

STATE OF WISCONSIN

Senate Journal

Seventy-Seventh Session

FRIDAY, May 6, 1966.

9:00 o'clock A.M.

The senate met.

The senate was called to order by the clerk.

Senator McParland was selected to preside at today's session, upon motion of Senator Zaborski, with unanimous consent.

Senator McParland in the chair.

The calling of the roll was dispensed with, upon motion of Senator Zaborski, with unanimous consent.

Upon motion of Senator Zaborski, with unanimous consent, the senate proceeded to the 6th order of business.

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of Administration
Bureau of Management
State Office Building
Madison, Wisconsin 53702

May 4, 1966.

Mr. William P. Nugent
Senate Chief Clerk
State Capitol
Madison, Wisconsin 53702

Dear Mr. Nugent: The State Claims Commission is submitting a report to you in accordance with the provisions

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of Section 15.94 of the statutes covering claims heard by it in August and September 1965 and March and April 1966.

The amounts recommended for payment under \$500 on claims included in these reports have, therefore, under the provisions of the statutes been paid directly by the Commission. The Commission will prepare the bills covering the claims over \$500 recommended for payment and will submit them to the Joint Finance Committee for legislative introduction. These reports are for the information of the legislature.

The Claims Commission will appreciate your acceptance of the reports and the spreading of them upon the Journal in the May 1966 session of the legislature to inform the members of the Senate as to the nature of the type of claims which comes before the Commission for its consideration.

Sincerely,

WAYNE F. McGOWN,
Secretary,
State Claims Commission.

BEFORE THE
CLAIMS COMMISSION OF WISCONSIN

Hearing was held at Madison, Wisconsin on September 29, 1965 upon the following claim:

<i>Name of Claimant</i>	<i>Amount of Claim</i>
Highway Pavers, Inc. -----	\$16,379.43

The Commission Finds:

Highway Pavers, Inc. claims \$16,379.43 as the result of additional costs incurred in the erecting a cofferdam (pier 9) incident to the construction of a highway overhead bridge spanning the main line tracks of the Chicago, Milwaukee, St. Paul and Pacific Railroad in the vicinity of South 13th Street and Bolivar Avenue, in the City of Milwaukee. The contract between Highway Pavers, Inc. and the State of Wisconsin for construction of such bridge provided, among other things:

"Excavations in the proximity of the tracks shall be sheeted in a manner satisfactory to the chief engineer of the railroad company * * *"

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The chief engineer of the railroad company rejected the plans submitted by Highway Pavers, Inc. for construction and sheeting of the cofferdam and insisted upon an ultra conservative plan which resulted in additional costs to the claimant amounting to \$14,402.54.

The time between the State's advertising for bids on August 22, 1963 and the letting of bids September 17, 1963 was not sufficient to enable the claimant to obtain approval of the railroad of plans for sheeting of the cofferdam prior to submitting its bid.

The Commission concludes that the State, by the terms of the contract placed the claimant in the position of being forced to accede to demands of the railroad, not a party to the contract, causing the claimant to incur additional cost not originally contemplated by either party to the contract, and that on equitable principles the State should pay to Highway Pavers, Inc. the sum of \$7,200.00 as its fair share of such additional costs.

The Commission Concludes :

That the payment of \$7,200.00 to Highway Pavers, Inc. is justified under provisions of Sec. 15.94, Stats.

Dated at Madison, Wisconsin, this 27th day of April, 1966.

WALTER G. HOLLANDER,
Chairman, Senate Committee on
Finance.

GEORGE MOLINARO,
Chairman, Assembly Committee on
Finance.

WARREN D. EXO,
Representative of Commissioner
of Administration.

DAVID G. McMILLAN,
Representative of Attorney General.

BEFORE THE CLAIMS COMMISSION OF WISCONSIN

Hearings were held at Madison, Wisconsin, on March 16, 1966, upon the following claims :

<i>Name of Claimant</i>	<i>Amount of Claim</i>
1. Warner G. Rumlow -----	\$ 884.63
2. Pearl Wilber -----	1,509.15
3. Daniel Popuch -----	192.86

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and on September 28, 1965, on the following claims:

4. Hardware Dealers Mutual Fire Insurance Co. ----- 27,823.03
5. Frank Keegan ----- 12,058.64

and on April 14, 1966, on the following claim:

6. Robert M. Denny ----- 194.03

The Commission Finds:

1. *Warner G. Rumlow*

Warner G. Rumlow claims \$884.63 as a result of his being discharged from his position as an attendant at the Winnebago State Hospital.

The claimant and four other attendants became engaged in a scuffle with a hospital patient who had become violent, and the patient died from injuries received during the struggle. A coroner's jury investigating the death concluded that all five attendants had violated section 940.29, Stats., making it a crime to abuse inmates of institutions, and on November 12, 1963, all five were suspended from their jobs pending the outcome of the trial. The trial jury found the claimant guilty and the other four innocent of the charges on December 6, 1963. On the same day the claimant was discharged from his employment at the hospital. He moved for a new trial, which was granted, and was acquitted in 1965.

The claimant and three of the other defendants did not appeal from their suspensions, and the claimant did not appeal from his discharge. All four of the other defendants were reinstated in their employment, upon their acquittal, and received pay for the period of suspension. The claimant did receive pay for the amount of the unused vacation credits which he had earned at the time of his suspension. His claim is based upon loss of earnings in the latter part of 1963 and in 1964 up to the time when he obtained employment at a higher salary than he had been receiving at the Hospital.

The Commission concludes that the State is neither legally nor morally obligated to pay any part of the claim for loss of earnings subsequent to the last day for which the claimant was paid—December 13, 1963. This is because he took no appeal from his discharge. Having taken no steps to protect his job subsequent to his discharge, he cannot now be heard to complain. The period of his suspension, however, presents a different question.

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Only one of the other four defendants in the initial criminal trial appealed from his suspension, yet all four of those defendants were reinstated with no loss of pay. The Commission concludes that on equitable principles the State in good conscience should pay that portion of the claim based upon loss of earnings during the period of suspension, which we have computed at \$268.00

2. *Pearl Wilber*

Pearl Wilber claims \$1,509.15 because of personal injuries sustained on May 21, 1964, when she was thrown to the floor by a disturbed patient while the claimant was on a conducted tour of Southern Colony. The Commission finds that the injuries were attributable at least in part to negligence of State employees, but that damages of only \$368.00 have been established.

3. *Daniel Popuch*

Daniel Popuch claims \$192.86 because of damages to his automobile on May 22, 1965. The claimant alleges that his vehicle was legally parked adjacent to property previously acquired by the State for expressway purposes and that a tree on State property was blown over, damaging his vehicle. The record establishes that the tree involved had considerable rot, and that it was blown over during high winds. The Commission finds that the damages were attributable in part to negligence of State employees, but that damages of only \$50 have been proved.

4. *Hardware Dealers Mutual Fire Insurance Co.*

5. *Frank Keegan*

Hardware Dealers Mutual Fire Insurance Co. and Frank Keegan claim \$27,823.03 and \$12,058.64, respectively, as compensation for damages resulting from a fire on the Keegan premises set by a Mendota State Hospital patient on March 4, 1963.

These claims first were made in 1963, and the Commission concluded that the claims should be denied. At that time the Commission concluded that the State, in the absence of negligence by its employees in allowing a mental patient to have considerable freedom, was not morally obligated to reimburse individuals damaged by acts of the patient. The claims were filed again, and the present Commission also finds that there was no causal negligence on the part of State agents or employees.

Upon the resubmission of these claims, the claimants have urged with considerable persuasiveness that the State should assume liability for damages to innocent persons, caused by mental patients who are in the custody of the State. It may be conceded in view of *Guardianship of Meyer* (1935), 218 Wis. 381, that insanity is no defense to a tort action unless intent is an essential element of the tort. It may even be conceded further that an individual who voluntarily assumes charge of a mental patient known to be dangerous to others has a duty to restrain the patient from damaging others. However, the foundation of this principle appears to lie partially in the public policy of inducing the patient's relatives or others interested in his estate to restrain him.

In the instant matter it is difficult to see how the State could profit by restraining the patient. The object of hospitalizing a mental patient is not just to protect society from the patient. It is also to rehabilitate the patient and to restore him to a useful position in society. To achieve this purpose it is necessary to allow the patient as much freedom and responsibility as, in the opinion of competent medical experts, is consistent with the interests of the patient and the public.

Since we are not persuaded that the State employees involved here were negligent by permitting the patient to have excessive freedom, we cannot conclude that on equitable principles or in good conscience the State should become the guarantor with respect to the damages caused by this patient.

6. *Robert M. Denny*

Robert M. Denny claims \$194.03 for travel expenses incurred as a member of the Great Lakes Compact Commission during the fiscal year ending June 30, 1963. He filed a claim for reimbursement of such expenses in September 1963, but the claim could not be paid since at that time there was no money available from the appropriation which could be expended for reimbursement of travel expenses during the prior fiscal year. The same situation has existed at the end of subsequent fiscal years. The Commission concludes that in equity and good conscience the State should pay this claim.

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The Commission Concludes:

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

Hardware Dealers Mutual Fire Insurance Co.
Frank Keegan

2. That payment of the following amounts to the following claimants, respectively, is justified under the provisions of section 15.94, Statutes:

Warner G. Rumlow -----	\$268.00
Pearl Wilber -----	368.00
Daniel Popuch -----	50.00
Robert M. Denny -----	194.03

Dated at Madison, Wisconsin, this 27th day of April, 1966.

WALTER G. HOLLANDER,
Chairman, Senate Committee
on Finance.

GEORGE MOLINARO,
Chairman, Assembly Committee
on Finance.

WARREN D. EXO,
Representative of Commissioner of
Administration.

E. WESTON WOOD,
Representative of Attorney General.

BEFORE THE
CLAIMS COMMISSION OF WISCONSIN

Karl Keel, Administrator of the Estate of Florence Kell,
Deceased.

A hearing was held at Madison, Wisconsin, on August 30, 1965, on the claim of Karl Kell, Administrator of the Estate of Florence Kell, deceased, for \$25,000.00 as a result of the suicide of the decedent. The decedent was committed to Winnebago State Hospital in early April, 1964. Late in the same month she escaped from the hospital and two days later committed suicide.

The claimant contends that the decedent's escape was due to negligence of the hospital staff and that the staff also was negligent in not more promptly notifying members of her family or others who might be able to locate her in time

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to prevent the tragedy. The Commission cannot agree and finds that the death of the decedent was not caused by negligence of State agencies or employees and that the claim is not one which on equitable principles the State should pay.

Dated at Madison, Wisconsin, this 27th day of April, 1966.

WALTER G. HOLLANDER,
Chairman, Senate Committee
on Finance.

GEORGE MOLINARO,
Chairman, Assembly Committee
on Finance.

ARVID A. SATHER,
Representative of Governor.

WARREN D. EXO,
Representative of Commissioner of
Administration.

The foregoing reports of the Claims Commission were received and referred to the joint committee on Finance. Ordered spread upon the journal.

Upon motion of senator Roseleip, the senate adjourned until 10:00 o'clock Tuesday morning, May 10th, 1966.