

1999 DRAFTING REQUEST

Bill

Received: **03/09/2000**

Received By: **kuesej t**

Wanted: **Soon**

Identical to LRB:

For: **Sheryl Albers 6-1743**

By/Representing: **Patricia Reardon - Claims Board**

This file may be shown to any legislator: NO

Drafter: **kuesejt**

May Contact:

Alt. Drafters:

Subject: **State Finance - claims agnst st**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Jerome and Theresa Wagner claim

Instructions:

Per board recommendation, 3/6/00.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
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/1			hhagen 03/15/2000	_____	lrb-docadmin 03/15/2000	lrb-docadmin 03/21/2000	

FE Sent For: **3/28/00**

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FE Sent For:

<END>




State of Wisconsin • CLAIMS BOARD

101 E. Wilson Street • Post Office Box 7864 • Madison, Wisconsin 53707-7864 • 608-264-9595 • Patricia.Reardon@doa.state.wi.us

DATE: March 8, 2000

TO: Jeffrey Kuesel
Legislative Reference Bureau

FROM: Patricia A. Reardon 
Program Assistant

RE: Drafting of Claims Legislation

Attached, please find a copy of the proceedings from the meeting held by the State Claims Board on February 17, 2000. At that time, the Board recommended that the following claims be paid:

Jerome & Theresa Wagner	\$69,860.00
City of La Crosse	\$8,420.92

The Claims Board members would appreciate it if you would draft the necessary legislation for this claim. Representative Sheryl Albers will sponsor the bill. Thank you for your assistance in this matter.

claimant and her HMO were given sufficient warning that her M.A. benefits would end April 1, 1999. 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. Jerome and Theresa Wagner of Middleton, Wisconsin claim \$69860.00 for loss of income related to the failure of Ryser Brothers Dairy of Wisconsin, Inc., in 1991. The claimants contend that the Department of Agriculture, Trade & Consumer Protection is responsible for the loss because of its regulation of Ryser under the dairy plant security law. When DATCP issued a demand for security to Ryser in 1990, the company went bankrupt. The claimants request \$69,860, the amount owed to them by Ryser. They attempted to receive some reimbursement through Ryser's bankruptcy proceedings, however Ryser's bankruptcy estate was not sufficient to make any distributions to unsecured creditors. The Department of Agriculture, Trade & Consumer Protection recommends denial of this claim. At the time of the Ryser plant's closing, the claimants were the only independent producers still shipping to Ryser. While they have not provided any documentation for the amount of their claim, the amount stated is the same as that amount shown to be owed to the claimants in the records of the Ryser plant. However, the claimants also state no basis for their claim, other than the bare statement that the Department would not let the plant keep operating. Since the entire producer security program is to provide only a reasonable assurance that producers be paid, there must be some showing of grounds for a producer claim against the state in a dairy default case other than a mere assertion of loss. This claim is similar to the claims related to the failure of Kasson, Inc., a cheese factory that closed in 1989 under similar circumstances. Producers of that plant filed claims with the Claims Board alleging that the Department had failed to perform its duties under the dairy producer security program. The Claims Board did not find that the Department was negligent in performing its duties but elected to award the producers 50% of their claimed amount on equitable grounds. The board recommends that the claim be paid in the reduced amount of \$23,053.80 based on equitable principles. The board further recommends that the claim be paid from the Claims Board appropriation s. 20.505 (4)(d).

3. Julie Leser of Madison, Wisconsin claims \$286.43 for vehicle damage allegedly incurred at her workplace. The claimant is employed by Madison Metropolitan School District but was authorized to park in a portion of a lot owned by the UW. The claimant states that in August 1998 her van was parked next to a UW parking sign, which was sunk into a bucket of concrete. She states that when she returned to her vehicle, the sign was tipped over and had damaged the hood of her van. The claimant alleges that the signs in Lot 91 were improperly anchored and states that all of them have blown over in the past and were permanently secured in the ground in December 1998 to alleviate the problem. The claimant believes that the UW was aware of this problem and that she should be reimbursed for her damages. The claimant has a \$250 insurance deductible and does have insurance coverage for the remaining \$36.43. The University of Wisconsin recommends denial of this claim. The UW states that at the time of this incident they were unaware of a problem with the parking signs in Lot 91. Following a windstorm in November 1998, some signs were blown or tipped over and the UW became aware of the problem. As soon as it became aware of the problem, the University acted to permanently secure all the signs in Lot 91. Since it did not have notice of any problem prior to the claimant's incident, the UW believes it should not be held responsible for these damages and that there is no equitable basis for the claim. The Board concludes the claim should be paid in the reduced amount of \$250.00 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.

Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285(5)(h), Stats.

The Board concludes:

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

- Angel F. Williams
- Melvin Rice
- Boulanger Construction Company, Inc.
- John C. Koshick
- Ernestine Nelson

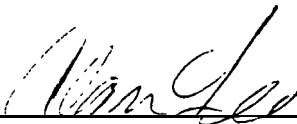
2. Payment of the following amounts to the following claimants is justified under s. 16.007, Stats:

Julie Leser	\$250.00
Wisconsin Gas Company	\$941.53
Scott A. Bowe	\$185.00
R.L. Elver	\$100.00
Wilbert Finke	\$50.85
Paul C. Johnson	\$799.63
Troy & Karen Mabie	\$346.50
Dennis Robertson	\$200.00

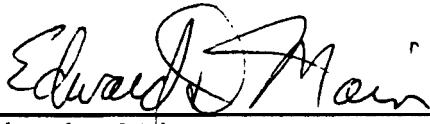
The Board recommends:

1. Payment of \$23,053.80 to Jerome and Theresa Wagner for damages related to the failure of Ryser Brothers Dairy in 1991.
2. Payment of \$8,420.92 to the City of La Crosse, Wisconsin for damages related to a late fee assessed against the city's 1999 transportation aids.

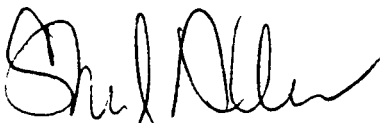
Dated at Madison, Wisconsin this 16 ~~th~~ day of March 2000.



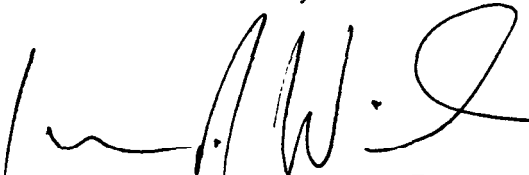
 Alan Lee, Chair/
 Representative of the Attorney General



 Edward D. Main, Secretary
 Representative of the Secretary of Administration



 Sheryl Albers
 Assembly Finance Committee



 Lawrence A. Wiley
 Representative of the Governor



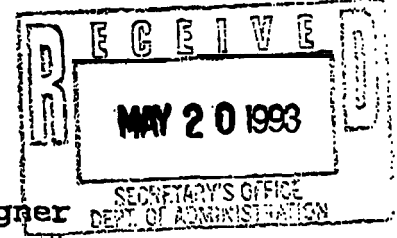
State of Wisconsin
 Department of Agriculture, Trade and Consumer Protection

Alan T. Tracy, Secretary

801 West Badger Road • PO Box 8913
 Madison, WI 53708-8911

May 13, 1993

State of Wisconsin Claims Board
 101 East Wilson St.
 Madison, WI 53707-7684



Re: Response to Claim of Mr. and Mrs. Jerome Wagner

Dear Claims Board Members:

A Claim has been filed against the Department of Agriculture, Trade and Consumer Protection by Mr. and Mrs. Jerome Wagner in regard to their losses from the failure of Ryser Brothers Dairy of Wisconsin, Inc., (Ryser) which operated a *cheese-making* plant in Mt. Horeb, Wisconsin. The Ryser plant closed on or about April 16, 1991, and the firm filed Chapter-11 ~~bankruptcy~~ in the federal court for the Northern District of Illinois shortly thereafter.

The Ryser plant was licensed by the Department of Agriculture, Trade and **Consumer** Protection (Department) to *buy* milk from producers under s. 100.06, Stats. There have been a number of changes in the statute and the rules implementing the statute (formerly chs. Ag 7 and Ag 8, Wis. Adm. Code, and currently ch. ATPC 100, Wis. Adm. Code) since the Ryser failure. *However, the basic operating principle of the program remains unchanged: in order to buy milk from producers, a dairy plant operator must meet specified minimum financial standards or file security with the Department in the amount of 75% of the operator's maximum liability to producers.*

At the time of the Ryser plant's closing, the Wagners were the only independent producers still shipping to Ryser, while the Wagners have not provided any documentation for the amount of their claim, ~~the amount stated in the claim of \$69,860.00, is the same as that~~ amount shown to be owed to the Wagners in the records of the Ryser plant. However, the Wagners' claim also states *no* basis for their Claim, other than the bare statement that the Department would not let the plant keep operating. Since the entire producer security program, as described above, is to provide only a reasonable assurance that producers be paid, there must be some showing of grounds for a producer claim against the state in a dairy default case other than a mere assertion of loss. Because of the Wagners' failure to state a basis for the claim, the Department must recommend that the Wagners' claim not be paid.

Ryser Bros. was licensed under regulations which permitted a dairy plant operator to be licensed on the basis of its financial statements if they showed a current ratio of at least 1.20 to 1.00 and total assets in excess of total liabilities (net worth equal to

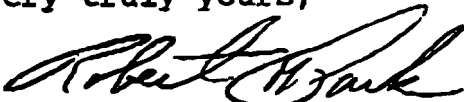
Members of the State Claims Board
May 13, 1993
Page 2

at least 1¢). During the license year beginning May 1, 1990, **Ryser Bros.** was licensed on the basis of its financial statements, but based on new financial statements received by the Department, a demand for security in the amount of \$604,600 was issued on July 25, 1990. The corporation was already in such poor financial condition that it could not provide the needed security. The Department continued to permit the plant to operate based on evidence from Ryser and its parent corporation that the parent corporation was working on a refinancing that would permit them to **comply with** the Department's requirements. Ryser officials elected to **close the plant** in April 1991.

The Wagners find themselves in a situation similar to that of the patrons of Kasson, Inc., USA, a cheese factory located in Brillion, Wisconsin, **that** closed in 1989. Producers of that plant filed claims with the Claims Board alleging the Department had failed to perform its duties under the dairy producer security program. The Claims Board did not find that the Department was negligent in performing **its** duties but elected to award the producers 33% (later raised to 50% by the legislature) of their claims based on "equitable grounds." There is a possibility of the--Claims Board taking similar action in the case of the **Wagners'** claim. However, unlike the Kasson situation, there appears to be a possibility of some recovery in the Ryser bankruptcy by general creditors **such** as the Wagners. An action by the trustee against various secured creditors such as the banks and certain **other** individuals is pending in federal district court in Chicago. The Department is cooperating with the trustee *in* this action. **Any recovery** by the trustee in this lawsuit could result in payment to the unsecured creditors including the Wagners of some of the money due them. Therefore, we recommend that any *award* to the Wagners be postponed until resolution **of** the bankruptcy proceeding. The trustee's lawsuit should come to trial in a few months.

Thank you for your consideration in this matter. If you **need** any further **information** on this claim, **please contact** me at the number below.

Very truly yours,



Robert H. Park, Director
Bureau of Trade Practices
DIVISION OF TRADE AND CONSUMER PROTECTION
608/266-7223

Members of the State Claims Board
May 13, 1993
Page 3

cc: Alan T. Tracy, Secretary
John M. Alberts, Administrator
James K. Matson
Reid W. Klopp



1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4711/lins
JTK...:....

WFO
PRINT W/LINE
NUMBERS

gen

Wanted Soon

JLg

AN ACT ...; relating to: expenditure of \$23,053.80[✓] from the general fund in payment of a claim against the state made by Jerome and Theresa Wagner.

→

INSERT ANALYSIS

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows: Claim against the state. ← (B)

SECTION 1. There is directed to be expended from the appropriation under section 20.505 (4) (d) of the statutes, as affected by the acts of 1999, \$23,053.80[✓] in payment of a claim against the state made by Jerome and Theresa Wagner, Middleton, Wisconsin, to compensate them for the value of milk[✓] that[✓] they shipped to a plant operated by Ryser Brothers Dairy of Wisconsin, Inc. prior[✓] to April 16, 1991, for which they have not been paid as a result of bankruptcy proceedings, and the alleged failure of the department of agriculture, trade and consumer protection to properly monitor the financial condition of the plant under section 100.06, 1989 stats. Acceptance of this payment releases this state and its officers, employes and agents from any further liability resulting from losses incurred by the claimants for milk shipped to this plant.

(END)

↓

INSERT ANALYSIS

This bill directs expenditure of \$23,053.80 from the general fund in payment of a claim made by Jerome and Theresa Wagner against the department of agriculture, trade and consumer protection (DATCP). The claimants shipped milk on credit to a plant operated by Ryser Brothers of Wisconsin, Inc. in the village of Mount Horeb. On or about April 16, 1991, the plant closed and subsequently, its parent corporation filed for bankruptcy protection. At the time of the closing, the claimants assert that the plant owed them \$69,860. The records of the plant confirmed this figure. The claimants were unable to recover any of this amount in the bankruptcy settlement. The claimants assert that DATCP did not properly monitor the financial condition of the plant under s. 100.06, 1989 stats. (the dairy plant security law). DATCP asserts that while it initially allowed the plant to operate based on its financial statements, when the financial position of the plant deteriorated, it required security to be posted. Ryser Brothers was unable to post the required security. DATCP also asserts that the dairy plant security law is not designed to insure against losses but rather to provide some level of assurance that dairy plants are operated in a financially responsible manner, and that it acted appropriately to carry out its responsibilities under the law. In addition, DATCP asserts that the claimants provided no itemized documentation of their claim. On March 6, 2000, the claims board recommended payment of \$23,053.80, representing one-third of the amount claimed by the claimants, on the basis of equitable principles (*see Senate Journal*, pp. 483484).

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

Dairy

Ryser Brothers of Wisconsin, Inc.
Dairy

**SUBMITTAL
F & M**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 03/1 92000

To: Representative Albers

Relating to LRB drafting number: LRB-47 11

Topic

Jerome and Theresa Wagner claim

Subject(s)

State Finance - claims agnst st

1. **JACKET** the draft for introduction _____



21 MAR 00

in the Senate ___ or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jeffery T. Kuesel, Managing Attorney
Telephone: (608) 266-6778