

**1999 DRAFTING REQUEST**

**Bill**

Received: **10/27/1999**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Kevin Shibilski (608) 266-3123**

By/Representing: **Dan Kursevski**

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:**

Central Wisconsin Inspection Services claim

**Instructions:**

See 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 12/09/1999	gilfokm 12/13/1999		_____			State
/1			jfrantze 12/14/1999	_____	lrb_docadmin 12/14/1999		State
/2	kuesejt 02/22/2000	gilfokm 02/22/2000	martykr 02/23/2000	_____	lrb_docadmin 02/23/2000		State
/3	kuesejt 03/20/2000	gilfokm 03/20/2000	martykr 03/20/2000	_____	lrb_docadmin 03/20/2000		State
/4	kuesejt	gilfokm	martykr	_____	lrb_docadmin	lrb_docadmin	

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/2	kuesejt 02/22/2000	gifo km 02/22/2000	mar tykr 02/23/2000		lr b_docadmin 02/23/2000		State
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LRB-3829

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03/27/2000

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- Dan picked-up  
a 2nd copy

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3/20/00

**LRB-3829**

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03/20/2000 03:13:44 PM  
Page 2

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Drafter: kusejt

May Contact: *Claims Bd*

Alt. Drafters:

Subject: State Finance - claims agnst st

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1/1	kusejt 12/9	1-12-13-99 <i>King</i>	12/14	<i>R/mc</i> 12/14			

FB Sent For:

<END>

# FACSIMILE TRANSMISSION

DATE: October 12, 1999

TO: Senator Kevin Shibilski  
Attn: Dan Kurseuski

Fax Number: (608) 267-6797

FROM: Terry Bauer

Fax Number: (715) 341-2009

NUMBER OF PAGES: (7)  
(Including cover sheet)

### COMMENTS

*Left voice in the next month  
Staff Mr Bauer  
faxed me  
Transfer Dan Kurseuski's  
266-3123 office*

Senator Shibilski:

Attached you will find the letter and information materials for the proposed bill discussed with Dan Kurseuski this morning. Again we want to thank you for your consideration and assistance.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, disclosure, dissemination, distribution or copying of this message or the taking of any action in reliance on its contents, is strictly prohibited. If you have received this communication in error, please notify us immediately at (715) 341-1270. Thank you.

**Central Wisconsin Inspection Service Inc.**  
3108 County Road K Custer, WI 54423-9697 Phone: (715) 341-1270



October 12, 1999

Senator Kevin Shibilski

PO Box 7882

Madison, WI 53707-7882

Senator Shibilski,

This letter is a follow-up to my telephone contact today with Dan Kursewski of your office. Dan asked our assistance to provide additional information needed to draft the legislation needed for claims denied by the state claims board.

We were asked by Dan to furnish a brief background order of events on this claim and proposed legislation. The history of the issues goes back several years. We believe the termination of our company contracts was a result of our reporting program inconsistencies and ongoing problems. That contact and requests for help from your office along with other state representatives started in May of 1995. At the end of July 1996 we received the termination of contracts letter from the state. We contacted your office right away and tried to get an injunction so that we might stay in business. The judge determined that we would be compensated monetarily when we were successful in showing the state was wrong in the termination and did not allow the injunction. The judge indicated that the initial process in matters against the state was to file a claim with the Claims Board and then to try and pass legislation prior to getting into civil court. To date we have gone through the Claims Board process and have, thanks to your office, legislation for one of the claims that was denied by the Claims Board (LRB drafting number: LRB-3478). That bill draft did not address the other claim denied by the state Claims Board. In our discussion with Dan this morning, we mutually determined that an additional bill should be drafted to cover the other claim. Information on that other claim and the list of events does not include all correspondence between your office and ours but rather the information needed to draft the additional bill we discussed. In order to lessen any further confusion, we are attaching only the copy of the Claim Board denial of the claim of Central Wisconsin Inspection Inc. that the bill needs to address. We have circled or indicated the referenced part of that Claims Board denial for your convenience.

We hope that this information completes your request. If additional information is necessary, please do not hesitate to ask. Again, thank you for your assistance.

Yours for Quality Inspections,

Terry Bauer

STATE OF WISCONSIN  
CLAIMS BOARD

101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON

GOVERNOR



Mailing Address:  
Post Office Box 7864  
Madison, WI 53707-7864  
Voice: (608) 266-1743  
TDD: (608) 267-9629

received  
11/10/97

November 3, 1997

Christopher J. Dodge  
Tomlinson, Gillman & Rikkers, SC  
P.O. Box 44158  
Madison, WI 53744-4158

RE: Claims of Terrence P. Bauer and Central Wisconsin Inspection  
Services Against the Department of Commerce

Dear Mr. Dodge:

Enclosed is a copy of the report and recommendation of the State Claims Board covering the above claim which was filed against the State of Wisconsin.

Sincerely,  
*Pat Reardon*

Patricia Reardon  
Program Assistant

Enclosure

pr\decision\todenied.doc

STATE OF WISCONSIN CLAIMS BOARD

received 11/10/97

The State Claims Board conducted hearings at 119 Martin Luther King Jr. Blvd., Madison, Wisconsin on October 14, 1997, upon the following claims:

Claimant	Agency	Amount
1. William J. Deppen	Department of Administration	\$1,533.32
2. Gary Heinrichs	Department of Administration	\$1,776.13
3. Cleansoil Wisconsin, Inc.	Department of Transportation	\$175,695.00
4. Lulloff's Used Cars	Department of Transportation	\$12,850.36
5. Terrence P. Bauer	Department of Commerce	\$149,511.92
6. Central WI Inspection Services	Department of Commerce	\$1,049,057.00
7. Paul B. Cogswell	Department of Revenue	\$2,678.76
8. Robert Wilkes	Department of Revenue	\$5,429.11
9. Bank of Homewood	Department of Natural Resources	\$178,548.40

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

Claimant	Agency	Amount
10. Vera J. Cross	Department of Administration	\$190.73
11. Gerald H. Herbs Jr.	Department of Transportation	\$2,988.60
12. Gloria S. Marrell	Department of Health & Family Services	\$231.79
13. Thomas C. Smith	Department of Corrections	\$1,188.72

In addition, the following claims, previously presented at hearings, were considered and decided:

Claimant	Agency	Amount
14. InterCon Construction, Inc.	Department of Natural Resources	\$5,897.17
15. Milwaukee Police Association	State Ethics Board	\$4,500.00
16. Annie J. Daniel	Department of Health & Family Services	\$5,000.00

The Board Finds:

1. William J. Deppen of Madison, Wisconsin claims \$1,533.32 for automobile damage allegedly caused by an accident in a state parking lot. The claimant is employed by the University of Wisconsin. The Department of Administration requested the University's assistance with a project at the Badger Road State Office Building. The claimant was scheduled to assist with this project on the afternoon of May 21, 1997. He had planned on using a UW staff vehicle to drive from his office to the Badger Road facility, however, as he was leaving, his supervisor called him into a meeting which did not adjourn until 3:40 p.m. Because he was leaving much later than originally planned, if the claimant had used a staff vehicle, which he would have had to return to the UW, he would have been late picking up his child from day care. The claimant's day care provider charges a \$1 per minute late fee; therefore, the claimant had no choice but to use his own vehicle. He parked his car in the visitor parking area at the Badger Road office and was in the building for approximately 15-20 minutes, during which time his car was apparently struck by another vehicle. When he returned to his car he noticed the damage but he was not certain to whom he should make a report and he had to leave to pick up his child, so he

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

6. Central Wisconsin Inspection Services of Custer, Wisconsin claims \$1,049,057.00 for lost profits

related to termination of tank inspection contracts with the Department of Commerce and its predecessor, the Department of Industry, Labor and Human Relations. Since July 1994 DILHR and Commerce have failed to award several bid inspection contracts under bid #JK-1604 in jurisdictions where the claimant was the low bidder, in alleged breach of an agreement with Terry Bauer, one of the owners of the claimant company. As part of this agreement, DILHR agreed not to discriminate against the claimant in any manner regarding its contracts. On October 24, 1996, the claimant states that it first became aware of a significant defect in the bid awarding process conducted by DILHR and Commerce, in that DILHR and Commerce failed to identify a particular category of tanks, which should have been bid on and paid for. As a result, the claimant claims it was not awarded additional bid inspection contracts under Bid #JK-1604 where the claimant was or would have been the low bidder. Prior to October 1994, the claimant and other contractors had been charging a fee for the supervision of the removal of underground storage tanks. Thereafter a Cease and Desist Order regarding the charging of such fees was issued by DILHR. Subsequently, several appeals were filed by the claimant and others regarding said Cease and Desist Order, which continues to date. In July 1996 the claimant was notified that its contracts were being terminated effective October 30, 1996. The claimant alleges that this termination is the culmination of a pattern of disparate and discriminatory treatment of the claimant by various DILHR and Commerce employees, based on personal animosities against Terry Bauer and also in retaliation for the filing of a separate lawsuit by the claimant against DILHR. Further, the claimant alleges that by such actions, the state has breached the claimant's contracts with the Department of Commerce and have interfered with the claimant's contracts with DILHR. The claimant states that the loss of the contracts will render the business defunct, which will in turn, result in the loss of livelihood for the shareholders and employees of the claimant. The claimant seeks monetary compensation for all losses resulting from the alleged wrongful termination of its contracts. The Department recommends denial of the claim. The claimant's theory of breach of contract is that Commerce was required to retroactively reassess the impact of subsequent changes in the number of tanks registered within a certain category of tanks on bids that had been submitted one or more years before, and then to readjust the jurisdictions accordingly. Nothing within the resignation agreement or any other binding contract supports this interpretation of Commerce's obligation under the agreement. 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.

7. Paul B. Cogswell of Gurnee, Illinois claims \$2,678.76 for income taxes incorrectly submitted to the Wisconsin DOR by his employer. The claimant last lived in Wisconsin in 1986 and has since lived in Illinois. In 1989, the claimant's employer, Marshall Field's, made an error pursuant to a change in their payroll system and submitted the claimant's withheld taxes to Wisconsin. In 1991, the State of Illinois requested the 1989 taxes, which they had not received. The claimant paid the taxes to Illinois, however, he was not able to discover where his withholdings had gone because Marshall Field's was sold into new ownership and the needed records could not be located. The claimant had not been a Wisconsin resident since 1986 and, therefore, never thought that Wisconsin had received his withholdings. The claimant understands that section 71.75(2), Wis. Stats., states that a claim for refund must be made within four years, however, he points to the fact that these funds were not paid by a resident not pursuant to the filing of a tax return by a legal resident of the state. The claimant therefore believes the funds should be considered escheatable property and remain in trust in perpetuity by Wisconsin pursuant to a request being made by the rightful owner for the return of the



full investigation of the matter and to present its legal and factual arguments to an independent hearing examiner. It could have sought review of any adverse decision of the Circuit Court and raised the same legal issues as in the above referenced case. It chose not to do so and instead, now seeks to substitute the Claims Board as its preferred forum. 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. (Member Lee not participating.)

16. Annie Daniel of Racine, Wisconsin claims \$5,000 for attorney's fees accrued when the claimant was charged with abuse of a resident by the Racine County District Attorney. The Claimant is employed at Southern Wisconsin Center and was accused of striking a resident while on duty on October 9, 1992. She contracted with legal counsel for a flat fee of \$5,000 to defend her against the charge. The case was dismissed after a preliminary hearing on the grounds that the allegations were not plausible. The Racine County DA and the Department of Health & Family Services recommend denial of this claim. Under s. 775.11, Stats., the claimant is entitled to compensation only if she is found not guilty. The Board concludes the claim should be paid in the reduced amount of \$3,500 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.

The Board concludes:

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

- William Deppen
- Gary Heinrichs
- Ceansois Wisconsin, Inc.
- Terrence P. Bauer
- Central Wisconsin Inspection Services
- Paul B. Cogswell
- Bank of Homewood
- Vera J. Cross
- Gerald H. Herber, Jr.
- Thomas C. Smith
- Milwaukee Police Association

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

- Lulloffs Used Cars \$5,000.00
- Robert E. Wilkes \$2,100.00
- Gloria S. Martell \$100.00
- InverCon Construction, Inc. \$4,000.00
- Annie Daniel \$3,500.00

STATE CLAIMS BOARD

OCTOBER 14, 1997

PAGE 9

Dated at Madison, Wisconsin this 20th day of October 1997.

*Alan Lee*  
\_\_\_\_\_  
Alan Lee, Chair  
Representative of the Attorney General

*Edward D. Main*  
\_\_\_\_\_  
Edward D. Main, Secretary  
Representative of the Secretary of Administration

*Sheryl Albers*  
\_\_\_\_\_  
Sheryl Albers  
Assembly Finance Committee

*Brian Burke*  
\_\_\_\_\_  
Brian Burke  
Senate Finance Committee

Preliminary Analysis of Damages

October 31, 1996

1. Present value of annual lost profits from November 1, 1996 to May 1, 2006	Annual expected income from State of Wisconsin contracts	259,562	Annual expenses necessary to produce income (1995)	(198,496)	Annual lost profits	61,066	Present value for 9 years, 6 months at 6.39%	425,082
2. Unpaid contract fees for tanks at federal facilities from July 1, 1995 to June 30, 1996		450						
3. Unpaid contract fees for tanks at federal facilities from July 1, 1996 to October 31, 1996		150						
4. Unpaid prorated share of contract area fees from July 1, 1996 through October 31, 1996		577						
5. Unpaid installation inspection fees		8,567						
6. Unpaid tank closure fees from July 1, 1994 to October 19, 1994		5,000						
7. Unpaid contract fees for federally regulated out of service or abandoned tanks not included in contract totals								
	Contract	Actual	Income	Paid	Balance			
1994 (6 months)	36,039	1,529	34,510	69,004	34,495			
1995	72,077	3,073	69,004					
1996 (to October 31, 1996)	56,541	22,046	34,495					
Total unpaid contract fees to October 31, 1996						138,009		
November 1, 1996 to May 1, 2006	61,508							428,158

8. Additional income from full service plan reviews under a requested memorandum of understanding from July 1, 1995 to October 31, 1996

	Expected Income	Actual Income	Balance
1995 (6 months)	9,719	5,585	4,134
1996 (to October 31, 1996)	13,737	7,718	6,019
Total contract damages as of October 31, 1996			10,153
Total contract damages as of October 31, 1996			1,016,146
Accumulated interest from November 1, 1996 to May 5, 1997 at 6.39%			32,911
Total contract damages as of May 5, 1997			1,049,057

(END)

the period from July 15, 1994 to May 1, 2006. from this agreement and any discriminatory practices against the claimant during this state and its officers, employees and agents from any further liability resulting department and the department of commerce. Acceptance of this payment releases tank inspection program and for discrimination against the claimant by that labor and human relations with respect to participation in the underground storage one of the claimant's owners, Terrence Bauer, and the former department of industry, to compensate the claimant for breach of an agreement dated July 15, 1994 between revenue, estimated lost fee revenue, unpaid plan review income and accrued interest Inspection Services, Custer, Wisconsin, as reimbursement for lost profits, unpaid fee 1999, \$1,049,057 in payment of a claim against the state made by Central Wisconsin appropriation under section 20.505 (4) (d) of the statutes, as affected by the acts of SECTION 1. Claim against the state. There is directed to be expended from the *enact as follows:*  
*The people of the state of Wisconsin, represented in senate and assembly, do*

→ Smart Analysis ←

AN ACT relating to: expenditure of \$1,049,057 from the general fund in payment of a claim against the state made by Central Wisconsin Inspection Services.

Walter Scan

1999-2000 DRAFTING INSERT  
 FROM THE  
 LEGISLATIVE REFERENCE BUREAU

LRB-3829/1  
 JTK  
 JTK

This bill directs expenditure of \$1,049,057 from the general fund in payment of a claim made by Central Wisconsin Inspection Services (CWI) against the department of commerce. One of the owners of CWI, Terrence Bauer, was employed by the former department of industry, labor and human relations (DILHR), the predecessor agency of the department of commerce, as a flammable and combustible liquid system coordinator prior to July 16, 1994. Under a termination agreement between DILHR and Mr. Bauer, DILHR agreed not to discriminate against CWI in the award of any contracts for which CWI was low bidder on a specific named bid number then pending. CWI alleges that DILHR and its successor, the department of commerce, have failed since July 15, 1994 to award several contracts to CWI when CWI was the low bidder or would have been the low bidder had the departments properly categorized their work, and that the department of commerce terminated its contracts with the claimant on October 30, 1996. CWI also alleges that the departments have engaged in discriminatory practices against it. CWI alleges that these actions have rendered its business defunct. According to the department of commerce, its alleged failure to describe certain tanks within certain categories in its bid solicitations is immaterial since payments are based on the number of tanks that are registered on the date of payment and all bidders operate from the same information. The department of commerce also alleges that the agreement with Mr. Bauer does not apply to the award of contracts for which bids were due to be filed after the date of the agreement. CWI claimed \$425,082 in estimated net lost profits for the period from November 1, 1996 to May 1, 2006; \$138,009 in unpaid fees that were formerly payable by tank owners to inspection contractors for the period from July 1, 1994 to October 30, 1996; \$428,158 in estimated fees that would have been paid or payable by tank owners for the period from November 1, 1996 to May 1, 2006; \$10,153 in additional income from service plan reviews that would have been earned between July 1, 1994 and October 31, 1996; plus \$32,911 in accrued interest from November 1, 1996 to May 5, 1997, calculated at the rate of 6.39% (total \$1,049,057). On October 30, 1997, the claims board recommended denial of this claim (see 1997 *Senate Journal*, p. 335).

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

for the period from 1995 to

LEGISLATIVE REFERENCE BUREAU

FROM THE

1999-2000 DRAFTING INSERT

JFK.....

LRB-3209/Inns2

3829

necessary to present the legislation. Please review the following suggested changes to bill LRB-3829 and redraft the legislation.

The bill suggests on line 7, that the contract dated July 15, 1994 is only between Terry Bauer and the department of industry labor and human relations. This is not true and this is not the only contract at issue.

1. The agreement referred to in the bill was between Central Wisconsin Inspection Service, Terry Bauer and the former department of industry, labor and human relations.

2. We also contend the respondents have breached or caused the breach of Central Wisconsin Inspection Service's Local Program Operator contract, failed to compensate CWI for work performed, and for categories of tanks overlooked by the department.

3. Further, by such actions, respondents have tortiously interfered with Central Wisconsin Inspection Service's contracts with its customers, which resulted in wrongful termination of the Central Wisconsin Inspection service contracts.

4. The actions caused a violation of Central Wisconsin Inspection Service's and Terry Bauer's constitutional rights to petition the government for redress of grievances and deprived us of a property right without due process.

We would again hope that a new draft be sent us for review. As you know, we have been directed by the court to complete this process prior to scheduling deadlines. That time frame prompted us to fax this letter to you along with the following request. Please fax us a copy as soon as possible at the fax number on the top of this page and we request that a copy be faxed to our lawyers. Their names and

From Dan Kususki: Sonato S.G.B.I.S.K.  
To Jeff Kuesel  
2/18/2000

# 1999 BILL

1 AN ACT relating to: expenditure of \$1,049,057 from the general fund in payment  
2 of a claim against the state made by Central Wisconsin Inspection Service.

## *Analysis by the Legislative Reference Bureau*

This bill directs expenditure of \$1,049,057 from the general fund in payment of a claim made by Central Wisconsin Inspection Service (CWI) against the department of commerce. One of the owners of CWI, Terrence Bauer, was employed by the former department of industry, labor and human relations (DILHR), the predecessor agency of the department of commerce, as a flammable and combustible liquid system coordinator prior to July 16, 1994. Under a termination agreement between DILHR and Mr. Bauer, DILHR agreed not to discriminate against CWI in the award of any contracts for which CWI was low bidder on a specific named bid number then pending. CWI alleges that DILHR and its successor, the department of commerce, have failed since July 15, 1994, to award several contracts to CWI when CWI was the low bidder or would have been the low bidder had the departments properly categorized their work, and that the department of commerce terminated its contracts with the claimant on October 30, 1996. CWI also alleges that the departments have engaged in discriminatory practices against it. CWI alleges that these actions have rendered its business defunct. According to the department of commerce, its alleged failure to describe certain tanks within certain categories in its bid solicitations is immaterial since payments are based on the number of tanks that are registered on the date of payment and all bidders operate from the same information. The department of commerce also alleges that the agreement with Mr. Bauer does not apply to the award of contracts for which bids were due to be filed after



**BILL**

the date of the agreement. CWI claimed \$425,082 in estimated net lost profits for the period from November 1, 1996, to May 1, 2006; \$138,009 in unpaid fees that were formerly payable by tank owners to inspection contractors for the period from July 1, 1994, to October 30, 1996; \$428,158 in estimated fees that would have been paid or payable by tank owners for the period from November 1, 1996, to May 1, 2006; \$10,153 in additional income from service plan reviews that would have been earned for the period from July 1, 1995, to October 31, 1996; plus \$32,911 in accrued interest from November 1, 1996, to May 5, 1997, calculated at the rate of 6.39% (total = \$1,049,057). On October 30, 1997, the claims board recommended denial of this claim (see 1997 Senate Journal, p. 335).  
For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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(END)

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1999 BILL



State of Wisconsin  
1999 - 2000 LEGISLATURE

JTK:kmg:jf  
LRB-3829/1

AN ACT relating to: expenditure of \$1,049,057 from the general fund in payment of a claim against the state made by Central Wisconsin Inspection Service. 2

Analysis by the Legislative Reference Bureau

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of a claim made by Central Wisconsin Inspection Service (CWI) against the department of commerce. One of the owners of CWI, Terrence Bauer, was employed by the former department of industry, labor and human relations (DILHR), the predecessor agency of the department of commerce, as a flammable and combustible liquid system coordinator prior to July 16, 1994. Under a termination agreement between DILHR and Mr. Bauer, DILHR agreed not to discriminate against CWI in the award of any contracts for which CWI was low bidder on a specific named bid number then pending. CWI alleges that DILHR and its successor, the department of commerce, have failed since July 15, 1994, to award several contracts to CWI when CWI was the low bidder or would have been the low bidder had the departments properly categorized their work, and that the department of commerce terminated its contracts with the claimant on October 30, 1996. CWI also alleges that the departments have engaged in discriminatory practices against the CWI alleging that these actions have rendered its business defunct. According to the department of commerce, its alleged failure to describe certain tanks within certain categories in its bid solicitations is immaterial since payments are based on the number of tanks that are registered on the date of payment and all bidders operate from the same information. The department of commerce also alleges that the agreement with the claimant does not apply to the award of contracts for which bids were due to be filed after ~~the~~ <sup>breach of contract, interference with third party contracts, failure to compensate for certain work, discriminatory practices and approval of certain construction</sup> ~~the~~ <sup>rights.</sup>

CWI and

Resolution of this claim is governed by the terms of the assignment agreement and the

**BILL**

the date of the agreement. CWI claimed \$425,082 in estimated net lost profits for the period from November 1, 1996, to May 1, 2006; \$138,009 in unpaid fees that were formerly payable by tank owners to inspection contractors for the period from July 1, 1994, to October 30, 1996; \$428,158 in estimated fees that would have been paid or payable by tank owners for the period from November 1, 1996, to May 1, 2006; \$10,153 in additional income from service plan reviews that would have been earned for the period from July 1, 1995, to October 31, 1996; plus \$32,911 in accrued interest from November 1, 1996, to May 5, 1997, calculated at the rate of 6.39% (total = \$1,049,057). On October 30, 1997, the claims board recommended denial of this claim (see 1997 Senate Journal, p. 335).

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 5 unpaid fee revenue, estimated lost fee revenue, unpaid plan review income and  
 6 accrued interest to compensate the claimant for breach of an agreement dated July  
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 8 department of industry, labor and human relations with respect to participation in  
 9 the underground storage tank inspection program and for discrimination against the  
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 11 payment releases this state and its officers, employees and agents from any further  
 12 liability resulting from this agreement and any discriminatory practices against the  
 13 claimant during the period from July 15, 1994, to May 1, 2006.

(END)

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

2. This redraft also expands slightly the description of the claimant's allegations. I should point out that the analysis is quite lengthy considering the length of the text of the draft and I have never known a court to even consider the wording of an analysis in determining whether the legislature has refused to allow a claim. The appropriate place for allegations to be detailed is in the claimant's complaint. The function of the analysis is merely to indicate the general nature of the claim.

1. The analysis to this draft and LRB-3478 have been changed to reflect the fact that there were 3 parties to the resignation agreement: Mr. Bauer, CWI and DILHR. The original language was based upon the claims board report and the notice of claim filed by the claimant's attorney.

Senator Shibilski:

AM

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3829/2dn

JTK

jm

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

February 23, 2000

Senator Shibilski:

1. The analyses to this draft and LRB-3478 have been changed to reflect the fact that there were 3 parties to the resignation agreement: Mr. Bauer, CWI and DILHR. The original language was based upon the claims board report and the notice of claim filed by the claimant's attorney.

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

3-11-2011

Jeff Kuehl

My ~~commitment~~ request the following changes be made in

ZRB 3829/2

Thank you all the help

and if I could I would like  
their back by 3/22/2011

at the latest.

Thank you  
for

Jan Kurseuski  
Senator Shilkin's office  
266-3123

Under  
"Local  
Program"  
operator  
contracts  
between  
DILHR  
and the  
claimant

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**Analysis by the Legislative Reference Bureau**

AN ACT relating to: expenditure of \$1,049,057 from the general fund in payment of a claim against the state made by Central Wisconsin Inspection Service

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**1999 BILL**

State of Wisconsin  
1999 - 2000 LEGISLATURE

*Wanted Re 3/21*



JTK:kmg:km

LRB-3829/2

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the resolution of this claim is governed by the terms of the resignation agreement and the agreement does not apply to the award of contracts for which bids were due to be filed after the date of the agreement. CWI claimed \$425,082 in estimated net lost profits for the period from November 1, 1996, to May 1, 2006; \$138,009 in unpaid fees that were formerly payable by tank owners to inspection contractors for the period from July 1, 1994, to October 30, 1996; \$428,158 in estimated fees that would have been paid or payable by tank owners for the period from November 1, 1996, to May 1, 2006; \$10,153 in additional income from service plan reviews that would have been earned for the period from July 1, 1995, to October 31, 1996; plus \$32,911 in accrued interest from November 1, 1996, to May 5, 1997, calculated at the rate of 6.39% (total = \$1,049,057). On October 30, 1997, the claims board recommended denial of this claim (see 1997 Senate Journal, p. 335).

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(END)

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*3rd Party contract with the state for*  
*Interference with the*  
*employment of*  
*labor and*  
*industry*  
*of*  
*the*  
*state*  
*for*  
*the*  
*purpose*  
*of*  
*the*  
*state*  
*of*  
*Wisconsin*  
*to*  
*compensate*  
*the*  
*claimant*  
*for*  
*certain*  
*work*  
*under*  
*local*  
*program*  
*provisions*

*for further to compensate*



# FACSIMILE TRANSMISSION

DATE: March 23, 2000

TO: Senator Kevin Shibilski  
Attn: Dan Kursuski

Fax Number: (608) 2676-6797  
FROM: Terry Bauer

Fax Number: (715) 341-2009

NUMBER OF PAGES: ( 3 )  
(including cover sheet)

### COMMENTS

*This is I hope  
their last request*

Senator Shibilski  
Here is the redraft proposal of LRB-3829/3. Thank you for your prompt attention to this request.

*Could you try for  
today or early Monday  
let me know if there is  
a problem. Thanks  
Tom Dan*

**266-3123**

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, disclosure, dissemination, distribution or copying of this message or the taking of any action in reliance on its contents, is strictly prohibited. If you have received this communication in error, please notify us immediately at (715) 341-1270. Thank you.



**Central Wisconsin Inspection Service Inc.**  
3108 County Road K Custer, WI 54423-9697 Phone: (715) 341-1270

March 23, 2000

Senator Kevin Shibilski

PO Box 7882

Madison, WI 53707-7882

Senator Shibilski,

This letter is a follow-up to the telephone conversations we have had with Dan Kursewski of your office. Dan indicated that the draft to the legislation needed for claims denied by the state claims board could be reviewed by our lawyers and suggested changes could be made prior to introduction. We have reviewed the 3rd draft proposal of LRB-3829/3 and request again that the change indicated below be made prior to introduction. Please review our prior submittal and you will note that we requested this change to be made. Please redraft the legislation and include these proposed changes. We would again hope that a new draft be sent us for review.

**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, \$1,049,507 in payment of a claim against the state made by Central Wisconsin Inspection Service, Custer, Wisconsin, as reimbursement for lost profits, unpaid fee revenue, estimated lost fee revenue, unpaid plan review income and accrued interest to compensate the claimant for breach of an agreement dated July 15, 1994, between the claimant, one of the claimant's owners, Terrance Bauer, and the former department of industry, labor and human relations with respect to participation in the underground storage tank inspection program, for discrimination against the claimant by that department and the department of commerce, for failure to compensate the claimant for certain work under "local program operator" contracts entered into between the former department of industry, labor and human relations and the claimant, for interference with 3rd-party contracts and for deprivation of certain constitutional rights. Acceptance of this payment releases this state and its officers, employees and agents from any further liability to claimant resulting from this agreement and breaches of these agreements, any discriminatory practices against the claimant during the period from July 15, 1994, to May 1, 2006, as well as the claims for interference with third-party contracts and deprivation of certain constitutional rights.

Page 2.

Please fax us a copy as soon as possible at the fax number on the top of this page and we request that a copy be faxed to our lawyers. Their names and fax numbers are:

Christopher J. Dodge  
Fax number: (608) 283-1709  
Maris RUSHNEVICS  
Fax number: (715) 341-4389

We will review the draft and contact your office to suggest any other changes if necessary. If your office should need any additional information, please do not hesitate to ask. Again, thank you for your assistance and prompt attention to our request.

Yours for Quality Inspections,

  
Terry Bauer

**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,

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fee revenue, unpaid plan review income and accrued interest to compensate the claimant for

breach of an agreement dated July 15, 1994, between claimant, one of the claimant's owners,

Terrence Bauer, and the former department of industry, labor and human relations with respect to

participation in the underground storage tank inspection program, for discrimination against the

claimant by that department and the department of commerce, for failure to compensate

claimant for certain work under "Local Program Operator" contracts entered into

between the state and claimant, for interference with third-party contracts, and for

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*Analysis by the Legislative Reference Bureau*

AN ACT relating to: expenditure of \$1,049,057 from the general fund in payment of a claim against the state made by Central Wisconsin Inspection Service.

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**1999 BILL**

WRITED MON 3/27-AM

State of Wisconsin  
1999 - 2000 LEGISLATURE



JTK:kmg:km

LRB-3829/4

14 3rd-party contracts and for deprivation of certain constitutional rights. Acceptance  
 13 industry, labor and human relations and the claimant, for interference with  
 12 program operator" contracts entered into between the former department of  
 11 commerce, for failure to compensate the claimant for certain work under "local  
 10 discrimination against the claimant by that department and the department of  
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 6 accrued interest to compensate the claimant for breach of an agreement dated July  
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**BILL**

**BILL**

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 4 (END)

or from interleave  
 contracts of  
 deprivation of  
 constitutional  
 rights

**SUBMITTAL FORM**

**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: 03/27/2000

To: Senator Shibilski

Relating to LRB drafting number: LRB-3829

**Topic**  
Central Wisconsin Inspection Services 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