

**2003 DRAFTING REQUEST**

**Bill**

Received: **02/16/2004**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Jon Richards (608) 266-0650**

By/Representing: **Scott Adrian**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact: **Claims Board**

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Richards@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

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**Topic:**

John C. Koshick claim

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**Instructions:**

Per attached memo, 2/11/04.

---

**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>
/?	jkuesel 03/05/2004	wjackson 03/08/2004		_____			State
/1			rschluet 03/08/2004	_____	Inorthro 03/08/2004	lemery 03/08/2004	

FE Sent For:

<END>

AA  
intro.

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/?	jkuesel 03/05/2004	wjackson 03/08/2004		_____			State
/1			rschluet 03/08/2004	_____	Inorthro 03/08/2004		

03/08/2004 10:01:55 AM

Page 2

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**<END>**

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1?	jkuesel	1 WJ 3/8					

38 3/8 PB  
<END>

FE Sent For:



STATE REPRESENTATIVE  
**JON RICHARDS**

SERVING MILWAUKEE'S  
EAST SIDE, DOWNTOWN AND  
BAY VIEW NEIGHBORHOODS

MEMORANDUM

TO: Jeffrey Kuessel  
Legislative Reference Bureau

FROM: Scott Adrian  
Rep. Jon Richards

DATE: February 11, 2004

SUBJECT: Bill draft for claim of John C. Koshick

---

Per our phone conversation, please find attached the Claims Board document showing the denial of Mr. Koshick's claim against the State Fair Park Board in the amount of \$5,910,212. We would like to draft a claims bill to authorize payment to him for his contention of the breach of contract.

Unfortunately, this is the only documentation we have in our office. Please contact me at 266-0650 with any questions or concerns in the drafting of this bill.

**CAPITOL**

P.O. Box 8953, Madison, WI 53708 • (608) 266-0650 • Fax: (608) 282-3619  
Email: rep.richards@legis.state.wi.us Toll-free: 1-888-534-0019

**HOME**

1823 North Oakland Avenue, Milwaukee, WI 53202 • (414) 270-9898



MAR 9 2000

## STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings in the State Capitol, Grand Army of the Republic Memorial Hall, Madison, Wisconsin on February 17, 2000, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Angel Williams	Health and Family Services	\$5,488.93
2. Jerome & Theresa Wagner	Agriculture, Trade & Consumer Protection	\$69,860.00
3. Julie Leser	University of Wisconsin	\$286.43
4. Boulanger Construction Company	Transportation	\$165,696.58
5. City of La Crosse	Transportation	\$16,841.83
6. Wisconsin Gas Company	Transportation	\$941.53
7. John C. Koshick	State Fair Park	\$5,910,212.00

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
8. Melvin Rice	Corrections	\$800.00
9. Scott A. Bowe	Natural Resources	\$185.00
10. R.L. Elver	Health and Family Services	\$100.00
11. Wilbert Finke	Agriculture, Trade & Consumer Protection	\$50.85
12. Troy & Karen Mabie	Administration	\$346.50
13. Ernestine Nelson	Revenue	\$628.00
14. Dennis Robertson	University of Wisconsin	\$200.00

#### The Board Finds:

1. Angel F. Williams of Merimac, Wisconsin claims \$5,488.93 for medical costs incurred because of an error allegedly made by the Medical Assistance program administered by the Department of Health and Family Services. The claimant states that she was never told that her M.A. health benefits would end 60 days after her pregnancy ended. The claimant elected to have a tubal ligation performed on April 12, 1999. The claimant states that she was first informed that her M.A. benefits had been terminated effective April 1, 1999, by letter dated May 11, 1999. This letter also denied coverage for her surgery. The claimant also alleges that her HMO was not notified about the April 1 benefit termination in a timely manner because she was not removed from the computer until the day after her surgery, April 13. The claimant states that if she had known this procedure would not be covered by Medical Assistance, she would not have had the surgery. She requests reimbursement for her medical expenses. The Department of Health and Family Services recommends denial of this claim. DHFS states that its records show that both the claimant and her HMO received sufficient notice in advance of her surgery that her coverage would end April 1, 1999. The Department's records show that a Notice of Decision dated February 19, 1999, was sent to the claimant stating that her M.A. benefits would end effective April 1, 1999. The Department's records also show that a March 20, 1999, Enrollment Initial Report was sent to the claimant's HMO and that this report provided notice that the claimant's coverage was pending effective April 1, 1999. The purpose of this notice is to allow the HMO to verify the recipient's eligibility prior to any service. Finally, the Department's records show that a notice was sent to the claimant's HMO on April 6, 1999, informing them that the claimant's M.A. benefits were terminated effective April 1. The claimant's HMO did not actually remove her name from their computer until April 13, 1999, however, the Department believes that both the

DOT is authorized to impose a 1% penalty for each working day that a report is late under s 86.303 (5), and this deduction is first made from the transportation aids due to a municipality. According to the city's own information, the financial report was completed and forwarded to the La Crosse Common Council on May 8, 1998, however, the report was not mailed to the DOR until the day of the filing deadline on July 31, 1998. The DOR knows of no compelling reason why the city waited until the last day to file the report and then submitted the wrong form. The city does not dispute that the report was filed one day late. The DOT points to the fact that there are 1,922 local government units that receive transportation aids and a handful of them inevitably file late each year. In order to encourage units to file promptly, the late fee is imposed. In 1998, there were six local government units that filed late and were imposed fees ranging from 1% to 8%. The City of La Crosse's penalty was \$16,841.83. This amount, along with the penalty amounts from the other delinquent units, was distributed to the units who filed on time. The DOT does not keep any of the funds generated by penalties. The board recommends that the claim be paid in the reduced amount of \$8420.92 based on equitable principles.

6. Wisconsin Gas Company of Madison, Wisconsin claims \$951.53 for costs related to damage to its gas line allegedly caused by employees of the Department of Transportation. The claimant alleges that on December 15, 1998, DOT employees were installing a sign and damaged the gas main while digging. The claimant states that DOT employees failed to call ahead and have the location of the underground lines marked in accordance with section 182.0175, Stats. The claimant requests reimbursement for gas loss and the labor and materials to fix the line. The Department of Transportation recommends denial of this claim. On December 15, 1998, a DOT employee was replacing a 4 x 4 wood sign post in Alma Center. The broken post was for a School Zone Speed Limit and School Crossing sign and as such, there was an increased sense of urgency to repair the post. The post that was being replaced was previously installed in 1990 by the DOT. DOT policy calls for a sign post of this type to be placed in the ground at a depth of 4' 6" using a 14' sign post. In May 1996 the claimant was issued a permit to place an underground gas line in the area. The permit contained the standard indemnification agreement in which the claimant agreed to indemnify and hold harmless DOT for any unintentional damage to utility lines during DOT's normal course of business. When the claimant installed the gas line in 1996, its contractor apparently removed and replaced the DOT owned sign without the permission or knowledge of the DOT and without adhering to DOT standards for sign post installation. The sign post was put back into the ground directly over the gas line. It is not the policy of DOT to call Diggers Hotline when replacing an existing sign in the same hole at the same depth. When the sign crew pulled the sign and began to re-auger the hole to the required depth of 4'6", the gas line was struck at a depth of only 3 feet. The DOT is the only entity authorized to remove or install DOT signs and all signs are imprinted with a warning of fine or imprisonment for removal or tampering of the sign. The DOT has no records that this signpost was removed or replaced by DOT since 1990. The DOT believes that it is reasonable to expect that a signpost in place since 1990 at a depth of 4' 6" could be replaced without incident by a same size post at the same depth. The DOT believes that the claimant should pursue their claim against the contractor that installed the gas line in 1996 and negligently removed and incorrectly replaced the DOT sign. The Board concludes the claim should be paid in the amount of \$941.53 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation s. 20.395(3)(eq), Stats.

7. John C. Koshick of Milwaukee, Wisconsin claims \$5,910,212.00 for monetary damages and lost revenues allegedly caused by breach of a verbal contract with the Wisconsin State Fair Park (WSFP). The claimant produces and promotes entertainment events, including Milwaukee Metalfest, a rock concert. The claimant alleges that in the summer of 1998, he was approached by WSFP regarding



holding the 1999 Metalfest at WSFP. The claimant states that he held a number of meetings with Rick Bjorklund, Executive Director of WSFP and that in June 1999, the claimant and WSFP entered into a contractual agreement for use of WSFP on July 30-31, 1999, for the Milwaukee Metalfest concert. The claimant alleges that on the basis of this agreement, he began to promote and advertise that Metalfest would take place at the WSFP grounds on July 30-31, 1999, that he began selling tickets, booking bands and arranging television broadcasts of the events. The claimant also states that WSFP posted notice of Milwaukee Metalfest on its web site and accepted reservations for Metalfest patrons to stay at WSFP dormitories during the event. The claimant states that on July 1, 1999, Rick Bjorklund advised him that WSFP would not honor the contractual agreement and that Milwaukee Metalfest would not be permitted on WSFP grounds on July 30-31. The claimant further states that he attempted to mitigate his damages by seeking a temporary injunction requiring WSFP to honor the contractual agreement. The claimant requests reimbursement for increased costs and lost revenues related to moving the event and losing the WSFP site. The Department of Tourism, representing Wisconsin State Fair Park, recommends denial of this claim. The claimant's claim is based on his assertions that WSFP entered into a contract with him for Metalfest to take place at the WSFP grounds. Tourism agrees that discussions about the event did take place between Rick Bjorklund and the claimant, however, a contract was never executed. The claimant makes numerous assertions regarding the details of the alleged verbal contract, however, little if anything is known about the basis of the purported bargain, estimated revenues and expenses, division of concession sales and other details that would be important, if not indispensable, to finalizing any kind of agreement. Tourism believes that the absence of a written agreement along with the dramatic disparity between WSFP's and the claimant's purported income from the event suggest that while there were negotiations, the details of an agreement had not been reached. Tourism believes that the lack of evidence of existence of a contract results in the lack of evidence of any breach of contract. Furthermore, the monetary damages claimed are merely assertions by the claimant and he has provided no evidence related to any of the claimed damages. Even if a contract was determined to exist between the claimant and WSFP, the Department of Tourism states that all of the damages alleged must be characterized as extras under Article IV, Section 26 of the Wisconsin Constitution and are therefore constitutionally prohibited. 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.

8. Melvin Rice of Janesville, Wisconsin claims \$800.00 for return of restitution money charged to him while he was incarcerated. The claimant alleges that in May 1999 he was assaulted by another inmate. The claimant states that he did not start the altercation but only defended himself when he was attacked. The claimant's hand was broken during the incident. After investigating the incident, the Department of Corrections gave the claimant 4 days adjustment time and charged him \$800 restitution for his medical bills. The claimant states that he requested a copy of the medical bills and was told that no bill existed at that time. The claimant does not believe that he should have been billed \$800 for medical bills because he does not feel that DOC had proof of \$800 medical treatment. The Department of Corrections recommends denial of this claim. According to the Department's investigation, the claimant went to another inmate's room to ask for a cigarette. The claimant's request was rudely rebuffed and the claimant responded in kind. Upon returning to his cell, the claimant and the other inmate got into a fight, during which the claimant suffered injuries that cost the state \$652.55 to treat at a local hospital. The restitution charged to the claimant was \$652.55, not \$800 as the claimant alleges. The Department also points out that as of August 25, 1999, the claimant had only paid \$149 towards his restitution. Payment of restitution as a penalty is authorized by section DOC 303.84 (1)(k) Wis. Adm. Code. The Department believes that there was no negligence by any state employee or officer and that equity does not require returning to the claimant restitution already paid.

*\*Producer Metalfest Series    \*Personal Manager Dustin Diamond  
\*Entertainment Director "Taste of Minnesota"  
\*Event Consultant World Wrestling Entertainment*

***JACK KOSHICK PRESENTS***

***Jack Koshick***

*1626 N. Prospect Ave. Suite 1801  
Milwaukee, Wisconsin 53202*

*Phone 414-225-9026 Fax 414-225-9025  
e-mail jckoshick@aol.com*

STATE CLAIMS BOARD

FEBRUARY 17, 2000

PAGE 8

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

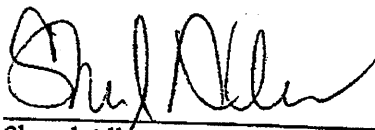
The Board recommends:

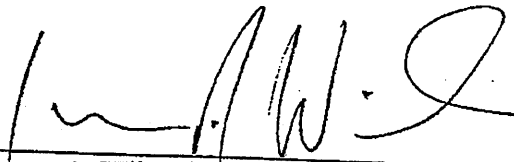
- 1. Payment of \$23,053.80 to Jerome and Theresa Wagner for damages related to the failure of Ryser Brothers Dairy in 1991.
- 2. Payment of \$8,420.92 to the City of La Crosse, Wisconsin for damages related to a late fee assessed against the city's 1999 transportation aids.

Dated at Madison, Wisconsin this 10 ~~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  
Claims Board

101 E. Wilson St.  
P.O. Box 7864  
Madison, WI 53707-7864

**FAX**

Date: 05/04  
Number of pages including cover sheet: 2

To:

Jeff Kessel

Phone:

Fax phone:

CC:

From:

Patricia A. Reardon

Program Assistant

Phone: (608) 264-9595

Fax phone: (608) 267-3842

REMARKS:

Urgent

For your review

Reply ASAP

Please comment

looks like there was  
a later submission than  
the one I sent earlier.  
Use this one instead

Metalfest to go forward on State Fair Park grounds on July 30, 1999 and July 31, 1999, and moving Milwaukee Metalfest to another site.

8. That as a result of the Wisconsin State Fair Park's failure to refusal to honor the contractual agreement for use of the State Fair Park grounds, John C. Koshick has suffered substantial monetary damages, including, but not limited to, the following:

Increased costs:		
Advertising	\$2,000.00	
Box Office	400.00	
Cat. Buyout	600.00	
Legal	15,000.00	
Power (electrical hookups)	3,790.00	
Rent	5,000.00	
Stagehands	7,097.00	
Tables	2,256.00	
Ticket set-up, commissions	7,255.00	
Facility fee	5,430.00	
Ushers	2,384.00	5,212
Lost revenues:		
Beverage commissions	36,000.00	
Food commissions	10,000.00	
Merchandise commissions	18,000.00	
Licensing fees	40,000.00	
Compact Disc and Video sales	500,000.00	
Camel sponsorship	5,000.00	
Ticket sales	250,000.00	
Pay per view sales	5,000,000.00	
Total	<u>\$5,910,212.00</u>	5, 859, 000

WHEREFORE, John C. Koshick, 1626 N. Prospect Avenue, Milwaukee, Wisconsin 53202, claims relief against Wisconsin State Fair Park and Richard J. Bjorklund for the sum of five million nine hundred ten thousand two hundred twelve and no/100 dollars (\$5,910,212.00).

  
John C. Koshick

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4272/1ins  
JTK.../...  
WLj

*Wanted Mon 3/8-AM*

*2003 BILL*

*GEN*

AN ACT ...; relating to: <sup>the</sup> expenditure of \$5,910,212 from the general fund in

ANAL: line → payment of a claim against the state made by John C. Koshick.  
INSERT ANALYSIS →

ANAL: line → *The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**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 2003, \$5,910,212 in payment of a claim against the state made by John C. Koshick, Milwaukee, Wisconsin, to compensate the claimant for damages incurred and revenues lost as the result of cancellation of an oral contract between the claimant and the ~~State Fair Park Board~~ to hold a concert series at the ~~State Fair Park~~ in July 1999. Acceptance of this payment releases this state and its officers, employees, and agents from any further liability resulting from damages incurred <sup>and revenues lost</sup> by the claimant as a result of cancellation of this contract.

(END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4272/1ins2  
JTK.....

INSERT ANALYSIS

(board)

This bill directs expenditure of \$5,910,212 from the general fund in payment of a claim made by John C. Koshick against the State Fair Park Board. The claimant, who is a producer and promoter of entertainment events, alleges that he entered into an oral agreement with the State Fair Park Board to hold the Milwaukee Metalfest concert series at the State Fair Park on July 30-31, 1999. On July 1, 1999, the board informed the claimant that the Metalfest would not be held at the park. The claimant was then required to relocate the Metalfest to an alternate site. The claimant claimed \$51,212 in increased costs and \$5,859,000 in lost revenues resulting from the relocation. The board concedes that it entered into discussions with the claimant about the proposed event but maintains that necessary details were never finalized, <sup>3</sup> and there was no written agreement, and that the claimed damages have not been proven. The claims board recommended denial of this claim on March 6, 2000 (see 1999 *Senate Journal*, p. 485).<sup>a</sup>

State Fair Park

that

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

**Emery, Lynn**

---

**From:** Vasby, Tara  
**Sent:** Monday, March 08, 2004 10:16 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-4272/1 Topic: John C. Koshick claim

It has been requested by <Vasby, Tara> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-4272/1 Topic: John C. Koshick claim