

## JOURNAL OF THE SENATE

WEDNESDAY, November 24, 1971.

The chief clerk makes the following entries under the above date.

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### AMENDMENTS OFFERED

Senate amendment 1 to Senate Bill 815 by Senator Soik, by request of T. F. Kryshak, Lakeside Laboratories.

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### BILLS INTRODUCED

Read first time and referred:

**Senate Bill 848**

Relating to advertising by political subdivisions of the state.

By Senator Soik.

To committee on Governmental and Veterans' Affairs.

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### PETITIONS AND COMMUNICATIONS

State of Wisconsin  
Claims Board

November 18, 1971.

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

Dear Mr. Nugent:

Enclosed are copies of the reports and recommendations of the State Claims Board covering claims heard by the Board.

The amounts recommended for payment under \$500 on claims included in this report have, therefore, under the

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provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

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 as to the nature of the claims which come before it for consideration.

Sincerely,

DONALD STERLINSKE,  
Secretary.

### BEFORE THE CLAIMS BOARD OF WISCONSIN

A hearing was held before the Claims Board at Madison, Wisconsin on September 27, 1971, on the claim of Andrew Wm. Huber who claims \$8,592.00 for damages arising out of an incident which occurred on or about March 26, 1970, at the Wisconsin School for Boys at Wales, Wisconsin. Claimant was one of forty occupants of one of the cottages at the School for Boys. Thirty-five of the occupants were inside of the cottage with the counselor during the free period at about 4:00 P.M. while five of the boys were engaged in outdoor group activity. Claimant does not know how the incident began which led to his injury, although the evidence indicates that it occurred as a result of horseplay with a friend of the claimant. While playing outside he was wrestled to the ground by another inmate, and as claimant fell he hit his mouth upon a pipe which was protruding from the ground. As a result of the injury claimant suffered a fractured mandible and multiple fractures of the mandibular maxillary teeth. Claimant was taken by State authorities to the Waukesha Memorial Hospital at Waukesha, Wisconsin where he received appropriate medical attention. Ultimately claimant lost ten or eleven teeth as a result of this incident. Claimant alleges that he did not receive proper prosthetics from the State Prison and that subsequently the claimant had to seek the services of his private dentist to receive proper prosthetics. The Board concludes that there is unsatisfactory evidence of negligence on the part of officers, agents or employees of the State and that the State is not legally liable for damages arising out of the incident which caused the claimant to lose his teeth, and that the

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claim is one which on equitable principles the State should not assume and pay, with one exception; that damages of \$450 have been shown as a result of the State failing to furnish proper prosthetics to the claimant during the time he was in its custody, and that the State should assume and pay said \$450 to the claimant on equitable principles.

Dated at Madison, Wisconsin this 17th day of November, 1971.

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

GEORGE MOLINARO,  
Chairman, Assembly Committee on  
Finance.

DONALD STERLINSKE,  
Representative of Secretary of  
Administration.

ALLEN WILLIAMS,  
Representative of Governor.

ALLAN P. HUBBARD,  
Representative of Attorney General.

### BEFORE THE CLAIMS BOARD OF WISCONSIN

Hearings were held at Madison, Wisconsin on November 1, 1971, upon the following claims:

<i>Name of Claimant</i>	<i>Amount of Claim</i>
1. Mr. & Mrs. Joseph Juneau	\$ 68.12
2. Santo Mollica	75.00
3. Edwin Anderson	100.00
4. Robert Lemberger	111.80
5. Joseph Kowalczyk	233.84
6. Wisconsin Gas Company	263.06
7. Ronald Dykstra	378.51
8. Gerald Raspiller	32,803.53

### THE BOARD FINDS:

#### 1. *Mr. & Mrs. Joseph Juneau*

Mr. & Mrs. Joseph Juneau claim \$68.12 for damages to their 1971 Chevrolet Station Wagon as the result of an incident occurring on Highway 51 near Merrill, Wisconsin on

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August 26, 1971. The damage was caused by fresh tar from the highway which was sprayed over their car. The Department of Transportation had no record of an application of tar by the Department on or near that date in said location. There is evidence that the tar was placed upon the highway as the result of dribble from the distributor bar of a truck owned by a third party. There is no evidence of negligence on the part of officers, agents or employees of the State and the board concludes the claim is not one for which the State is legally liable and not one which on equitable principles the State should assume and pay.

### 2. *Santo Mollica*

Santo Mollica claims damages of \$75.00 to his 1966 Ford, as the result of an incident occurring on May 27, 1971, on I-State 94 Northbound near the Beloit Road Exit in Milwaukee, Wisconsin. While his son was driving the car it was sprayed on the windshield, bumper, hood and side with white paint which was being applied to the highway by a Department of Transportation highway vehicle. The Board concludes that damages of only \$50 have been shown, and that on equitable principles the State should assume and pay \$50 to the claimant.

### 3. *Edwin Anderson*

Edwin Anderson claims damages of \$100.00 as the result of an incident occurring in December of 1970 on Highway 71 between Norwalk and Sparta, Wisconsin. At the time of the incident a large amount of snow had been piled on each side of the highway, causing it to be narrower than usual. While trying to avoid oncoming traffic the claimant drove his automobile along a steel guard rope which had been erected along the side of the highway. The protruding bolt-heads from the guard rope damaged the right side of his car. There is no evidence of negligence on the part of officers, agents or employees of the State and the Board concludes the claim is not one for which the State is legally liable, and not one which on equitable principles the State should assume and pay.

### 4. *Robert Lemberger*

Robert Lemberger claims reimbursement for damages of \$111.80 as the result of an accident occurring on September

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9, 1971, on Highway 894 North of Lincoln Avenue in Milwaukee, Wisconsin. Department of Transportation painting crews were painting black and white stripes on the highway. While passing the truck which was applying the paint to the highway, the claimant's car was sprayed. Claimant replaced his white vinyl roof in July of 1971. The Board concludes the claim for \$111.80 is one which on equitable principles the State should assume and pay.

### 5. *Joseph Kowalczyk*

Joseph Kowalczyk claims damages of \$233.84 as the result of an incident occurring on June 5, 1971, in the Township of Fredonia on State Highway 57, approximately 500 feet south of County Highway K. While proceeding in a southerly direction on State Highway 75 the highway buckled. Pieces of the concrete struck the rod of the claimant's vehicle causing damage to the automobile and personal injury to the claimant. Numerous similar explosions occur from year to year on highways in Wisconsin with and without expansion joints, usually on extremely hot days. Although many theories have been advanced as to what caused these explosions, their specific cause remains unknown. There is no evidence on the part of officers, agents or employees of the State and the Board concludes the claim is not one for which the State is legally liable and not one which on equitable principles the State should assume and pay.

### 6. *Wisconsin Gas Company*

The Wisconsin Gas Company claims damages of \$263.06 as a result of an incident which occurred on May 12, 1971, at the corner of Locust and Wisconsin Avenue in Frederic, Wisconsin. An augering machine being operated by an employee of the Wisconsin Department of Transportation struck and damaged a two-inch gas main, owned by the Wisconsin Gas Company. The location of the gas main had been approved by the Wisconsin Department of Transportation in 1966, under permit No. 7283-B. The Board concludes the claim for \$263.06 is one which on equitable principles the State should assume and pay.

### 7. *Ronald Dykstra*

Ronald Dykstra claims damages of \$378.51 as the result of an incident occurring on June 6, 1971, on I-State 94 west

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of Milwaukee, Wisconsin. The claimant hit a concrete blow-up about 3 or 4 inches high which caused damages to his car. Numerous similar explosions occur from year to year on highways in Wisconsin with and without expansion joints, usually on extremely hot days. Although many theories have been advanced as to what causes these explosions their specific cause remains unknown. There is no evidence of negligence on the part of officers, agents or employees of the State, and the Board concludes the claim is not one for which the State is legally liable, and not one which on equitable principles the State should assume and pay.

### 8. *Gerald Raspiller*

Gerald Raspiller claims damages of \$32,803.53 as the result of an incident occurring on September 6, 1966, at Route 13, 5 miles south of Wisconsin Rapids. While stopped behind a school bus which was discharging passengers, a car driven by a third party ran into the rear-end of claimant's truck, causing claimant to run into the rear-end of the car parked in front of him. Upon the advice of his attorney, claimant settled his claim with the wrongdoer, precluding him from pursuing further recovery against the wrongdoer. It is the claimant's position that because the State law permits the released wrongdoer to continue driving in spite of his poor driving record and the damage inflicted to the claimant, that the State should be liable to the claimant. There is no evidence of negligence on the part of officers, agents or employees of the State and the Board concludes the claim is not one for which the State is legally liable, and not one which on equitable principles the State should assume and pay.

### THE BOARD CONCLUDES:

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

Mr. & Mrs. Joseph Juneau  
Edwin Anderson  
Joseph Kowalczyk  
Ronald Dykstra  
Gerald Raspiller

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2. Payment of the following amounts to the following claimants, respectively, is justified under sec. 16.007 (6), Wis. Stats.:

Santo Mollica -----	\$ 50.00
Robert Lemberger -----	\$111.80
Wisconsin Gas Company -----	\$263.06

Dated at Madison, Wisconsin this 17th day of November, 1971.

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

GEORGE MOLINARO,  
Chairman, Assembly Committee on  
Finance.

DONALD STERLINSKE,  
Representative of Secretary of  
Administration.

ALLEN WILLIAMS,  
Representative of Governor.

ALLAN P. HUBBARD,  
Representative of Attorney General.

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## EXECUTIVE COMMUNICATIONS

November 17, 1971.

To the Honorable, the Senate:

Pursuant to the provisions of the statutes governing, I have nominated and with the advice and consent of the Senate do appoint Joey E. Sangor, of Milwaukee, as a member of the Athletic Examining Board, to serve for a term ending July 1, 1974.

Sincerely,

PATRICK J. LUCEY,  
Governor.

Read and referred to committee on Governmental and Veterans' Affairs.

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To the Honorable, the Senate:

Pursuant to the provisions of the statutes governing, I have nominated and with the advice and consent of the Senate do appoint Erich Mildenberg, of Silver Lake, as Commissioner of Banking, to succeed Roger Heironimus, to serve for a term ending March 1, 1977.

Sincerely,

PATRICK J. LUCEY,  
Governor.

Read and referred to committee on Commerce, Labor, Taxation, Insurance and Banking.

To the Honorable, the Senate:

Pursuant to the provisions of the statutes governing, I have nominated and with the advice and consent of the Senate do appoint Patrick Buckley, of Waukesha, as a member of the Pesticide Advisory Council, to succeed Lynn K. Brunn, to serve for a term ending July 1, 1974.

Sincerely,

PATRICK J. LUCEY,  
Governor.

Read and referred to committee on Agriculture.

To the Honorable, the Senate:

Pursuant to the provisions of the statutes governing, I have nominated and with the advice and consent of the Senate do appoint James Peterson, of Prairie du Chien, as Administrator of the Division of Motor Vehicles, to succeed James Karns, to serve for a term ending March 1, 1977.

Sincerely,

PATRICK J. LUCEY,  
Governor.

Read and referred to committee on Transportation.