

STATE OF WISCONSIN

Senate Journal

Ninety–Third Regular Session

WEDNESDAY, January 8, 1997

The Chief Clerk makes the following entries under the above date.

PETITIONS AND COMMUNICATIONS

**State of Wisconsin
Senate Majority Leader**

January 8, 1997

The Honorable, The Senate:

Pursuant to Senate Rule 20, I have made the following appointments to Senate Committees:

To the committee on Administrative Rules: Senators Grobschmidt, (Chair), Wineke, Wirch, Darling and Welch.

With regards to the members of the minority party, the appointments reflect the recommendations of that caucus.

Sincerely,

CHUCK CHVALA

Chair, Committee on Senate Organization

**State of Wisconsin
Claims Board**

December 18, 1996

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on December 4, 1996.

The amounts recommended for payment under \$5,000 on claims included in this report have, under the provisions of s. 16.007, Stats., been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$5,000, if any, and will submit such to the Joint Finance Committee for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,

EDWARD D. MAIN

Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin on December 4, 1996, upon the following claims:

| | <u>Claimant</u> | <u>Amount</u> |
|----|-----------------------|---------------|
| 1. | Thomas VanRooy | \$ 4,379.65 |
| 2. | Rob & Suzanne Saletta | \$ 10,426.14 |
| 3. | Barb Abelmann | \$ 206,124.00 |
| 4. | Poornima Srinivas | \$ 1,055.46 |
| 5. | Scott Kaun | \$ 200.00 |

| | | |
|-----|-----------------------------------|---------------|
| 6. | Gary Stelpflug | \$ 932,331.50 |
| 7. | Plach GM Chrysler, Inc. | \$ 6,100.00 |
| 8. | Donald Nerenhausen and Associates | \$ 6,494.53 |
| 9. | Mews Companies, Inc. | \$ 114,212.74 |
| 10. | Brevak Construction | \$ 25,034.47 |

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

| | | |
|-----|-------------------------|-----------|
| 11. | Charles E. Crook | \$ 137.81 |
| 12. | Laurie Tank | \$ 250.00 |
| 13. | Franklin Meats, Inc. | \$ 320.00 |
| 14. | Mark W. Hunter | \$ 315.00 |
| 15. | Ernest Salathe | \$ 328.60 |
| 16. | David Horzewski | \$ 97.02 |
| 17. | Kerry Hochstatter | \$ 123.90 |
| 18. | CNA Insurance Companies | \$ 363.80 |
| 19. | CNA Insurance Companies | \$ 489.07 |
| 20. | Carl Petersen | \$ 272.37 |
| 21. | Randall Franzke | \$ 327.60 |

The Board Finds:

1. Thomas VanRooy of Ashwaubenon, Wisconsin, claims \$4,379.65 for damages related to Van Rooy's withdrawal from the Wisconsin Retirement System (WRS) in 1994. The claimant enrolled in the WRS in 1981. In 1991 he was injured and became permanently disabled. In July 1994 the claimant contacted the Department of Employee Trust Funds to receive a Separation Benefit Application which he filed with ETF on July 8, 1994. In September 1994 the claimant received payment of the separation benefit. He compared the amount paid by ETF to the statement of account that he had received earlier in the year and noticed that he had not received payment of any interest for 1994. He contacted ETF and was told that ETF only paid interest up to the January 1 prior to the separation benefit application and that the counselor to whom he spoke when requesting the application should have informed him of this. He was also told that the "fine print" of the application stated that interest would not be paid on moneys withdrawn before the end of the calendar year. Several days later he received a letter from an ETF supervisor, which acknowledged that this "fine print" could be easily overlooked and apologized for the misunderstanding. The claimant had not yet deposited the checks and asked if the money could be re-deposited into WRS. He was told that this was not possible. The claimant believes that ETF should have pointed out to him that he would not receive 1994 interest when he first called to discuss the separation benefit, since ETF acknowledges that the "fine print" on the application is easy to miss. The claimant requests interest on his WRS account from January through early September 1994. He also requests payment of the lost interest he would have accrued on the money to date. He calculates his

loss at the 1993 rate of 11% interest per year, for a total claim of \$4,379.65. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

2. Robert and Suzanne Saletra of Bayside, Wisconsin, claim \$10,426.14 for refund of overpayments garnished to satisfy income tax delinquencies for 1990 and 1991. The claimants have an established history of timely filing their income tax returns. In the late 1980's the claimants' mother transferred some mutual funds she owned to the claimants. The claimants sold the stocks in 1990. They had never owned stocks and were not educated in the complex record keeping responsibilities involved with mutual funds. The claimants' mother had moved and her records and papers had been lost, therefore, they were unsuccessful in their attempt to examine her financial records and obtain the information about the mutual fund needed to file their 1990 income tax return. The claimants became confused about what to do and, rather than seeking assistance, froze and did nothing. The claimants knew they had to file a 1990 return, but became afraid of the consequences of their procrastination. This fear also led them to neglect their 1991 and 1992 returns. In the fall of 1993, the Department of Revenue began garnishing Mr. Saletra's wages to collect the delinquent taxes. The claimants were never informed of the statute of limitations governing refund of any overpayment. The claimants hired an accounting firm to file their 1993 taxes and prepare the delinquent tax returns for 1990-1992. In May 1996 the late returns were filed. The claimants have been refunded their overpayment of \$8,376.51 for 1992, however, overpayments for 1990 (\$4,977.35) and 1991 (\$5,448.79), have not been refunded due to the statute of limitations. The claimants do not feel it was fair that the DOR never informed them of the statute of limitations and also feel that the amounts assessed were unreasonable. The DOR seized \$18,800 for an actual tax liability of only \$184.40. Mr. Saletra's health is failing and the claimants request they be refunded the overpayments for 1990 and 1991. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

3. Barb Abelmann of Madison, Wisconsin, claims \$206,124.00 for medical expenses and related damages allegedly caused by a surgical error. The claimant required pelvic reconstruction surgery at UW Hospital and Clinics in January 1986 due to a motorcycle accident. Since the surgery, the claimant has been unable to adequately control her bladder or bowel functions. The claimant believes this is because the surgeon accidentally cut a nerve. She was told by a UW neurologist that her bowel/bladder dysfunction was a complication of the surgery and would probably correct itself within a year. The claimant was placed on a regimen of medications and catheterization to deal with the problem. In July 1986 the claimant re-entered the work force. It was very difficult for her to maintain a normal work and social schedule due to continuing bladder/bowel dysfunction. She experienced a number of embarrassing public episodes of fecal and urinary incontinence and was forced to leave her job in 1988. In 1994, the claimant had a urinary pump implant to help eliminate the dysfunction. This is an expensive surgery which will need to be repeated every six to seven years. She is no longer eligible for regular private health insurance, however, she is eligible for Medicare. She requests reimbursement for the medical supplies, HIRSP insurance and repeated surgeries she will require for the rest of her life. Her estimated expenses are \$206,124. The UW did "write off" some of the costs of the

urinary pump implant surgery. The claimant believes their decision to do so was an indirect admission that the hospital had accidentally injured her. Consequently, she believes that the UW has a continuing obligation to assist her with her future medical costs. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

4. Poornima Srinivas of Madison, Wisconsin, claims \$1,055.46 for vehicle damage caused by an accident with a UW employee in the Eagle Heights parking lot. The claimant saw the UW vehicle pass by her parking space and she then began backing out of the space. When she was about 3/4 out of the parking space, the UW vehicle began backing down the drive aisle towards her vehicle. She honked her horn but was not able to quickly pull back into her parking space because of the angle of her vehicle. The UW vehicle backed into the claimant's car, causing damage to the rear left panel. The claimant requests reimbursement of her repair cost, which is not covered by insurance. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

5. Scott Kaun of Loganville, Wisconsin, claims \$200.00 for damages related to slaughter of a cow. The animal had been imported from the United Kingdom, prior to the 1989 ban on such importation by the USDA. After the scare and publicity regarding bovine spongiform encephalopathy ("mad cow disease"), the animal was quarantined by the DATCP. At the request of the USDA and the DATCP, the claimant agreed to have the cow slaughtered in order to eliminate the threat of disease. The cow was appraised at \$2200. The USDA has reimbursed the claimant \$2000 and he now requests payment for the remaining \$200. The Board concludes the claim should be paid in the amount of \$200.00 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 and Consumer Protection appropriation s. 20.115(2)(a), Stats.

6. Gary Stelpflug of Lancaster, Wisconsin claims \$932,331.50 for damages relating to the quarantine of two herds of swine due to an outbreak of pseudorabies. On May 17, 1993, the swine were quarantined by a DATCP veterinarian. The claimant told the vet that he had 89% ownership of the animals in a partnership agreement with Farmers Hybrid Financial Services (FHFS). He also told the vet that he was involved in a lawsuit with FHFS for breach of contract. The claimant states that the vet told him that, for all practical purposes, he was the owner of the swine and would receive the indemnity checks. The vet also allegedly told the claimant that the DATCP would make sure FHFS replaced any lost breeding stock. The claimant cleaned and disinfected the farms as required in the DATCP herd plan. FHFS never replaced the breeding stock. The first indemnity payment by the DATCP was issued as a two party check to both FHFS and the claimant. Because of the lawsuit, this check was placed in a trust account pending the court decision. The remaining indemnity checks were issued to FHFS only and not placed in the trust account. The claimant has not received any of the \$65,792.50 in indemnity payments. The claimant does not understand how the DATCP could determine that FHFS was the owner of the swine when the claimant has 89% ownership of the animals and that the decision regarding ownership was a legal decision and should not have been made by a DATCP veterinarian. The court eventually decided that FHFS was the owner of the swine and released the trust account payments to FHFS. The claimant believes that the court relied

on the word of the DATCP that FHFS owned the animals. He alleges that, in this manner, the DATCP directly interfered in his lawsuit and contracts with FHFS. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

7. Charles Plach for Plach GM Chrysler of New London, Wisconsin, claims \$6,100.00 for damages related to titles issued by the DOT. The claimant, a car dealership, accepted two vehicles. Each vehicle had a clear Wisconsin title at the time it was accepted by the claimant. When the claimant later tried to sell the vehicles, they discovered that both vehicles had been previously salvaged. Previous titles had stated "this is a salvage vehicle," however, the DOT later issued clean titles for both vehicles. The claimant can not sell a vehicle without disclosing that it has been previously salvaged and does not feel it was right for the DOT to "launder" the titles for the two vehicles. The claimant requests \$6,100 for lost profits from the two vehicles. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

8. Donald H. Nerenhausen and Associates of Oconto, Wisconsin, claims \$6,494.53 for the difference between the contract overhead rate and the actual overhead rate incurred for a 1994 DOT project. Payment to the claimant under the standard contract with the DOT includes an overhead rate established by the DOT accounting office. An estimated overhead rate is used in the contract and after the project is completed the actual overhead rate is determined by a DOT audit. The contractor is required to reimburse the DOT for any overpayment if the actual overhead rate falls below the contract rate. Likewise, the DOT reimburses the contractor if the actual rate goes above the contract rate. Contrary to Facilities Development Manual Procedure 8-25-5, the DOT allowed the claimant to use the 1991 audit overhead rate of 98.66% for the years 1992 and 1993. The actual overhead rates for 1992 and 1993 were below 98.66% and therefore, the claimant owed the DOT \$43,968.48. The claimant believes it is unfair that the DOT withheld all payments for a 1995 project to satisfy this debt and wants the department to make arrangements for a reasonable payment schedule as it has done in the past. The claimant alleges that the DOT said the 1994 overhead rate could be fixed "so there would be no adjustment." The 1991 rate of 98.66% was again used and an item was added to the 1994 contract stating "Overhead rate will be fixed at 98.66% of direct labor, without adjustment..." The actual 1994 audited overhead rate was determined to be 115.76%, however, the claimant was told it could not collect the difference from DOT. The claimant believes the DOT misrepresented the meaning of the word "fixed" in the contract and that they really meant "capped." The claimant requests payment of \$6,494.53, the difference between the contract overhead rate and the actual overhead rate for 1994. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

9. Mews Companies, Inc. of Butler, Wisconsin, claims \$114,212.74 for damages related to a DOT highway construction project in 1992. The claimant alleges that it did 13,402 cubic yards of extra borrow excavation on the project for which it was not paid and that it has also not been paid for 2,000 cubic yards of scheduled excavation. The claimant requests \$56,371.32 for unpaid borrow excavation. The claimant also alleges the DOT improperly denied access to the median strip,

causing additional damages. Prior to the borrow excavation, the claimant needed to strip topsoil from the median. Free fill was available to the claimant from a nearby company during the time they planned to have access to the median. The claimant relied on access to this free fill when bidding for the project. They allege that the DOT denied them access to the median, delaying the topsoil removal and the borrow excavation. Because of the delay, the claimant lost the free fill and had to purchase fill. The claimant alleges that the delay also caused weather problems as it pushed work further into the "wet" season. The claimant requests \$56,694.75 for damages related to denial of access to the median strip. The claimant also requests \$25,046.37 for crushed aggregate base course installed along the shoulder of the project. The total claim for damages related to the project is \$138,112.32. The DOT has paid the claimant \$23,900 as a result of a change order for the crushed aggregate installation reducing the claim to \$114,212.74. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

10. Brevak Construction, Inc. of Washburn, Wisconsin, claims \$25,034.47 for damages relating to the construction of the Hurley Information Center on Highway 51 in 1992. The claimant was a subcontractor for Angelo Luppino, Inc. (ALI), the prime contractor for this project. The claimant states there was rock that needed to be excavated at the project site and that payment for removal of this rock was not included in the contract between the state and ALI. The claimant spoke with DOT personnel and alleges that they agreed there was rock at the site which needed to be removed and that a change order should be submitted for payment of this excavation. The claimant submitted costs to ALI and requested that they submit a change order request to the state. ALI apparently made an oral request but never submitted a written change order request to the DOT. The oral request was denied. The claimant also alleges that the DOT did not correctly calculate the excavations below subgrade (EBS) and as a result, ALI and the claimant, as its subcontractor for excavation, did not receive the full amount due to it for EBS for this project. The claimant requests the sum of \$15,816.15 for expenses with regard to rock removal plus 15% for profit and 12% for overhead, for a total of \$20,086.51, together with the sum of \$4,948.32 for under reported EBS. The claimant brought a lawsuit against ALI which was settled for \$4,000. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Charles E. Crook of Waupun, Wisconsin, claims \$137.81 for restitution money taken from his inmate account. In October 1995 the claimant was involved in a disturbance at Oakhill Correctional Institution. As a result of that disturbance, the claimant was transferred to Columbia Correctional Institution. As partial restitution, the claimant was charged \$137.41, or one-fourth of the mileage and staff wages for his transfer to Columbia Correctional. The claimant does not believe the Department of Corrections has the authority to seize funds from his account for this reason without due process. The claimant agrees that the DOC is allowed to require inmates to pay restitution, however, he contends that mileage and wages do not fall under the definition of "damages" for which DOC is allowed to collect restitution. The claimant does not deny that he was involved in the disturbance which resulted in his transfer, however, he believes he has been adequately reprimanded by being placed in segregation and having 9 months added to his sentence. He does not believe that DOC has

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

12. Laurie Tank of Waupun, Wisconsin, claims \$250.00 for damage to her personal vehicle caused by an accident which occurred while she was traveling to a work related activity. The claimant was on her way to present certified copies of DOC records at the Federal Courthouse in Madison. The claimant was driving on a one-way street looking for a place to park and made a right-hand turn into a parking lot. As she turned into the lot, another vehicle struck her car on the passenger side. Her insurance covers all but her \$250 deductible. She requests reimbursement for this amount. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

13. Franklin Meats, Inc. of Franklin, Wisconsin, claims \$320.00 for damages related to the failure of a DATCP inspector to appear for a scheduled animal slaughter. The claimant's business, Franklin Meats, may not slaughter animals to sell for meat unless a DATCP inspector is present. In December 1995 the claimant had a two day slaughter scheduled on December 27 and 28. A DATCP inspector was scheduled to be present on both days. The claimant had 131 animals to slaughter over the two days. On December 27, the DATCP inspector told the claimant she could not come for the second day of slaughter because she had to take a vacation day or she would "lose" it. The claimant called DATCP to see if another inspector could be scheduled, however, there was no inspector available. The claimant was not able to finish slaughtering all 131 animals in one day and had to send 10 hogs and 8 goats to another meat processor to be butchered. The claimant would have received \$20 per hog and \$15 per goat if he had been able to slaughter the animals. He requests reimbursement of \$320 for these losses. The Board concludes the claim should be paid in the amount of \$320.00 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 and Consumer Protection appropriation s. 20.115(1)(a), Stats.

14. Mark W. Hunter of DePere, Wisconsin, claims \$315.00 for the cost of a cellular phone which was stolen from a locked, state owned vehicle parked at the Public Defender's Office in Green Bay. The cellular phone was purchased by the claimant's girlfriend because a credit card number was required for the purchase agreement. The claimant was the one who carried and used the phone. The claimant needed the phone because he was often inaccessible because of the travel requirements of his job as an Assistant State Public Defender. The claimant has not turned in bills for his calls because he purchased a flat-rate of time on the phone which was not reimbursable on an expense voucher. The claimant used the state vehicle in question several days before the phone was discovered missing and he left the car locked. Two other SPD employes used the car after the claimant and both have indicated they locked the vehicle. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

15. Ernest Salathe of Darlington, Wisconsin, claims \$328.60 for repairs to a boat that was damaged at a state park. In

June 1996 the claimant was boating at Yellowstone Lake State Park. As he came along side the dock, his boat was scratched by a nail sticking out of the side of the dock. At the time of the accident the boat was only three weeks old. The claimant requests reimbursement for the repair costs to fix his boat. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

16. David Horzewski of Fitchburg, Wisconsin, claims \$97.02 for cost of sunglasses lost while he was on duty as a conservation warden. On July 1, 1995, the claimant was patrolling the Yahara River. He was wearing a pair of Ray Ban sunglasses that he had purchased to protect his eyes from harmful ultraviolet rays. Sunglasses are not provided for wardens. The claimant stopped a boater to issue a citation. During his contact with the boater he removed his sunglasses, which he always does when dealing with the public in order to assure good communication. He placed the sunglasses on the gunwale of the boat; an eleven inch wide, flat surface with a raised edge on both sides. The only other place to put the sunglasses would have been on the floor of the boat, where they might have been easily stepped on by either the claimant or the other warden in the boat. During the course of issuing the citation he accidentally knocked the sunglasses into the river. After he finished with the boater, he attempted to retrieve his glasses but could not find them. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

17. Kerry Hochstatter of Mukwonago, Wisconsin, claims \$123.90 for replacement of the front grill on her vehicle. The claimant is employed at the Ethan Allen School for Boys. On August 18, 1995, after finishing her shift, the claimant discovered that the front grill on her vehicle had been stolen while the vehicle was parked in the school parking lot. The claimant is certain that the grill was not missing when she arrived at work that morning because she does a visual check of her vehicle every morning before she leaves Milwaukee. The claimant believes that she should be reimbursed because the parking lot is state property. The claimant's insurance covers \$23.90 of the damage, leaving an uninsured balance of \$100.00. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

18. CNA Insurance Companies of Milwaukee, Wisconsin, claims \$363.80 for worker's compensation payments made to an employe of J.P. Cullen & Sons, the claimant's insured. The employe, Jason Schlough, was working at a job site at Mendota Mental Health Institute when he came in close contact with a MMHI employe who had whooping cough. Because of this exposure, he was required to miss one week of work. The claimant paid the above amount to cover lost wages and requests reimbursement from the state. Based on its long-standing policy regarding subrogation claims, the Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

19. CNA Insurance Companies of Milwaukee, Wisconsin, claims \$489.07 for worker's compensation payments made to an employe of J.P. Cullen & Sons, the claimant's insured. The employe, Kenneth Reeves, was

working at a job site at Mendota Mental Health Institute when he came in close contact with a MMHI employe who had whooping cough. Because of this exposure, he was required to miss one week of work. The claimant paid \$365.57 for lost wages and \$123.50 for medical bills and requests reimbursement from the state. Based on its long-standing policy regarding subrogation claims, the Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

20. Carl Petersen of DePere, Wisconsin, claims \$272.37 for medical bills for treatment of injuries incurred in an accident at Wisconsin State Fair Park. The claimant was visiting SFP on August 13, 1992, to attend a concert. The Claimant was a passenger in a SFP tram which tipped over. The claimant was thrown to the ground and dragged some distance. His medical bills totaled \$762.40, \$272.37 of which was uninsured. The Board concludes the claim should be paid in the amount of \$272.37 based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the State Fair Park appropriation s. 20.190(1)(h), Stats.

21. Randall Franzke of Little Chute, Wisconsin, claims \$327.60 for medical bills incurred when the claimant was injured in a tram accident at SFP. The claimant was visiting the park on August 13, 1992, when the SFP tram he was riding in tipped over, spilling him to the ground and dragging him some distance. The claimant has not submitted bills to his insurance company, Aetna Insurance. Aetna has indicated that they would pay 70% (\$229.32) towards the claimant's medical bills if he were to submit a claim. This would leave an uninsured balance of \$98.28. The Board concludes the claim should be paid in the reduced amount of \$98.28 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the appropriation s. 20.190(1)(h), Stats.

The Board concludes:

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

| | |
|----------------|---------------------------|
| Thomas VanRooy | Rob & Suzanne Saletra |
| Barb Abelmann | Poornima Srinivas |
| Gary Stelpflug | Plach GM & Chrysler, Inc. |

Donald Nerenhausen and Associates
Mews Companies, Inc.

| | |
|---------------------|-------------------------|
| Brevak Construction | Charles E. Crook |
| Laurie Tank | Mark W. Hunter |
| Ernest Salathe | David Horzewski |
| Kerry Hochstatter | CNA Insurance Companies |

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

| | | |
|----------------------|----|--------|
| Scott Kaun | \$ | 200.00 |
| Franklin Meats, Inc. | \$ | 320.00 |
| Carl Petersen | \$ | 327.60 |
| Randall Franzke | \$ | 98.28 |

Dated at Madison, Wisconsin this 18th day of December, 1996.

ALAN LEE, CHAIR
Representative of the Attorney General

EDWARD D. MAIN, SECRETARY
Representative of the Secretary of Administration

BRIAN BURKE
Senate Finance Committee

BEN BRANCEL
Assembly Finance Committee

STEWART SIMONSON
Representative of the Governor

**State of Wisconsin
Investment Board**

January 1, 1997

The Honorable, The Legislature:

Attached is the Investment Board's annual report to the Legislature on investment goals and strategies, as provided under section 25.17(14g) of the Statutes. Objectives for each of the major funds managed by SWIB are described and significant changes since our last report are noted.

The Board currently manages over \$35.5 billion for the Wisconsin Retirement System (WRS), the ninth largest public pension fund in the U.S. and the 20th largest public or private pension fund in the world. The Board also manages over \$4.6 billion in cash balances of state agencies, local governments and the WRS in the State Investment Fund (SIF).

Our investment objectives remain fundamentally the same from year-to-year. A long-term focus guides the investment strategy for the Retirement System trust funds, in keeping with their long-term obligations. Broadly diversified portfolios reduce market risk in these funds. Safety of principal and liquidity are emphasized for SIF, reflecting its shorter-term cash-management objectives.

Key points of note in this report:

- Management of the Fixed (or balanced) Retirement Trust Fund follows a disciplined, long-term approach to the allocation of assets among various markets (such as stocks, bonds, loans and real estate). Experience suggests that this approach is more likely to continue to produce needed rates of return over time that a strategy which attempts to enter or leave the markets at the peaks or lows ("market timing").

The continued strength of the domestic market has caused the Fixed Fund to be slightly overweighed in stocks. We rebalance to achieve targeted levels in each asset class. We are making somewhat greater use of index funds in domestic and international equities to complement our predominantly active style of investment and to facilitate rebalancing.

- We continue to maintain a high degree of liquidity in SIF. With input received from local governments, we reviewed and renegotiated more favorable insurance coverage for the Local Government Investment Pool component of the State Investment Fund, effective January 1, 1997.
- The Board is also in the process of reviewing the program under which SWIB purchases certificates of deposit from qualified Wisconsin banks and thrifts. We are examining steps that might increase demand for the program without impairing SWIB's ability to earn a competitive rate of return. More discussions are planned with banking associations and financial institutions.

- As you know, [1995 Wisconsin Act 403](#) designated SWIB to manage the Tuition Trust Fund for the [EdVest Wisconsin](#) program. We are in the process of developing the investment guidelines for the Fund. The Department of Administration is managing the program, which is scheduled to begin operation this spring.

The development of investment strategy is critically affected by the availability of resources. As we approach the 1997–99 biennial budget deliberations, our most urgent resource need is for a substantial upgrade of our information systems. This need must be addressed if we are to have the portfolio management, accounting and compliance monitoring tools that are essential to stay competitive and properly manage risk. I look forward to the opportunity to discuss this initiative with you.

As provided under [1995 Wisconsin Act 274](#), we will submit a report to you by March 31 which discusses investment performance through the end of 1996.

Please feel free to contact me if you have any questions about this report or other matters.

Sincerely,

PATRICIA LIPTON
Executive Director

**State of Wisconsin
Department of Employment Relations**

January 6, 1997

The Honorable, The Legislature:

The Department of Employment Relations, Division of Affirmative Action is very pleased to present the 18th edition of the Affirmative Action Report for Wisconsin State Government for your information.

The report represents the fiscal year July 1995 through June 1996. It includes a summary of the Division's EEO/AA programs and services, key findings and numerous statistical reports which illustrate the status of affirmative action group members (women, racial/ethnic minorities and persons with disabilities) in the classified state service.

We look forward to continuing cooperative efforts in achieving equal employment opportunity in Wisconsin's civil service.

Sincerely,

GREGORY C. JONES
Administrator

**State of Wisconsin
Department of Administration**

December 1996

The Honorable, The Legislature:

Attached is the Department of Administration's annual report to the Council on Small Business, Veteran-owned and Minority Business Opportunities as required by s. [16.75 \(4\) \(a\) 5](#), Wis. Stats.

The report evaluates the performance of Wisconsin's small businesses in submitting bids or proposals to the state and identifies the department's initiatives to encourage small, veteran-owned and minority businesses to participate in the state's purchasing program.

The report shows that the dollars the state spends with Wisconsin small businesses continues to increase.

- The number of purchase orders placed increased to 92,276 up 3,201 (3.6%) from 1994-95.
- The dollars awarded to Wisconsin small businesses increased to \$319,861,066 up \$21,913,680 (7.4%) from 1994-95.

- The percent of dollars awarded to Wisconsin small businesses, of all state awards, increased to 40.5% from 38.3% for 1994-95.
- The number of Wisconsin small businesses increased by 1,939 (1.6%) to 121,477.

The report excludes purchase orders to other state agencies as well as orders that are exempt from the purchasing process. It also excludes orders for postage, memberships, telephones, electric power, steam, water, and sewer, as no known Wisconsin small businesses exist to provide these commodities.

The Department of Administration remains strongly committed to working with Wisconsin's small, veteran-owned and minority businesses to increase their competitiveness and participation in the state purchasing program. This commitment is shown by the outreach and assistance activities identified in the report and in the increased share of state dollars (\$21 million) awarded to small businesses.

Sincerely,

MARK D. BUGHER
Secretary

**State of Wisconsin
Department of Administration**

December 31, 1996

The Honorable, The Legislature:

I am pleased to submit our annual Minority Business Report for fiscal year 1996. This year's report reflects a new record and increased commitment by state agencies.

State agencies spent \$40,906,078 with firms designated as minority businesses.

The Department of Development has continued to expand the number of businesses certified as minority firms. A total of 640 firms have now been certified, a decrease of 13 from the 1994–95 fiscal year.

Forty-two state and quasi-state purchasing offices have awarded at least 5% or more of their purchasing dollars to certified minority businesses.

Not counting firms interested only in financial investments, 51% of the certified minority businesses received contracts for various commodities and services during fiscal year 1995–96.

I am pleased that the Division of Facilities Development (DFD) total MBE participation in architectural/engineering services and construction contracting equaled 5.12% in fiscal year 1996 marking the first time ever achieving the overall 5% goal.

The Department of Natural Resources Clean Water Fund Loan Program for the Milwaukee Metropolitan Sewerage District expended 18.62% of its grant dollars to minority firms.

The State of Wisconsin Investment Board (SWIB) expended 7% of its stock transactions to minority firms. SWIB also purchased \$199,000,000 public bonds on a new issue basis. Of this amount \$21,400,000 or 10.8% was allocated to minority firms. Selling concessions on the total purchased were \$892,500 of which \$86,900 or 9.7% was for minority firms.

A total of \$5,753,788 was deposited in minority-owned banks by various state and quasi-state agencies.

The Wisconsin Housing and Economic Development Authority placed 5.88% of its discretionary purchases with minority firms.

The Department of Administration's Capital Finance Office reported that certified minority-owned firms underwrote 6.27% of all bonds and notes issued by the State of Wisconsin Building Commission. Allocations of bonds and notes sold to minority-owned firms amounted to 4.07% of all bonds and notes issued by the Building Commission.

These are but a few of the highlights of the past year. While proud of this progress, we still have room for improvement and our goal remains 5%. We will continue to work toward this goal building on the progress we have made. The attached report discusses in greater detail the efforts that are being made.

Sincerely,

MARK D. BUGHER
Secretary

**State of Wisconsin
Department of Health and Family Services**

December 27, 1996

The Honorable, The Senate/Legislature:

1995 Wisconsin Act 27 created s. 46.27 (11g) of the statutes, which requires the Department of Health and Family Services to submit an annual report on its Community Options Program. The attached report describes the persons served, program expenditures and services delivered through the Community Options Program in calendar year 1995.

Community Options is designed to relocate or divert people who need long term care from nursing homes. This is accomplished by offering an alternative package of community services to elderly and disabled persons who are otherwise eligible for Medicaid-funded nursing home care.

The Department allocates funds to county human service agencies to deliver these community services. In providing services, the county agency may not expend more, on average, than the state portion (about 40%) of the Medicaid cost for nursing home care. The county agency must also maximize funds by accessing any federal funds (Waiver and other Medicaid) available for an individual before using Regular Community Options funds.

The annual report examines program activity for both the Community Options Program and the Community Options Program-Waiver in calendar year 1995.

Sincerely,

JOE LEEAN
Secretary

**State of Wisconsin
Department of Health and Family Services**

December 30, 1996

The Honorable, The Senate:

Section 46.03(26) of the statutes requires the Department of Health and Family Services to report annually on information system projects under development. The attached report is a summary of the departmental systems currently under development.

Sincerely,

JOE LEEAN
Secretary

**State of Wisconsin
Department of Public Instruction**

December 17, 1996

The Honorable, The Legislature:

The department is pleased to submit the 1996 Annual Report on the Status of Bilingual-Bicultural Education programs, as required under s. 115.96, Wisconsin Statutes.

The report provides a review of the state's administration and funding of bilingual education in Wisconsin and factors contributing to program expansion and the resulting continuously lower annual reimbursement rates for school districts. The number of pupils served from minority languages, the locations of the state-funded programs during

the 1996 fiscal year (July 1, 1995, through June 30, 1996), and staff-related data are included in the report to inform those with responsibilities for ensuring the continued success of bilingual education programs in Wisconsin. I am confident that you will find the report informational, useful and of concern given the rising numbers of pupils to be served absent a corresponding increase in fiscal support by the state.

If you have questions on any aspect of this report, please contact Dr. William J. Erpenbach, director, equity and Title I, 267-1072. He is willing to discuss these with you at your earliest convenience.

Sincerely,

JOHN T. BENSON
State Superintendent

**State of Wisconsin
Legislative Audit Bureau**

December 18, 1996

The Honorable, The Legislature:

We have completed a best practices review of local government operations as required by s. 13.94 (8), Wis. Stats. Privatization of local government services was selected as the topic of our review with the assistance of the Local Government Advisory Council, which consists of representatives of counties, cities, villages, and towns.

Nearly 50 percent of the local governments responding to our survey reported that within the past seven years, they have initiated at least one contract for services with a private vendor. Survey respondents most often reported contracts for solid waste collection, recycling, building maintenance building inspections, and road and street repair services.

Local governments commonly consider contracting with private vendors as a way to reduce service costs; however, a careful assessment is necessary to ensure desired benefits will be achieved. In particular, before entering a contract, the full costs of government service delivery must be measured and compared to estimated contracting costs. In addition, service delivery decisions need to take into account whether a delivery system is consistent with the local government's goals and objectives for the service, including quality, control, and long-term stability, as well as the requirements of existing laws and legal obligations.

Based on the contracting experiences of several counties and municipalities, as well as professional and academic literature, this report identifies best practices to follow when contracting for public services. Specific practices are identified for local governments to consider in selecting vendors, specifying service expectations and administrative responsibilities, and establishing monitoring procedures.

We thank the Local Government Advisory Council for its assistance in selecting the topic for our review and we appreciate the courtesy and cooperation extended to us by local government staff.

Sincerely,

DALE CATTANACH
State Auditor

**State of Wisconsin
State Historical Society of Wisconsin**

December 18, 1996

The Honorable, The Legislature:

I am pleased to send you the second annual report from the Electronic Records Program at the State Historical Society. The State Legislature established the program with a special appropriation in 1994.

The report includes a Preliminary Preservation Plan for statewide electronic records, a Strategic Plan for the Electronic Records Program, and a report on the attempt to take custody of historical data from the Sentencing Commission. Each of these documents identifies issues that must be addressed to ensure the preservation of Wisconsin's historically significant electronic records.

The Preliminary Preservation Plan identifies three primary objectives required to preserve electronic records of historical value. These objectives must be met at a statewide level as well as by each state and local agency.

1. **Develop policy and technical standards for electronic recordkeeping.**

The state needs policies and technical standards that emphasize the incorporation of record and archives management capabilities into electronic systems, address minimum recordkeeping capabilities, and policies that identify responsibility for long term management of electronic records of permanent value. In areas where the State Archives has authority, it will develop policies and technical standards. Where authority does not exist, the State Archives will actively advocate and participate in the policy and standards development process.

2. **Develop a program to assist state agencies and local governments to establish and maintain reliable electronic records.**

State and local government employees need an authoritative, reliable, and consistent source of information and training to effectively create, manage, and preserve electronic records. In early 1997, the State Archives will assess program assistance needs and present recommendations for their improvement or development.

3. **Develop a model program to manage electronic records of long-term value.**

Agencies that have custody of long term records must maintain an archival program capable of meeting archival requirements. Unfortunately, state standards and best practices to meet archival requirements for electronic records do not exist. The State Archives is examining and evaluating archival requirements for managing electronic records and a model archives program to manage electronic records. The outcome of this work will be the development of archival standards and best practices that state and local agencies may adopt.

These three objectives cannot be accomplished without support from all levels of state and local government. Information technology can help Wisconsin state and local agencies do more with less. However, they must also consider the responsibilities that come with creating, using, storing, and preserving electronic records. The state Historical Society and the Electronic Records Program look forward to working with state and local government leaders to ensure that our valuable electronic resources are properly managed.

Please call me at the 264-6480 if you have any questions about our second year report or would like further information on our work.

Sincerely,
PETER GOTTLIEB
State Archivist

**State of Wisconsin
Child Abuse and Neglect Prevention Board**

December 26, 1996

The Honorable, The Senate:

Enclosed is one copy of the Right From the Start Programs Evaluation Report pursuant to the requirements stated under Wisconsin Statutes, Chapter 48.982, Section 7 (h).

Please feel free to contact me at (608) 266-6871 if you have any questions or need additional information.

Sincerely,

MARY ANNE M. SNYDER
Acting Executive Director

**State of Wisconsin
Council on Physical Disabilities**

November 1, 1996

The Honorable, The Legislature:

As required by s. 46.29 (f) of the state statutes, we are submitting to you the annual report of the Council on Physical Disabilities for fiscal year 1996 (July 1, 1995 through June 30, 1996). The Council appreciates the opportunity to participate in state government as a representative of Wisconsin's citizens with physical disabilities.

Sincerely,

JACKIE STENBERG
1995-96 Chairperson

JOEL RODNEY
1996-97 Chairperson

**State of Wisconsin
Office of the Commissioner of Insurance**

August 1996

The Honorable, The Legislature:

Pursuant to section 153.10 (10), Wis. Stat., we are pleased to submit to the Governor and to the Legislature the quarterly Health Care Data Report. This report is based on hospital inpatient discharge data reported to the Office of Health Care Information by all operating general medical-surgical and specialty hospitals in Wisconsin for the first quarter of 1995. It also contains selected ambulatory surgery utilization and charge data from general medical-surgical hospitals and freestanding ambulatory surgery centers in Wisconsin during the same quarter.

This report fulfills the statutory requirement to report "in a manner that permits comparisons among hospitals ... the charges for up to 100 health care services or diagnostic-related groups selected by the office."

Sincerely,

JOSEPHINE W. MUSSER
Commissioner of Insurance
BARBARA A. RUDOLPH
Deputy Director
Office of Health Care Information

**State of Wisconsin
Office of the Commissioner of Insurance**

August 1996

The Honorable, The Legislature:

Pursuant to section 153.10 (10), Wis. Stat., we are pleased to submit to the Governor and to the Legislature the quarterly Health Care Data Report. This report is based on hospital inpatient discharge data reported to the Office of Health Care Information by all operating general medical-surgical and specialty hospitals in Wisconsin for the second quarter of 1995. It also contains selected ambulatory surgery utilization and charge data from general medical-surgical hospitals and freestanding ambulatory surgery centers in Wisconsin during the same quarter.

This report fulfills the statutory requirement to report *"in a manner that permits comparisons among hospitals ... the charges for up to 100 health care services or diagnostic-related groups selected by the office."*

Sincerely,

JOSEPHINE W. MUSSER
Commissioner of Insurance

BARBARA A. RUDOLPH
Deputy Director
Office of Health Care Information

**State of Wisconsin
Office of the Commissioner of Insurance**

September 1996

The Honorable, The Legislature:

Pursuant to section 153.10 (10), Wis. Stat., we are pleased to submit to the Governor and to the Legislature the quarterly Health Care Data Report. This report is based on hospital inpatient discharge data reported to the Office of Health Care Information by all operating general medical-surgical and specialty hospitals in Wisconsin for the third quarter of 1995. It also contains selected ambulatory surgery utilization and charge data from general medical-surgical hospitals and freestanding ambulatory surgery centers in Wisconsin during the same quarter.

This report fulfills the statutory requirement to report *"in a manner that permits comparisons among hospitals ... the charges for up to 100 health care services or diagnostic-related groups selected by the office."*

Sincerely,

JOSEPHINE W. MUSSER
Commissioner of Insurance

BARBARA A. RUDOLPH
Deputy Director
Office of Health Care Information

**State of Wisconsin
Office of the Commissioner of Insurance**

August 1996

The Honorable, The Legislature:

Pursuant to section 153.10 (10), Wis. Stat., we are pleased to submit to the Governor and to the Legislature the quarterly Health Care Data Report. This report is based on hospital inpatient discharge data reported to the Office of Health Care Information by all operating general medical-surgical and specialty hospitals in Wisconsin for the fourth quarter of 1995. It also contains selected ambulatory surgery utilization and charge data from general medical-surgical hospitals and freestanding ambulatory surgery centers in Wisconsin during the same quarter.

This report fulfills the statutory requirement to report *"in a manner that permits comparisons among hospitals ... the charges for up to 100 health care services or diagnostic-related groups selected by the office."*

Sincerely,

JOSEPHINE W. MUSSER
Commissioner of Insurance

BARBARA A. RUDOLPH
Deputy Director
Office of Health Care Information

**REFERRALS AND RECEIPT OF
COMMITTEE REPORTS CONCERNING
PROPOSED ADMINISTRATIVE RULES**

The committee on **Labor** reports and recommends:

December 16, 1996

Senate Clearinghouse Rule 96-140

Relating to administration of child care funds.

No action taken.

Senate Clearinghouse Rule 96-141

Relating to child care certification.

No action taken.

Russell Decker
Chairperson

MESSAGES FROM THE ASSEMBLY

By Charles Sanders, chief clerk.

Mr. President:

I am directed to inform you that the Assembly is, organized and ready to proceed to the business of the 1997-98 legislative session.

MOTIONS UNDER SENATE RULE 98

for the Month of December 1996

A certificate of congratulations by Senator Fitzgerald for the Aaron John Abraham on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by Senator George for the Albright United Methodist Church on the occasion of celebrating their 150th Anniversary.

A certificate of congratulations by Senator Risser for Irene "Rene" Beryl Walter Anderson on the occasion of celebrating her 90th Birthday.

A certificate of commendation by Senator Darling for Gerald C. Anderson on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by Senator Burke for Senator Joseph Andrea on the occasion of his retirement from the Wisconsin State Senate after 20 years of service to the Legislature and wish him all the best in his future endeavors.

A certificate of commendation by Senator Farrow for Sara Balistreri on the occasion of being selected as the 1997 Wisconsin Restaurant Association-Milwaukee Chapter, "Outstanding Restaurateur of the Year".

A certificate of congratulations by Senator Breske for Jack DuPlayee on the occasion of his retirement from the Tomahawk Police Department after 35 years of service.

A certificate of congratulations by Senator Schultz for James B. Hasler on the occasion of his retirement after 20 years of outstanding dedicated service to the City of Reedsburg.

A certificate of congratulations by Senator Fitzgerald for Ryan Hellenbrand on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by Senator Buettner for Ryan L. Johnson on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by Senator Chvala for Matthew Kleinheinz on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by Senator Farrow for Michael S. Kuglitsch on the occasion of being selected as the 1996 Wisconsin Restaurant Association–Milwaukee Chapter, “Outstanding Restaurateur of the Year”.

A certificate of commendation by Senator Drzewiecki for Lois Ludwig on the occasion of being selected as the 1996 Outstanding Restaurateur of the Year.

A certificate of commendation by Senator Darling for Nicholas O’Brien on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by Senator Weeden for Larry Ochowski on the occasion of his retirement from the Janesville Police Department as an Identification Officer and for his lifetime of dedication to the City of Janesville.

A certificate of commendations by Senator Buettner for the Omro VFW Post 8493 on the occasion of celebrating their 50th anniversary.

A certificate of congratulations by Senator Moen for the Osseo–Fairchild Chieftains Football Team on the occasion of winning the 1996 Division 5 WIAA State Championship.

A certificate of commendation by Senator Drzewiecki for James D. Pecard IV on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by Senator Breske for Joe and Barb Polak on the occasion of being honored by the Wisconsin Agriculture as recipients of the 1996 Master Agriculturist Award for their contributions to the Maple Syrup industry in Wisconsin.

A certificate of congratulations by Senator Farrow for Sean T.H. Riley on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by Senator Panzer for Sheriff Robert H. Schulteis on the occasion of his retirement after 27 years of dedicated service to the citizens of Washington County.

A certificate of congratulations by Senator Weeden for Sergeant Peter Peloquin on the occasion of his retirement from the Janesville Police Department after a lifetime of dedication to the City of Janesville.

A certificate of congratulations by Senator Weeden for James Strommen on the occasion of his retirement from the Janesville Police Department as an Inspector and for his lifetime of dedication to the City of Janesville.

A certificate of congratulations by Senator Wineke for Chris Theis on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by Senator Fitzgerald for Christopher M. Theis on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by Senator Weeden for Robert Wilkinson on the occasion of his retirement from the Janesville Police Department and for his lifetime of dedication to the City of Janesville.