which eventually led to his revocation. DOC notes that the statute requires only that the behavior would constitute a crime—it does not require that charged be filed. DOC states that individuals on probation are under the supervision of DOC and are therefore required to exhaust their administrative

remedies pursuant to Wis. Admin. Code DOC 310.07 and DOC 328.12. Renard was on probation at the time the hold was placed but he failed to exhaust his administrative remedies. Finally, DOC believes Renard does not have a claim for monetary damages for himself and that he lacks standing to bring this claim on behalf of Brown County Jail. For these reasons, DOC requests denial of this claim.

The Board concludes that DOC properly applied the statute in question, that there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees, and that 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. Ronald Lane of Waupun, Wisconsin claims \$234.03 for return of restitution payments deducted by DOC. Lane was convicted of three burglaries committed in October 2003 along with his nephews, George Saunders and Shaun Halper. The burglaries took place at the Club Forest Tavern in Portage County, Dayton Hills Tavern in Richland County, and Kickapoo Inn in Vernon County. The Judgements of Conviction (JOCs) for the Kickapoo Inn and Dayton Hills Tavern burglaries ordered Lane, Saunders, and Halper to pay restitution to the same parties in the same amounts, jointly and severally. The JOCs for the Club Forest Tavern burglary ordered all three to pay restitution to the same parties (Todd & Pam Booth, Society Insurance, and Encompass Insurance) in the same amounts. However, while Halper's and Saunders' JOCs stated the restitution was to be paid jointly and severally, Lane's JOC did not contain that language. Lane alleges that Halper satisfied the restitution payments for Club Forest Tavern. He points to DOC account statements showing Halper made restitution payments to Society Insurance, Encompass Insurance, Daniel Goska, and Van Beck Vending regarding cases in Portage and Wood counties. The court later vacated all three co-defendants' restitution orders for Dayton Hills Tavern and Kickapoo Inn. Halper's and Saunders' restitution orders were also vacated for Club Forest Tavern, but Lane's was not. In November 2019, Portage County Judge Robert Shannon vacated Lane's restitution for Club Forest Tavern and ordered DOC to reimburse him \$234.03. Lane believes that a DOC employee may have stolen the restitution money that should have gone to Society Insurance. Lane notes that two different judges have determined that the Club Forest Tavern restitution was paid. He believes that DOC should have appealed Judge Shannon's order if they disagreed with it but because they did not do so, they are required to abide by the order and reimburse him.

DOC believes that the courts erred in vacating Lane's, Halper's and Saunders' Club Forest Tavern restitution obligations. DOC also believes Judge Shannon lacked jurisdiction to order DOC to reimburse Lane. DOC notes that in addition to the three crimes they committed with Lane, Halper and Saunders by themselves also burglarized Goose's Pub, located in Wood County. Society Insurance insured both Club Forest Tavern and Goose's Pub and was owed restitution in both burglaries. DOC notes that Lane's JOC for Club Forest Tavern did not indicate that his restitution should be paid jointly and severally with Halper and Saunders. DOC also can find no evidence that the Club Forest Tavern restitution was satisfied as Lane alleges. The available evidence related to Club Forest Tavern restitution payments shows the following: for Society Insurance - \$9,443.35 ordered minus \$549.88 (Halper) and \$151.05 (Lane) = \$8,679.35 still owed and for Encompass Insurance - \$5,197.00 ordered minus \$302.64 (Halper) and \$95.77 (Lane) = \$4,798.59 still owed. Although there was money confiscated by law enforcement from the Club Forest Tavern burglary which went to some of the victims, court records indicate that Society Insurance did not receive any of that money. DOC believes Lane may have committed a fraud upon the courts and is now trying to perpetrate a fraud upon the Claims Board by deliberately misrepresenting Halper's Wood County restitution payments as proof of satisfaction of the Club Forest Tavern restitution. DOC believes Lane is fully aware that the Wood County restitution payments relate to the Goose's Pub burglary, a crime in which Lane did not participate. DOC believes that, although there may be some confusion regarding payments made to other victims in the Club Forest Tavern case, the evidence shows that at a minimum, Lane still owes thousands of dollars to Society Insurance for his role in that crime.

The Board defers decision of this claim at this time in order to obtain additional information from the Department of Corrections.

8. Victor Robinson of Green Bay, Wisconsin claims \$607.14 for the value of books and other publications allegedly lost by DOC. Robinson was transferred to Waupun Correctional Institution (WCI) in 2018. WCI inventoried his property and gave him a receipt which stated, "misc. papers sent to security for review." Robinson notes that he did not receive a conduct report, which proves the property was not taken as contraband. Robinson states that he sent multiple inquiries to the security department asking for the status of the review, but security staff did not respond. In 2002, Robinson contacted the WCI Security Director and asked for the return of his property. The Security Director confirmed that some of Robinson's property had been taken for review, but he was unable to determine what specific items were taken, by whom, and to whom they were given in the security office. He also was not able to locate any of the property. Robinson filed an inmate complaint, but it was rejected as untimely. Robinson believes this rejection was unfair because it is not unusual for staff to hold an inmate's property for a long period of time, and the security office failed to respond to his earlier inquiries. Robinson believes it is cruel for DOC to dismiss his missing publications as not having value; they are valuable to him, and he believes he should be reimbursed.

DOC points to Robinson's property inventories from 2017 up to his arrival at WCI, which show that he possessed 19-22 books, and the property inventories conducted while he was at WCI, which show that he possessed 22-23 books. Robinson claims that DOC lost 29 books and a dictionary. DOC notes that he was allowed to keep 4 books when he arrived at WCI, which means Robinson is alleging that he arrived with 33 books, plus a dictionary. That is not possible because DOC only allows inmates to possess 25 books, plus a dictionary. DOC also notes that the property receipt referenced by Robinson says that miscellaneous *papers*—not books—were kept for security review. DOC points to the fact that Robinson filed six property-related complaints at WCI before he filed a complaint about these allegedly missing items. DOC believes that the fact that Robinson waited two years before filing that complaint and the fact that he did not mention the allegedly missing publications in any of his prior complaints, provides strong evidence that the publications were never actually missing. Finally, DOC believes that many of the items claimed by Robinson do not appear to have any value that would warrant Claims Board reimbursement and DOC 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.

The Board concludes:

That decision of the following claim will be issued separately:

Sam Hadaway


That decision of the following claim is deferred to a later date:

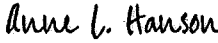
Ronald Lane

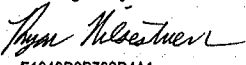
That the following identified claims are denied:

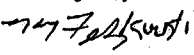
David Martens
Andrew Pelkey
Lauren Coffey and Shannon Cook
Frank Davidson
Wesley Renard
Victor Robinson

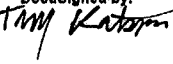
Dated at Madison, Wisconsin this 7th day of MAY, 2021

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Corey Finkelmeier, Chair
Representative of the Attorney General

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Anne L. Hanson, Secretary
Representative of the Secretary of
Administration

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Ryan Nilsestuen
Representative of the Governor

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Mary Felzkowski
Senate Finance Committee

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Terry Katsma
Assembly Finance Committee