

# Eighty-Sixth Regular Session

WEDNESDAY, December 12, 1984

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

## COMMITTEE REPORTS

The committee on Senate Organization reports and recommends:

As chairman to the joint committee on Finance, Senator George, to fill the vacancy created by the resignation of Senator Maurer.

TIMOTHY F. CULLEN  
Chair

## PETITIONS AND COMMUNICATIONS

State of Wisconsin  
State Senate

November 29, 1984

To the Honorable the Senate:

This letter is to notify you that I am resigning my position as Senate Chairperson of the joint committee on Finance effective immediately.

Sincerely,  
JOHN J. MAURER  
State Senator

State of Wisconsin  
State Senate

December 12, 1984

To the Honorable the Senate:

It is my understanding that with my appointment as Senate Chairperson of the joint committee on Finance, I become an ex officio member of the Wisconsin Legislative Council. This is to advise you that I would like to resign that ex officio position.

Sincerely,  
GARY R. GEORGE  
State Senator

State of Wisconsin  
Claims Board

December 7, 1984

Don Schneider  
Senate Chief Clerk  
Madison, Wisconsin

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on November 26, 1984.

The amounts recommended for payment under \$1000 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$1,000, 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 November 26, 1984 upon the following claims:

Claimant	Amount
John Belknap	\$ 346.50
James Verhage	1,940.20
William Gelhaus	1,668.87
James Bailey	250,000.00

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

Carol Buettner	\$ 100.00
St. Paul Insurance Co.	3,483.51
Gary Lindenberger	40.00
Lee Haass	103.00
James Bennett	132.00
Haruyasu Kinashi	110.50
Susan Schilling	550.00
Milwaukee Mutual Insurance	2,540.31
Shannon Van Den Heuvel	61.90
Mary Mullaney	15.00
Dennis Eschenfeldt	4,757.60
Daniel Benzer	83.95
Robert Framke	25.00
Crawford County	632.30
Wisconsin & Southern Railroad Co.	823.20
Henry & Audrey Wessing	3,000.00
Connie De Lory	20.00
Marc Williamson	15.00

## THE BOARD FINDS:

1. John Belknap of Madison claims \$264.00 for the amount of insurance premiums and \$82.50 for administrative costs to process his claim. Claimant was employed as a Project Associate with the Department of Agricultural Economics at the University of Wisconsin-Madison on July 1, 1983. During claimant's absence on a work-related project out of the country, the 30-day period for enrollment in the health insurance plan of claimant's choice had lapsed. Claimant was eligible for health insurance coverage, with paid contribution from the University, under the Wisconsin Physicians Service standard plan; however, claimant continued premium payments for an insurance plan with Group Health

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Cooperative Insurance. A majority of the Board concludes that claimant was negligent in failing to make further inquiry concerning his option for insurance coverage and therefore, concludes the claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (Members Schneider and Colas dissenting).

2. James Verhage of Plymouth claims \$1,940.20 for attorney fees incurred in the defense of charges of child abuse and molestation brought against him in 1983 by the Sheboygan County Social Services and expenses incurred to obtain visitation rights to see his two daughters. After a preliminary hearing, the Court found no probable cause to believe a crime had been committed and dismissed the charges against claimant. The Board concludes there has been no showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for the state is legally liable nor one which the state should assume and pay based on equitable principles.

3. William Gelhaus of Monona claims \$1,668.87 for attorney fees incurred from 1978 to 1980, in pursuance of a grievance on the issue of back pay against his employer, the Department of Transportation. The Department of Transportation and the claimant reached an agreement on October 14, 1980, prior to a hearing on the matter before the State Personnel Commission. The agreement provided payment to the claimant in the amount of \$3,500.00. In the absence of any provision for attorney fees, the Board concludes 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. James Bailey of Shell Lake claims \$250,000.00 for damages resulting from the death of his wife, Audrey Bailey, who was killed in an automobile accident on July 30, 1980, on state highway 25 near the intersection of I-94 in Dunn County. Claimant alleges that inadequate lighting and negligent design of the road where the accident occurred were the cause of the automobile accident. The Board finds that the evidence does not show any casual negligence on the part of any officers or employes of the state and as tragic as this death was, in the absence of such negligence the Board concludes the 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. Carol Buettner of Oshkosh claims \$100 as the insurance deductible amount on the loss of several personal items that were stolen from her automobile while it was parked in front of the Department of Natural Resources office building in Milwaukee on November 9, 1983, when the claimant was attending a legislative committee public hearing. The Board concludes there is not 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.

6. St. Paul Fire & Marine Insurance Company of Brookfield claims \$3,483.51 subrogation damages.

Claimant's insured, Thomas Frederickson, presented the claim to the insurance company for damages to his motor home incurred on September 4, 1983, when it struck a tree limb in Potawatomi State Park. Consistent with a long-standing policy of this Board concerning subrogation damages, the Board concludes the 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. Gary Lindenberger of Spooner claims \$40.00 for the replacement of cost of his contact lens that was lost on May 9, 1984, while he was engaged in fish management activities at the Turtle-Flambeau flowage, as a limited-term employe of the Department of Natural Resources. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

8. Lee Haass of Osceola claims \$103.00 for replacement cost of his eyeglasses which were lost on April 2, 1984, while he was removing a beaver dam on the Osceola Fish Hatchery grounds, as an employe of the Department of Natural Resources. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

9. James Bennett of River Falls claims \$132.00 for replacement cost of his eyeglasses which were damaged on May 3, 1984, while he was performing his duties as a limited-term employe of the Department of Natural Resources. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

10. Haruyasu Kinashi of Madison claims \$110.50 for medical expenses incurred in April, 1984, as a result of a misunderstanding with the University of Wisconsin-Madison regarding the effective date of his insurance coverage. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285(1)(m), Stats.

11. Susan Schilling of Middleton claims \$550.00 for dental expenses allegedly resulting from an accident which occurred while she was attending a University of Wisconsin football game at Camp Randall Stadium in October, 1982. The accident occurred when a woman who was being body-passed through the crowd was dropped on top of claimant. Claimant had root canal surgery on a tooth following the incident and the University of Wisconsin paid claimant \$525 in exchange for a release of all claims growing out of the accident. In December, 1983, claimant required root canal work on another tooth which she alleges is related to the 1982 accident. The Board concludes the claim is not one for

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which the state is legally liable nor one which the state should assume and pay based on equitable principles.

12. Milwaukee Mutual Insurance Company claims \$2,540.31 for subrogation damages and the deductible amount paid by its insured, James Murphy, for damages to his car incurred on January 28, 1984, when he was involved in an accident with a University of Wisconsin bus. The Board finds there has been no showing of negligence on the part of the state, its officers, agents or employes and consistent with a long-standing policy of this Board concerning subrogation claims the Board concludes the 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. Shannon Van Den Heuvel of Madison claims \$61.90 for replacement cost of her portfolio allegedly stolen from her instructor's office on the University of Wisconsin-Madison campus on May 11, 1984. Claimant had left the portfolio with her instructor in order to be graded. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285(1)(a), Stats.

14. Mary Mullaney of Madison claims \$15.00 for clothing damaged while being laundered in a washing machine located in University housing on the University of Wisconsin-Madison campus on June 18, 1984. The washing machine timer malfunctioned and the wash cycle continued for several hours causing damage to the clothing. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285(1)(h), Stats.

15. Dennis Eschenfeldt of Oregon claims \$4,757.60 for attorney fees incurred from 1979 to the present for representation during his reclassification appeal to the State Personnel Commission and the Dane County Circuit Court. In July, 1981, the Personnel Commission granted claimant's reclassification request and also awarded back pay. The state appealed the decision to the Circuit Court which issued a decision dated April 27, 1983, affirming the reclassification of the claimant's position and reversing the award of back pay retroactive to October 5, 1978. A majority of the Board concludes the claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (Member Wilker dissents).

16. Daniel Benzer of Sheboygan claims \$83.95 to repair scratches on the finish on his automobile allegedly incurred while the automobile was parked in the staff parking lot at the Kettle Moraine Correctional Institute on March 20, 1984. An inmate of the Institute allegedly threw a shovel of sand and salt mixture onto claimant's automobile while he was sanding the parking lot. 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 the the state is

legally liable nor one which the state should assume and pay based on equitable principles.

17. Robert Framke of Athens claims \$25.00 for the replacement cost of a hood ornament which was broken off the hood of his automobile by a resident of the Northern Wisconsin Center while the automobile was parked in the Institute's parking lot on July 14, 1984. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Department of Health and Social Services appropriation s. 20.435(2)(gk), Stats.

18. Crawford County claims \$632.30 for the court costs imposed upon the County as a result of the decision of Judge Michael Kirchman in the case of State of Wisconsin v. Phillip D. Halverson and City of Prairie du Chien. The State's claim against the City was dismissed with prejudice and the Court granted the City costs. The Court found Crawford County liable for the costs under s. 778.20, Stats. Crawford County liable for the costs under s. 778.20, Stats. Crawford County was not involved as a party in the case. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Claims Board appropriation s. 20.505(4)(d), Stats.

19. Wisconsin & Southern Railroad Company of Horicon claims \$823.20 for damage to their railroad coal cars while being unloaded by employes of the Waupun Correctional Institution on January 25, 1984. Due to weather circumstances, a heating device was used by employes of the Department of Health and Social Services in order to unload the coal. During the process of heating, air gaskets and train line fittings were damaged. The Board concludes the claim should be paid in the reduced amount of \$743.20 for the cost of repairs only, based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Department of Health and Social Services appropriation s. 20.435(3)(kk), Stats.

20. Henry and Audrey Wessing of Lomira claim \$3,000.00 for taxes they have paid for 30 years on 6.75 acres of land on which an easement was acquired by the state Highway Commission in 1952. The Department of Transportation has indicated that they would be willing to accept a conveyance of the 6.75 acres, which would remove that area from claimants' tax parcel. The Board concludes there has been no 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.

21. Connie De Lory of Kenosha claims \$20.00 plus tax for the replacement cost of a pair of slacks which were damaged by a broken spring that had poked through a chair at the Kenosha Job Service Office where claimant was employed on July 16, 1984. The Board concludes the claim should be paid in the amount of \$20, based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats.,

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payment should be made from the Department of Industry, Labor and Human Relations appropriations s. 20.445(1)(z), Stats.

22. Marc Williamson of Madison claims \$15.00 for replacement cost of his watch allegedly stolen on June 11, 1984, from his desk drawer in his office at the Loraine Building where he is employed by the Department of Development. The Board concludes there is an insufficient showing of negligence on the part of the state, its officers, agents or employe 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.

THE BOARD CONCLUDES:

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

- John Belknap
- James Verhage
- William Gelhaus
- James Bailey
- Carol Beuttner
- St. Paul Insurance Company
- Susan Schilling
- Milwaukee Mutual Insurance Company
- Dennis Eschenfeldt
- Daniel Benzer
- Henry & Audrey Wessing
- Marc Williamson

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

Gary Lindenberger	40.00
Lee Haass	103.00
James Bennett	132.00
Haruyasu Kinashi	110.50
Shannon Van Den Heuvel	61.90
Mary Mullaney	15.00
Robert Framke	25.00
Crawford County	632.30
Wisconsin & Southern Railroad	743.20
Connie De Lory	20.00

Dated at Madison, Wisconsin this 7th day of December, 1984.

GARY R. GEORGE  
Senate Finance Committee

MARLIN D. SCHNEIDER  
Assembly Finance Committee

JUAN B. COLAS  
Representative of Governor

EDWARD D. MAIN  
Representative of Secretary of Administration

WILLIAM H. WILKER  
Representative of Attorney General

SENATE CLEARINGHOUSE ORDERS

The committee on Health, Education, Corrections and Human Services reports and recommends:

**Clearinghouse Rule 84-53**

AN ORDER to renumber Accy 4.11 and 7.03 (3); to amend Accy 1.405 (1) (a) and 7.03 (2); and to create Accy 4.11 and 7.03 (3), relating to qualifications of, and requirements for practice as, certified public accountants.

No action taken.

**Clearinghouse Rule 84-131**

AN ORDER to repeal and recreate ch. PI 2, relating to school district boundary appeals.

No action taken.

**Clearinghouse Rule 84-188**

AN ORDER to create ch. PI 18, relating to high school graduation requirements.

No action taken.

**Clearinghouse Rule 84-199**

AN ORDER to create HSS 110.10, relating to defibrillation of patients by ambulance attendants.

No action taken.

CARL W. THOMPSON  
Chair