

1999 DRAFTING REQUEST

Bill

Received: 03/30/2000

Received By: kuesejt

Wanted: 03/30/2000

Identical to ERB:

For: Scott Jensen (608) 266-3387

By/Representing: Adam Peer

This file may be shown to any legislator: NO

Drafter: kuesejt

May Contact: Claimant's attorney.

Alt. Drafters:

Subject: State Finance - claims agnst st

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Bank of Homewood claim

Instructions:

Per attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 03/30/2000	gilfokm 03/30/2000		_____			State
/1			kfollet 03/30/2000	_____	lrb-docadmin 03/30/2000	lrb-docadmin 03/30/2000	

FE Sent For:

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3/30/00

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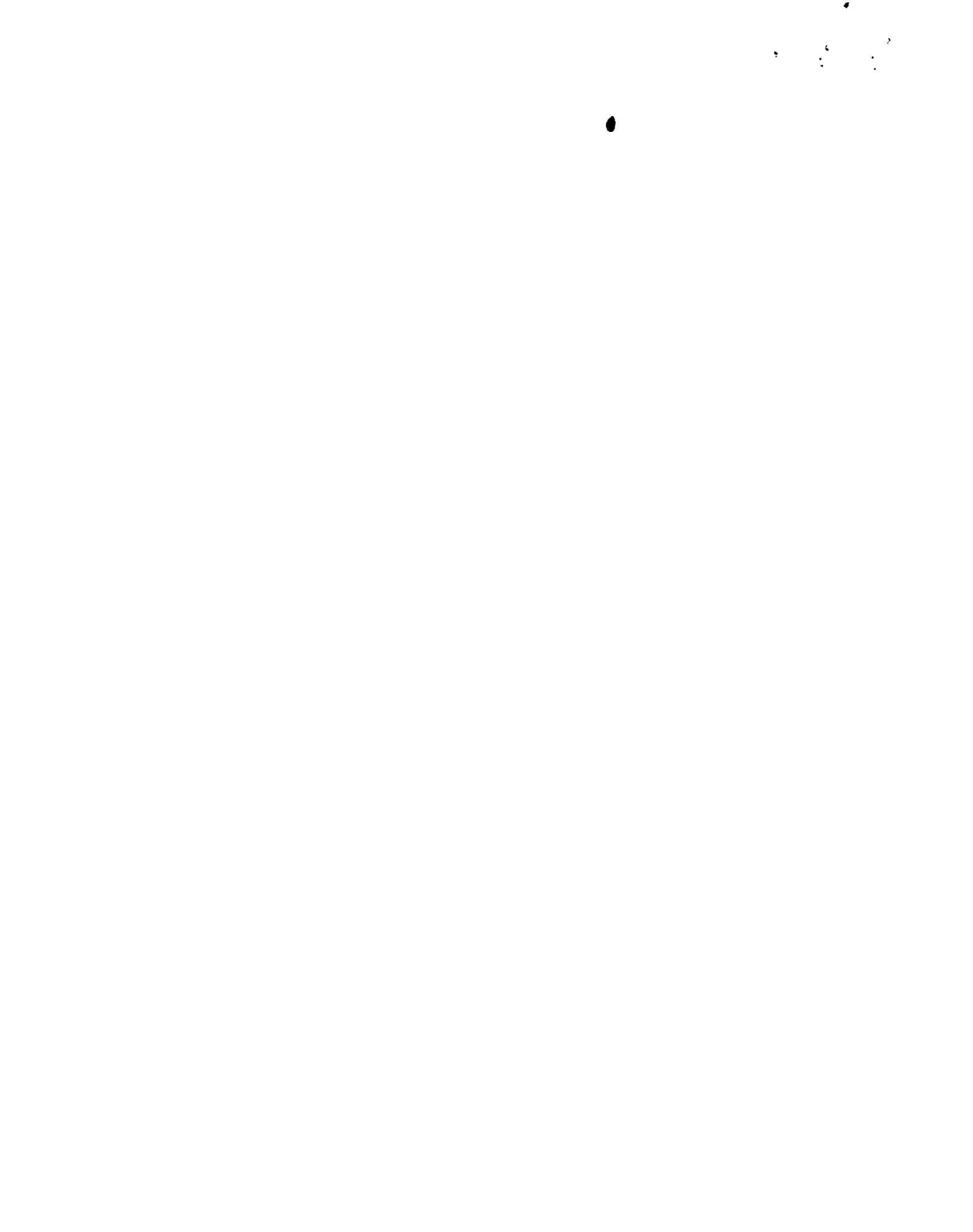
Per attached.

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FE Sent For:

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1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

ERB-4870/1

JTK...:.....

mg

Wanted THU 3/30 - 6:30pm

Ben Cat.
AN ACT ~~of~~ relating to: expenditure of \$178,548.40 from the general fund in payment of a claim against the state made by the Bank of Homewood.

_____ *Insert Analysis*
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

nonstat.

SECTION 1. Claim against the state. 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, \$178,548.40 in payment of a claim against the state made by the Bank of Homewood, Homewood, Illinois, as reimbursement for grants that were payable to its creditor, National Tire Services, Inc. under the waste tire removal and recovery grant program under section 157.17, 1993 stats. for the years 1992 to 1995. Acceptance of this payment releases this state and its officers, employes and agents from any further liability resulting from waste tires removed from this state by National Tire Services, Inc. for the years 1992 to 1995.

(END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4870/lins2
JTK.....

analysis ... *section* *Illinois*

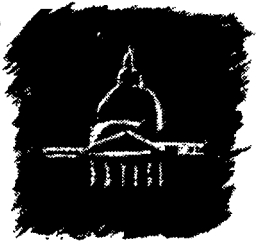
2

This bill directs expenditure of \$178,548.40 from the general fund in payment of a claim made by the Bank of Homewood against the department of natural resources (DNR). The claimant is a secured creditor of National Tire Services, Inc. (NTS) of South Chicago Heights, ~~IL~~. In 1996, NTS filed for bankruptcy protection. From 1992 to 1995, NTS participated in the waste tire removal and recovery program administered by DNR under ~~S.~~ 159.17, 1993 stats. Under this program, certified processors were eligible for specified payments for waste tires picked up in Wisconsin and delivered to acceptable end users. The claimant asserts that NTS picked up and processed tires for the years 1992 to 1995 for which it should have qualified for payment from DNR in the amount of \$178,548.40. DNR asserts that NTS failed to file certifications from appropriate end users that the amount of material specified in NTS' applications filed with DNR was processed and delivered to those end users, that liens and setoffs to this state for unpaid taxes have not been satisfied and that legislative appropriations for the period in question are now exhausted. The claimant asserts that the state's setoff claim is invalid under bankruptcy law. On October 30, 1997, the claims board recommended denial of this claim (see 1997 *Senate Journal*, pp. 335-336).

stat

to

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



SCOTT R. JENSEN
ASSEMBLY SPEAKER

Peer, Adam

To: Kuesel, Jeffery
Cc: Hodan, Patrick Fax
Subject: Request for Drafting a Private Bill

Jeffery,

I am requesting, on behalf of the Speaker, a private bill draft for introduction today for the Bank of Homewood. The bank's claim that was before the state Claims Board was denied. Thereafter, the client wished to file a court complaint. The court stated that the claim needed to be considered by the legislature first. The Speaker is requesting a bill that this end.

I am transmitting to you a copy of materials that have been sent to the Speaker by the bank's attorney, Mr. Patrick J. Hodan, Esq., for your reference. The Speaker gives the Legislative Reference Bureau his consent to discuss this bill request and relating matters with Mr. Hodan. Specific questions should be referred to him. Thank you for your efforts.

Attorney for the Consitituent:
Patrick Hodan
Office 414.298.8333
Home 262549.1619

Regards,

ADAMS PEER
Legislative Assistant, IV

OFFICE OF ASSEMBLY
SPEARER SCOTT R JENSEN
State of Wisconsin, USA

For contact information, please visit our home page online at:
<http://www.legis.state.wi.us/assembly/asm32/asm32.html>

REINHART | BOERNER | VAN DEUREN
NORRIS & RIESELBACH, S.C.

ATTORNEYS AT LAW

FACSIMILE MESSAGE**IMPORTANT CONFIDENTIALITY NOTICE**

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PLEASE DELIVER THE FOLLOWING TO:

NAME:	Mr. Adam Peer	FACSIMILE NO.	608-266-5123
COMPANY:		PHONE NO.	608-266-3387

FROM: Patrick J. Hodan, Esq.
DATE: March 30, 2000

REQUESTED BY	Laura Zentgraf	ATTORNEY NO.	372
EXTENSION	414-298-8518	CLIENT NO.	99999
		MATTER NO.	0006

Total number of pages sent, including this page

25

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COMMENTS:




property. The Department of Revenue recommends denial of this claim. Section 71.75(2), Wis. Stats., provides that a claim for refund must be made within four years of the unextended due date of the return. 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. The Board further concludes this claim would be more appropriately pursued against Marshall Fields, or its assigns.

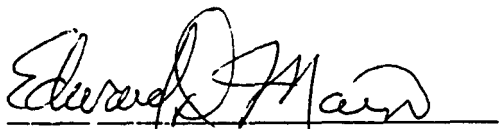
8. Robert Wilkes of Elcho, Wisconsin claims \$5,429.11 for return of a levy against his account as well as a 1991 Homestead tax credit. The claimant's financial records were misplaced when he was hospitalized. He was again hospitalized in 1994 during which time his home was sold and his records put in storage. The Department of Revenue issued assessments for the claimant's 1991 and 1992 income taxes in October 1994. In 1996 the Department levied \$4,269.11 from the claimant's bank account. The claimant filed his 1991 and 1992 returns in February 1997, he did not owe any taxes but was denied his \$1,160.00 homestead credit for 1991 because the return was filed four years after the original due date. The claimant filed his taxes as soon as he was able and requests that he be reimbursed for his overpayment and homestead credit. The Department of Revenue recommends the claim be denied. Section 71.75(5), Stats., prohibits the Department from refunding money that was applied to the original assessments for 1991 and 1992 since no refund was claimed within the prescribed two-year time period. The Board concludes the claim should be paid in the reduced amount of \$2,100 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.

9. The Bank of Homewood of Homewood, Illinois claims \$178,548.40 for payment of waste tire reimbursement grant money. The claimant files this claim on behalf of National Tire Services (NTS). NTS has filed for bankruptcy and the claimant is a secured creditor of NTS. From 1992 through 1995, NTS participated in the DNR's grant program for processors of waste tires. Under this program, certified processors were eligible for specified payments for waste tires picked up in Wisconsin and delivered to acceptable end users. NTS filed an application to receive payment for waste tires picked up between 1992 and 1994. The claimant states that the application and information contained in DNR's records established NTS' entitlement to a payment of not less than \$178,548.40. Furthermore, NTS picked up additional tires in 1995 and delivered these tires to appropriate end users. While NTS did not file an application for these tires, NTS should be entitled to payment for all qualifying tires picked up in 1995. The claimant contends that NTS' application is complete when supplemented with certifications received from WP&L and other information contained in DNR's records. Based on its pre-bankruptcy loan documents and/or the financing orders approved by the bankruptcy court, the claimant has a first priority security interest in the monies owed to NTS by DNR. Finally, the claimant asserts that the state's setoff claim predicated on NTS' alleged failure to pay withholding and employment taxes is impermissible under bankruptcy law (11 USC s. 553). The Department of Natural Resources recommends denial of this claim. First, the original grant application received from NTS in February 1995 was deficient and the amount requested unsubstantiated. Second, liens and other acknowledged claims, including setoffs to the state for unpaid taxes have not been satisfied. Third, monies appropriated by the Legislature for the waste tire program have been exhausted and the remaining monies collected have reverted to the General Fund. Finally, payment of this claim might be viewed as precedent by the 25 other businesses that did not receive full grant funding for 1995 because of the reversion of monies to the General Fund. 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. (Member Main not participating.)

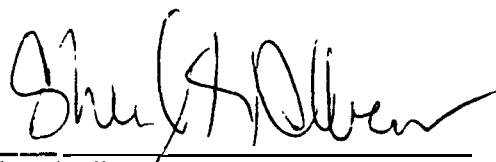
Dated at Madison, Wisconsin this 30th day of October 1997.



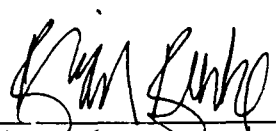
Alan Lee, Chair
Representative of the Attorney General



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



Sheryl Albers
Assembly Finance Committee



Brian Burke
Senate Finance Committee

**REINHART | BOERNER | VAN DEUREN
NORRIS & RIESELBACH, S.C.**

ATTORNEYS AT LAW

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REQUESTED BY Laura Zentgraf
EXTENSION 414-298-8518

ATTORNEY NO. 372
CLIENT NO. 99999
MATTER NO. 0006

Total number of pages sent, including this page

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ATTORNEYS AT LAW

March 30, 2000

Patrick J. Hodan
Direct Dial:
414-298-8333

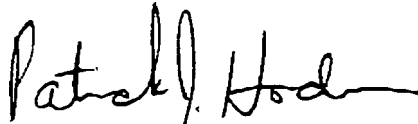
SENT BY FACSIMILE

Mr. Adam Peer
115 East, State Capitol
Madison, WI 53707

Dear Mr. Peer:

Enclosed is the information I mentioned. Please call me after you have received it.

Very truly yours,



Patrick J. Hodan

MW\602570PJH:LAZ

Enc.



NOV 18 1999

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 18, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATE.

No. 99-0227

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

**BANK OF HOMEWOOD FOR THE BENEFIT OF NATIONAL
TIRE SERVICES, INC.,**

PLAINTIFF-RESPONDENT,

v.

STATE OF WISCONSIN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
MARK A. FRANKEL, Judge. *Reversed and cause remanded with directions.*

Before **Dykman, P.J., Vergeront and Roggensack, JJ.**

¶1 **PER CURIAM.** The State appeals from an order denying its motion to dismiss a lawsuit commenced by the Bank of Homewood.¹ We conclude that

¹ We granted the State's petition for leave to appeal the trial court's nonfinal order.



the **bank** failed to obtain personal jurisdiction over the State, and we therefore reverse.

* ¶2 In 1997, the bank filed a claim with the Wisconsin Claims Board, alleging a debt owed to its **client, National Tire Services, Inc.**² In October 1997, the board issued a report **recommending** against the **claim**. The report **was forwarded** to the Wisconsin Senate for **filing** and publication and the report was subsequently published **in** the WISCONSIN STATE JOURNAL. The **bank** took **no further** action on its claim, such as having legislation introduced on its behalf, until **filing** this action several months later. Nor did the legislature take any **further** action **on** the claim.

¶3 Section 775.01, STATS., provides that the State waives **its** sovereign **immunity** and **allows** claimants to commence suit “[u]pon the refusal of the legislature to allow a claim.” Section 16.007(1), STATS., provides that “[n]o claim or bill relating to such a claim shall be considered by the legislature until a **recommendation thereon** has been made by **the** claims board.”

¶4 Here, the trial court found that after **the** board communicated its recommendation to the legislature, that body’s **failure** to act constituted a **sufficient** refusal of the claim, under § 775.01, STATS., to **allow** the action to proceed. However, we recently **ruled** that § 775.01 requires **that** the claimant have a legislator submit a private bill on its behalf, with immunity waived only **after** the **legislature** refuses to **pass** it See *Brown v. State*, No. 98-2662, slip op. at 11-12 (Wis. Ct. App. **Sept.** 2, 1999, ordered published Oct. 25, 1999). **That** resolves **the**

² The bank based its claim on a perfected security interest in National Tire’s accounts receivable.



No(s) **99-0227**

matter and requires reversal of the **trial court's** order. The State remained immune in this proceeding. Accordingly, we reverse and remand with directions to **dismiss** the bank's claim.

By the Court.—**Order** reversed and cause **remanded** with directions.

This opinion **will** not be published. See **RULE 809.23(1)(b)5, STATS.**



J. KEFFER

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

BANK OF HOMEWOOD,
for the benefit of National
Tire Services, Inc.,

Plaintiff,

v.

Case No. **98CV0190**
Case Code.30303

STATE OF WISCONSIN,

Defendant.

SUMMONS

CYNTHIA S. ERNST, CLERK OF COURTS
JAN 23 1998

THE STATE OF WISCONSIN

TO: State of Wisconsin

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the

submitted by:

Scott R. Halloin
Robert J. Diaz
Mallery & Zimmerman, S.C.
17th Floor
111 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4808
telaphona: 414-271-2424
facsimile: 4X-271-8678

,



statutes. The answer must be sent or delivered to the Court, **whose** address is Waukesha County Courthouse, 515 W. Moreland Boulevard 53188, and to Scott R. **Halloin** of **Mallery & Zimmerman, S.C.**, **plaintiff's** attorney, whose address is 111 East Wisconsin Avenue, Suite 1790, Milwaukee, **Wisconsin** 53202. **You** may have an attorney **help or** represent you.

If you **do** not provide a proper answer within 20 days, **the** Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money **may** become a lien against any real estate you own **now or** in the future, and **may** also be enforced by garnishment or seizure of property.

Dated: January 23, 1998.

MALLERY & ZIMMERMAN, S.C.
17th Floor
111 East Wisconsin Avenue
Milwaukee, Wisconsin **53202-4808**
telephone: **414-271-2424**
facsimile: 414-271-8678

MALLERY & ZIMMERMAN, S.C.
Attorneys for Citizen's
Mortgage, Inc.

By: 

Scott R. Halloin
State Bar No. 1024669
Robert **J.** Diaz
State Bar NO.1021458



STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

BANK OF HOMEWOOD,
for the benefit of National
Tire Services, Inc.,

Plaintiff,

v.

STATE OF WISCONSIN,

Defendant.

98CV0190

Case No. _____

Case Code.30303

CYNTHIA S. ERNST, CLERK OF COURTS

COMPLAINT AND JURY DEMAND

JAN 23 1998

Bank of Homewood (the "Bank"), ~~by its~~ undersigned
counsel, pursuant to Wis. Stat. Section 893.80, ~~completes~~ of
the State of Wisconsin ("Wisconsin") as follows:

PARTIES, JURISDICTION AND VENUE

1. The Bank is a bank chartered under the laws of the state of Illinois.
2. Wisconsin is a state subject to suit under Wis. Stat. Section 893.80.

Submitted by:

Scott A. Halloin
Robert J. Diaz
Mallery & Zimmerman, S.C.
17th Floor
111 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4808
telephone: 414-271-2424
facsimile: 414-371-8678



3. This court has subject matter jurisdiction over this proceeding pursuant to **Wis.** Stat. Section 893.80.

4. venue is proper in **Waukesha** county pursuant to **Wis.** Stat. Section 801.50.

BACKGROUND FACTS

Bank's Entitlement to Pursue Claim

5. On January 25, 1996 (the "**Petition Date**"), National Tire Services, Inc. ("**NTS**") filed a petition for relief **under** Chapter **11** of the United States Bankruptcy Code, thus commencing bankruptcy case number 96 B 2058, presently pending in the United **States** Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "**Bankruptcy Case**"). The **Bankruptcy** Case was subsequently converted to a liquidation proceeding under Chapter 7 of the Bankruptcy Code.

6. Both prior to and subsequent to the **Petition Date**, **the** Bank loaned money to **NTS**. These loans were secured by a valid, properly perfected security interest in various assets of **NTS**, including accounts receivable.

7. The Bank is presently owed in excess of **\$1,500,000.00** by **NTS** on account of the foregoing **loans**.

8. On **July 2**, 1996, the Honorable Erwin I. **Katz** entered an order in the **Bankruptcy Case**, modifying the automatic stay



to **permit** the Bank to take all action necessary to liquidate the **accounts** receivable of NTS (the "**Stay Relief Order**"). In particular, this order authorized the **Bank** to initiate and prosecute **litigation** in **NTS'** name to collect such **sums**. A true and correct copy of the Stay Relief Order **is** attached hereto as Exhibit A.

NTS' Entitlement to Reimbursement from State

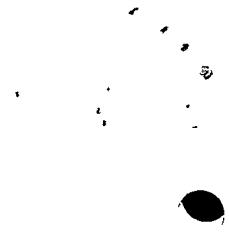
9. At some point during the early to mid **1990's**, Wisconsin established a grant program for processors of waste tires.

10. Pursuant to this program, which was administered by **Wisconsin's** Department of Natural Resources ("**DNR**"), certified processors would be eligible for specified **payments for** waste tires picked up in Wisconsin, and delivered to acceptable end users.

11. **DNR** certified **NTS** for participation in the program.

12. NTS processed tons of qualifying waste tires in **Wisconsin** from 1992 through **1995**.

13. **NTS** filed an application to receive payment for waste tires picked up between 1992 and 1994.



20. DNR had actual **notice of** the claim at all **relevant** times, and **has** not been prejudiced by the timing of its submission.

COUNT ONE-BREACH OF CONTRACT

21. The Bank **realleges and** incorporates by reference **the** allegations contained in **¶¶ 1-17** of this Complaint.

22. **DNR's** establishment of the tire **processor** grant program and certification of NTS as a qualifying processor constituted an offer to enter a contract with **NTS**.

23. **NTS** accepted this offer by processing tires, and by submitting its applications for reimbursement.

24. There was a valid and enforceable contract between **DNR and NTS**, obligating **DNR** to reimburse NTS **for** processing qualifying tires.

25. **NTS** performed its obligations under this contract.

26. DNR breached its obligations under this contract by failing to reimburse **NTS for** processing qualifying tires.

27. **DNR** has been damaged by this breach in the amount **of** the unpaid reimbursement provided under the program.

WHEREFORE, for the foregoing reasons, the Bank of Homewood prays that this court enter judgment in its favor, and against Wisconsin, in an amount not less than **\$178,548.40,**



plus such additional reimbursement as may be owed for qualifying tires processed in 1995, plus pre-judgment interest, costs and attorneys' fees.

COUNT **TWO--PROMISSORY ESTOPPEL**

28. The Bank realleges **and** incorporates by reference the allegation contained in ¶¶ 1-27 of this Complaint.

29. DNR promised NTS to pay it specified reimbursement for qualifying waste **tires processed** in Wisconsin.

30. IA reliance on the foregoing promise, **NTS** picked up tons of qualifying **waste** tires.

31. DNR and Wisconsin benefited from the processing of waste tires by **NTS**, but has not paid for this benefit.

32. Under the foregoing circumstances, **Wisconsin should** be estopped from denying NTS reimbursement for the qualifying tires processed.

WHEREFORE, for the foregoing reasons, the " Bank of Homewood pray6 that this court enter judgment in its favor, and against Wisconsin, in an amount not less than **\$178,548.40**, plus such additional **reimbursement as may be owed** for qualifying tires processed in 1995, **plus** pre-judgment interest, costs and attorneys' **fees**.



COUNT THREE--UNJUST ENRICHMENT

33. The Bank realleges and incorporates by reference the allegations contained in ¶¶ 1-32 of this Complaint.

34. **DNR** and Wisconsin have received a benefit by virtue of the qualifying tires processed by **NTS**.

3s. **DNR and** Wisconsin have not paid NTS for the benefit provided.

36. It would be inequitable to **permit DNR** and Wisconsin to avoid the payment obligations accompanying **NTS' processing** of the qualifying tires.

WHEREFORE, for the foregoing reasons, the Bank of Homewood **prays** that this court enter judgment in its favor, and against Wisconsin, in an amount not less than **\$178,548.40**, plus such additional reimbursement as may be owed for qualifying tires processed in 1995, plus pre-judgment interest, costs and **attorneys' fees**.

Respectfully submitted,

BANK OF HOMEWOOD

By: Robert J. Diaz
Robert J. Diaz



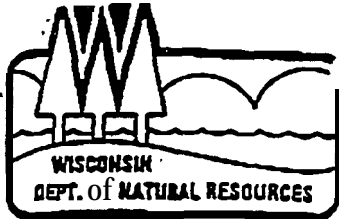
Scott R. **Halloin** (WBN 01024669)
Robert J. Diaz (WBN 01021458)
MALLERY & ZIMMERMAN, S.C.
111 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
(414) 271-2424

Of Counsel:

Jonathan W. Young (Illinois Bar # 06204590)
WILDMAN, HARROLD, ALLEN & DIXON
225 West **Wacker** Drive, Suite 3000
Chicago, Illinois 60606-1229
(312) 201-2000

The Plaintiff **demands** a **jury** of 12





WISCONSIN
DEPT. OF NATURAL RESOURCES
George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3679
TDD 608-267-6897

September 13, 1995

Mr. Tryge Bakkom
National Tire Services, Inc.
3215 Butler Avenue
South Chicago Heights, IL 60411

Dear Mr. Bakkom:

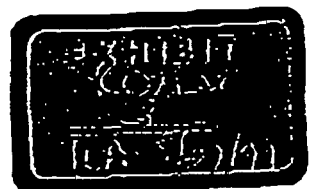
Based upon your request I have made a preliminary determination of the amount of reimbursement that National Tire Services is entitled to based upon processing waste tires for calendar year 1992, 1993 and 1994. Although all of the information requested for processing your reimbursement has not been sent to us I have preliminarily calculated that you would be entitled to \$178,548.40. T&E information that is missing from your application to this point are certifications from end users that the amount of material you have claimed in your application was processed and delivered to end users.

If you should have any questions with regard to this preliminary determination please call me at (608) 267-9388. Thank you.

Sincerely,

Paul J. Hozlar, Director
Waste Tire Removal & Recovery Program
Bureau of Solid and Hazardous Waste Management

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STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Bernesta L. Bridge
Deputy Attorney General

123 West Washington Avenue
P.O. Box 7857
Madison, WI 53707-7857

Richard E. Braun
Assistant Attorney General
608/264-6201
FAX 608/267-2223
TTY 608/267-8902

September 18, 1996

David R. Welch
Dannen, Crane, Heyman & Simon
Suite 1540
135 South LaSalle Street
Chicago, IL 60603-4297

Re: National Tire Services, Inc.
Bankruptcy 96-B-02058

Dear Mr. Welch:

The Department of Justice will be representing the interests of the State of Wisconsin ("the state") in the referenced Chapter 11 proceeding;

A Notice of Appearance has been filed (copy enclosed). Please direct all future notices, pleadings and communications regarding matters involving the state directly to the undersigned.

The state, through its Department of Natural Resources, is holding \$178,548.40 (tire recycling rebates) for NTS's account. An administrative hold has been placed on the funds pending resolution of the following matters:

1. NTS's submission of the documents identified in Secretary Meyer's March 8, 1996 letter to you;
2. resolution of the state's setoff claim;
3. resolution of the three credit claims made against the funds pursuant to §779.155, Stats.;
4. resolution of the Bank of Homewood's claim to the funds based upon its contention to hold a perfected security interest in NTS's accounts receivable; and
5. entry of an order of the Bankruptcy Court approving the final resolutions to the above claims.

With respect to the state's setoff claim, I am enclosing a copy of the state's proof of claim, which has been forwarded to the clerk for filing. The withholding and unemployment tax components of the claim are based upon estimated assessments, since NTS has

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W.K. Welch
AZ, 1996
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not filed the required returns/reports for the relevant time periods. As soon as the appropriate documents are filed, the exact amounts owed by NTS will be calculated.

Please provide me with the documentation and information requested above at your earliest convenience. We can then set up a telephone conversation, or perhaps a meeting, to determine ~~to~~ proceed to a point where the funds on hold can be distributed.

I look forward to hearing from you.

Very truly yours,



Richard E. Braun
Assistant Attorney General

Enclosures.



WILDMAN, HARROLD, ALLEN & DIXON
225 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606-1229
(312) 201-2000
FAX: (312) 201-2655

JONATHAN W. YOUNG
(312) 201-2662
E-MAIL: young@whad.com

June 27, 1997

VIA FACSIMILE AND FEDERAL EXPRESS

Facsimile No. (608) 2664983

Mr. Charles Leveque
Chairman
Wisconsin Administrative Review Board
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707


Facsimile No. (608) 267-3842.

Ms. Patricia Reardon
State of Wisconsin Claims Board
101 East Wilson Street
10th Floor
Madison, Wisconsin 53702

**Re: Claim against Wisconsin Department of Natural Resources
Asserted by Bank of Homewood on Behalf of National Tire
Services, Inc.**

Dear Mr. Leveque and Ms. Reardon:

This firm represents the Bank of Homewood (the "Bank"), a secured creditor of National Tire Services, Inc. ("NTS"). Pursuant to Wis. Stat. §§ 16.007 and 893.80, and on behalf of NTS, the Bank hereby asserts a claim against the State of Wisconsin in an amount not less than \$178,548.40, predicated on monies owed by the Department of Natural Resources ("DNR"). This letter will set forth the nature of NTS' claim, the defenses asserted to the claim by DNR and its attorneys, and the reasons why those defenses are not well taken.



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WILDMAN, HARROLD, ALLEN & DIXON**Mr. Charles Leveque****Ms. Patricia Reardon****June 27, 1997**

Page 2

On **January 25, 1996**, NTS filed a petition for relief under Chapter 11 of the United States **Bankruptcy Co&** thus **commencing bankruptcy** case number **96 B 2058**, presently pending **in the United States Bankruptcy Court** for the **Northern District of Illinois, Eastern Division**. No **plan of reorganization** has been **confirmed**, and the motion of the United States Trustee to **convert or dismiss the case** is set for **hearing** on Monday, **June 30, 1997 at 10:30 am**. **At that time, we expect that Judge Katz will enter an order** converting the case to **a proceeding** under Chapter 7 of the United States Bankruptcy Code.

The Bank holds a valid, **properly** perfected security interest in, *inter alia*, the accounts receivable of NTS (the "**Receivables**"). On **July 2, 1996**, Judge Katz entered an order **modifying** the automatic stay applicable to NTS' **bankruptcy** proceeding, in order to permit the **Bank** to "take **all** actions necessary to liquidate the **accounts** receivable of [NTS], including but not limited to (i) making **demand** on the Debtois behalf for the payment of such sums, and (ii) initiating, prosecuting **and/or** compromising litigation in the Debtois name to collect **such** sums. I am enclosing a copy of **the** order for your reference. **This order empowers the Bank to collect** accounts receivable owing from DNR to NTS.

After **reviewing records** produced by DNR, and **conducting the** deposition of Director Paul **Koziar**, we have **concluded that** DNR is indebted to NTS in an amount not less than **\$178,548.40**. In support of **this** figure, I am enclosing a copy of a letter from Paul **Koziar** to Tryvge Bakkom, dated September **13, 1995**. **This** letter states that DNR has made a "preliminary **determination** of the amount of reimbursement that National Tire Services is **entitled to** based upon processing waste **tires** for **calendar** year 1992, 1993 and 1994. **The letter further** states that, while NTS has not yet certified delivery of **the waste tires** to end users, DNR has "**preliminarily** calculated that you would be entitled to **\$178,548.40**." I am also enclosing a copy of a letter from Richard. E. **Braun, Assistant** Attorney General, to David **K. Welch**, **bankruptcy** attorney for NTS, dated September 18, 1996.. **This** letter advises that "the state, through its **Department** of Natural Resources, is **holding \$178,548.40** (tire recycling **rebates**) for NT'S' account," and that "an **administrative hold** has been **placed** on the **funds pending resolution** of [various] matters."

The documentary **and testimonial evidence** produced by DNR establishes the following **facts**. The **State of Wisconsin** established a grant program for processors of waste tires. **Pursuant** to this program **administered** by DNR, certified **processors** would be **eligible** for **specified** payments for **waste tires** picked up in **Wisconsin**, and delivered to **acceptable** end users. **DNR certified NTS** for participation in the program. **Thereafter**, NTS **filed an** application to receive payment for waste **tires** picked up **between 1992** and

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WILDMAN, HARROLD, ALLEN & DIXON

Mr. Charles Leveque
Ms. Patricia Reardon
June 27, 1997
Page 3

1994. On information and belief, the application, together with the information contained in DNR's own records, established NTS' entitlement to a payment of not less than \$178,548.40. Moreover, on further information and belief, NTS picked up additional Wisconsin tires in 1995, and delivered these tires to appropriate end users. While NTS did not file an application for these tires, NTS should be entitled to payment for all qualifying tires picked up in 1995.

As evidenced by the attached letter, the Wisconsin Department of Justice ("DOJ") has represented DNR in connection with the NTS bankruptcy. DOJ has identified the following defenses to NTS' claim for the tire recycling funds: (i) NTS did not submit a complete application to DNR, by virtue of its failure to certify delivery to authorized end users, (ii) numerous NTS creditors made competing claims to the funds, thereby subjecting DNR to a risk of double payment, (iii) the State of Wisconsin has setoff claims predicated on NTS' alleged failure to pay withholding and employment taxes, and (iv) the funds appropriated for payment of the 1992-1994 and 1995 tire recycling claims have been exhausted.

The Bank believes that none of these defenses can be sustained. First, on information and belief, when supplemented with certifications received from Wisconsin Power & Light and other information contained in DNR's records, NTS' application is complete and sufficient. Second, based upon its pre-bankruptcy loan documents and/or the financing orders approved by the bankruptcy court, the Bank has a first priority security interest in the monies owed to NTS by DNR. Third, the State of Wisconsin's alleged tax claims lack the requisite mutuality to be setoff against the monies owed by DNR. Fourth, on information and belief, the State of Wisconsin is presently holding in reserve in excess of \$1,000,000.00 received from tire user fees and/or cost recovery actions brought by DNR, which funds are due to revert to a general public revenue fund on June 30, 1997 (the "Reserved Funds"). These funds are more than sufficient to pay NTS' claims against the State, and should be appropriated for that purpose. To the extent Wisconsin statutes purport to preclude DNR from applying these funds to 1992-1994 or 1995 liabilities, the Bank believes such legislation to be an impermissible attempt to retroactively void rights already vested in NTS.

For the foregoing reasons, the Bank of Homewood respectfully requests, on behalf of National Tire Services, Inc., payment of \$178,548.40, plus such additional sums as may be owing to NTS for pickup of qualifying tires in 1995. Pending either (i) allowance of this claim or (ii) a judicial determination of whether the monies are owing, the Bank requests that an amount sufficient to pay this claim in full be withheld from the Reserved Funds.

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WILDMAN, HARROLD, ALLEN & DIXON

Mr. **Charles Leveque**
Ms. **Patricia Reardon**
June 27, 1997
Page 4

If either I or my co-counsel can furnish any additional information in connection with this claim, please do not hesitate to let us know. I am also enclosing an executed and notarized claim form. Thank you for your attention to these matters.

Very truly yours,

BANK OF HOMEWOOD

By: 
One of its Attorneys

Scott R. Halloin (WSB # 1024669)
MALLERY & ZIMMERMAN, S.C.
111 East Wisconsin Avenue
17th Floor
Milwaukee, Wisconsin 53202-4808
(414) 271-2424

David J. Fischer (Illinois State Bar # 813475)
Jonathan W. Young (Illinois State Bar # 06204590)
WILDMAN, HARROLD, ALLEN & DIXON
225 West Wacker Drive, suite 3000
Chicago, Illinois 606061229
(312) 201-2000

Enclosures

cc: **Richard E. Braun, Esq. (w/enclosures)(via facsimile)**
David K. Welch, Esq. (w/enclosures)
Lawrence Fisher, Esq. (w/enclosures)
Thomas J. Rohan (w/enclosures)
David J. Fischer, Esq. (w/enclosures)

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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: 03/30/2000

To: Representative Jensen

Relating to LRB drafting number: LRB-4870

Topic

Bank of Homewood claim

Subject(s)

State Finance - claims agnst st

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



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