

2003 DRAFTING REQUEST

Bill

Received: 06/02/2003

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Dan Meyer (608) 266-7141

By/Representing: Patricia Reardon - Claims Bd

This file may be shown to any legislator: NO

Drafter: jkuesel

May Contact:

Addl. Drafters:

Subject: State Finance - claims agnst st

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Mullins Cheese, Inc. claim

Instructions:

Per attached claims board recommendation, 5/15/03.

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 06/24/2003	csicilia 06/24/2003		_____			State
/1			chaugen 06/26/2003	_____	lemery 06/26/2003	sbasford 08/06/2003 sbasford 08/06/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

→ AT
Intro.

2003 DRAFTING REQUEST

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/?	jkuesel 06/24/2003	csicilia 06/24/2003				↓ per Bill Kosh in Meyer's office	State
/1			chaugen 06/26/2003		lemery 06/26/2003		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 06/02/2003

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Sheryl Albers (608) 266-8531

By/Representing: Patricia Reardon - Claims Bd

This file may be shown to any legislator: NO

Drafter: jkuesel

May Contact:

Addl. Drafters:

Subject: State Finance - claims agnst st

Extra Copies:

Submit via email: YES

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

changed to Rep. Meyer per JTK 06-26-2003

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Mullins Cheese, Inc. claim

Instructions:

Per attached claims board recommendation, 5/15/03.

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 06/24/2003	csicilia 06/24/2003					State
/1			chaugen 06/26/2003		lemery 06/26/2003		

FE Sent For:

<END>

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Wanted: As time permits

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For: Sheryl Albers (608) 266-8531

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Drafter: jkuesel

May Contact:

Addl. Drafters:

Subject: State Finance - claims agnst st

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Mullins Cheese, Inc. claim

Instructions:

Per attached claims board recommendation, 5/15/03. *inspection date 5/1/02*

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>
17/1	jkuesel 6/24	1 cjs 6/24	ck 6-26	ck 6-26 pb			

FE Sent For:

<END>




State of Wisconsin • CLAIMS BOARD

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

DATE: May 28, 2003

TO: Jeffrey Kuesel
Legislative Reference Bureau

FROM: Patricia A. Reardon 
Program Assistant

RE: Drafting of Claims Legislation

Attached, please find a copy of the proceedings from the meeting held by the State Claims Board on April 25, 2003. At that time, the Board recommended that the following claims be paid:

Mullins Cheese, Inc.

\$17,568.12

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

this handbook. The claimants state that they relied on the only rules that they were given, which made no mention of geographic restrictions. The medical expenses they incurred totaled \$7,070.75. Based on their legal research, the claimants do not believe that they have a legal claim against Dean Care. The claimants are aware of the Board's \$5,000.00 limit and, rather than dealing with additional delays that would be caused by legislation required for the full amount, they request payment of \$5,000 to cover the majority of their expenses.

DHFS does not contest payment of this claim. Although the medical services provided to the claimants in the Bahamas are not covered under the laws governing the BadgerCare program, DHFS admits that this lack of coverage may not have been made clear to the claimants prior to their trip. DHFS has no objection to approval of this claim by the Claims Board but points to the fact that there is no DHFS appropriation to recommend as a payment source. Section HFS 104.01(11) prohibits direct recipient reimbursement with program funds and it appears that the provider has already been paid.

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 neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

2. **University Avenue Stamps of Madison, Wisconsin** claims \$350.00 for damage to stamps incurred at the MILCOPEX 2002 Stamp Show, which took place at Wisconsin State Fair Park in September 2002. The claimant was an exhibitor at the show. The claimant set up his display using the tables that were provided by SFP for the event. The claimant states that the table he used did not appear to be wet and that the surface was dry to the touch. The claimant placed a cloth on the table, arranged his stamps, which were displayed in packages that had paper backings, and then placed a sheet of Plexiglas over the top of the table to protect the stamps. The claimant later discovered that some of his stamps had water damage and that the table was wet to the touch. The claimant believes there was moisture inside the table surface, which his tablecloth absorbed and which then became trapped under the Plexiglas. In response to SFP's assertion that he should have dried off the table before using it, the claimant states that there was no moisture evident on the table when he set up his display and that he never would have placed his stamps on the table if he had known it was damp. The claimant believes that, although the top of the table had dried out, there was apparently still moisture trapped inside the table surface. The claimant believes that SFP stored the tables improperly by letting them get wet and then not allowing them to dry completely before using them again. The stamps for which the claimant is requesting reimbursement were in mint condition and had never been used. The moisture from the table caused the stamps to adhere to the paper backing and they therefore are no longer considered unused because the gum on the back of the stamp has been disturbed. Stamps with disturbed gum are no longer considered unused and their value is decreased to that of a used stamp. Finally, the claimant points to the fact that the host of the event, the Milwaukee Philatelic Society, fully supports his claim as shown in their statement submitted with his claim documents. In support of the claimant, MPS states that they believe that SFP is responsible for providing facilities and equipment that are ready for use and that do not cause their show any loss or damage.

SFP recommends that this claim not be paid. SFP believes that if moisture was the cause of the damage to the claimant's stamps, the primary responsibility rests with the claimant to dry the table before using it. SFP believes that it is the claimant's responsibility to protect the quality of his stamps. SFP states that the event at which the claimant exhibited his stamps was conducted by the Milwaukee Philatelic Society. While SFP provides the tables for the event, they are actually set up by MPS and therefore any secondary responsibility for drying the tables would rest with MPS. SFP also points to the fact that MPS' contract with the state has a hold harmless agreement, releasing the state from liability. MPS also has a contract with each exhibitor, which includes a hold harmless agreement for both MPS and SFP.

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 neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

3. **Mullins Cheese, Inc., of Mosinee, Wisconsin** claims \$17,568.12 for damages allegedly caused by milk testing conducted by DATCP. The claimant alleges that its own test, the test performed by DATCP and tests conducted by a third-party laboratory all were negative for antibiotics in excess of established limits. The claimant states that DATCP refused to accept their test results and ordered them to hold all cheese and

State of Wisconsin
Claims Board

101 E. Wilson St.

P.O. Box 7864

Madison, WI 53707-7864

FAX

Date:

6/24/03

Number of pages including cover
sheet:

5

To:

JEFF KESSL

Phone:

Fax phone: 4-6948

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

There are a few dates in the
attached info. \$ table also attached

PR

MULLINS CHEESE INC.

598 SEAGULL DRIVE

MOSINEE, WI 54455

715-693-3205 FAX: 715-693-2682

Patricia Reardon, Program Assistant
State of Wisconsin Claims Board
P. O. Box 7864
Madison, WI 53707-7864

November 27, 2002

To Whom It May Concern:

On May 1, 2002 an action was taken by several employees of the Wisconsin Department of Agriculture, Trade and Consumer Protection Division of Good Safety, (Referred to as the "Department" in the remainder of this correspondence) which was quite irresponsible and totally unwarranted. The action has ultimately resulted in this claim to the State of Wisconsin Claims Board.

The situation began with the random unannounced collection of load samples for Beta Lactam testing. The Department tested these samples by one of three approved tests for this procedure, which only tests for 5 of the 6 Beta Lactams with regulatory safe levels established by the Department, but with sensitivity at levels far below the regulatory limits. I might also add, that this fact had to be pointed out to Department officials during the ensuing dispute. In following with regulations, Mullins Cheese Inc., certified intake personnel had also tested samples of the same milk on another regulatory approved test with all results negative of any Beta Lactams at established safe limits. It just so happened that Mullins Cheese, Inc. had also sent samples of the same milk to Ag Source, a certified laboratory, in Stratford Wisconsin, which in turn, had tested the samples with the third approved test and also produced results negative of any Beta Lactams at established safe limits. My point here is that all three approved test results found "no Beta Lactams" in excess of the regulatory established safe limits and yet these officials refused to except any approved test results, other than the one they used. After several highly heated and emotional discussions and phone conversations between Mullins Cheese, Inc. management and Department heads in Madison, the Department conceded to allow all randomly collected samples be sent to a FDA laboratory in Denver Colorado to perform a fourth and even more thorough test to determining Beta Lactam presence. This test also found results negative at established safe limits. They also conceded to allow, as stated in a copy of an inspection report by Nancy Sekorski R.S. #21 to be "after a lengthy delay," which I contend was caused by the Department holding orders on all cheese and whey protein concentrate (WPC) produced from milk test with four different tests all yielding negative results of any Beta Lactams at established safe limits. Eventually, all product under these holding orders were released after the Department finally realized they needed to follow their own regulations and cannot make up new rules to cover their errors.

MULLINS CHEESE INC.

598 SEAGUII. DRIVE

MOSINEE, WI 54455

715-693-3205 FAX: 715-693-2682

The request for this claim is being made for the cream from the cheese manufacturing process, which we believe was requested to be disposed of, totally unnecessarily. It is my contention that, based on statements from representatives of Grassland, the cream they were requested to dispose of, could have also been allowed to be churned into a butter product which could also have been put in a holding order until the issue was settled, just as the cheese and WPC were. It is, also, my contention that this was not allowed due to Department pride and their egotistical need to show their power and authority as a regulatory agency. Grassland submitted a claim to their insurance carrier, but based on the circumstances, the claim was refused (see attached copy of letter of denial of claim), due to the inappropriate action taken by the Department. Therefore, the total liability for all cream which had to be dumped, fell to Mullins Cheese, Inc., (see attached Grassland payment request) for which payment has been made.

Attempts to come to a settlement with the Department officials have proved to be futile. Based on statements made by Mr. Les Lamb in a July 2, 2002, meeting at the Mullins Cheese, Inc. office and in phone conversations with Mr. Steve Steinhaf, Food Safety Administrator, the Department cannot take any settlement action on its own leaving me no other alternative than to file this claim for the entire amount of cream loss in the amount of \$17,568.52.

It would be my wish that an amiable settlement could be made directly with the Department and that we, as dairy industry and the Wisconsin Department of Agriculture, could work together to preserve Wisconsin's great dairy heritage rather than bringing to the field the intimidating, authoritative, we're-above-reproach attitude, which was displayed in this situation.

If you have any further questions in order to make an informed decision, please contact me at 715-223-3396 or 715-387-1151 extension 369.

Raymond A. Mullins

cc: Senator Russ Decker - 29th District
Senator Dave Zien - 23rd District
Representative Scott Suder - 69th District
Representative Jerry Petrowski - 86th District

**Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Food Safety**

Report of Dairy Plant
Mullins Cheese Inc.
Knowlton Cheese Div
598 Seagull Drive
Mosinee WI 54455
PHONE: (715) 693-3205
Date of last inspection: 2-2002

Page 4 of
May 13, 2002
LICENSE NO.: 55-1854
CODES:
COUNTY: Marathon (37)
TOWNSHIP: 24
MANAGER: Don or Bill Mullins

- ◆ At 11:55 AM a fax from Dean Hicker – Grassland Dairy in response to a request from me to provide me with the following: **A copy of the Bill of Lading for Whey Cream pick up at Mullins Cheese with accurate date (the driver picked up the whey cream at 8:00 PM 5-7-02 and wrote 5-8-02 on the Bill of Lading), unloading log, and scale ticket from load of whey cream.**
- ◆ At 12:06 PM a fax arrived at Mullins from Ag Source with the result of the lab tests for patrons 9727 & 9716 from 5-5-02 (the official test day) and a second page with all patrons from load 3251-2 (except 9727 & 9716 which had official test 5-5-02) as official tests. Also included on the sheet were the unofficial result of 9727 & 9716, which had been thrown into the dumpster on 5-7-02 at 4:30 PM and found and tested for Beta Lactam by Charm SL by Eric Helms at 12:45 PM on 5-8-02.
- ◆ At 2:47 PM a fax was received from Lynn Dairies stating the 2 loads of permeate from Mullins was going to be land spread. Bill of lading #'s 369 and 370 corresponding to the 2 loads were not available.
- ◆ I contacted Dean Hicker per Jackie Owens requesting the whey cream be disposed of. I suggested they contact Dale Sosolla to obtain a disposal agreement on this disposal.
- ◆ After a lengthy delay holding orders # 17548 & 17549 were placed on all cheese made from Vat 24-X through Vat 35-LL by Kathy Howe and myself.
- ◆ The plant decided to dry the whey from the production of cheese dated 5-7-02 (milk for cheese production 5-7-02 was received into the plant 5-6-02) and at 4:30 PM the production was not yet complete. Kathy and I placed 3600 lbs. of Nutro Pro 80% in 50-LB bags on Holding order #17547. As the rest of the days production was not complete the office suggested I would return 5-9-02 and inventory and place on hold the balance of the WPC produced 5-8-02.

May 9, 2002

- ◆ I met Kathy Howe and we went through the previous day's occurrences and put all documents in order
- ◆ I arrived at Mullins Cheese and spoke with Eric Helms as he was picking up samples from the plant intake in regard to the sample mix up on May 6, 2002 official tests for load 3251-2. He stated they were in the machine being tested for SCC and had not been entered into the computer, as the results were not finished. He offered to and faxed me a complete copy of official tests from Mullins test 5-6-02. The office can review this record to determine if it helps clear up the previous day's confusion on samples.

Received by _____

Inspector _____

Nancy Sekorski, R.S., #21



N8790 Fairground Avenue, PO Box 160 • Greenwood, WI 54437-0160 • 1-800-428-8837 • Fax (715)267-6044

September 18, 2002

Mr. Don Mullins
Mullins Cheese
P.O. box 649
Colby, WI 54421

Dear Don:

Here is the information for the cream we had to dump:

	<u>Btr.</u>	<u>Weight</u>	<u>Test</u>	<u>Butterfat</u>	<u>Price</u>	<u>Total</u>
	<u>Mkt. Overage</u>					<u>Dollars</u>
Cassel Garden	1.03 x 1.09 = 1.1227	3,917 x 45.90 =	1,797.90 x 1.1227 =			\$2,018.50
Hillside Dairy	1.03 x 1.09 = 1.1227	2,541 x 34.00 =	863.94 x 1.1227 =			969.95
	1.03 x 1.09 = 1.1227	2,719 x 31.50 =	856.48 x 1.1227 =			961.57
Mullins	1.03 x 1.20 = 1.2360	11,880 x 34.20 =	4,062.96 x 1.2360 =			5,021.82
WI Dairy State	1.03 x 1.09 = 1.1227	3,553 x 34.00 =	1,208.02 x 1.1227 =			1,356.24
	1.03 x 1.09 = 1.1227	6,011 x 31.10 =	1,869.42 x 1.1227 =			2,098.80
Nasonville	1.03 x 1.13 = 1.1639	1,616 x 50.30 =	812.84 x 1.1639 =			946.06
Lynn Dairy	1.03 x 1.16 = 1.1948	5,095 x 38.10 =	1,941.19 x 1.1948 =			2,319.33
Cream left from the day before	1.03 x 1.15 = 1.1845	4,800 x 33.00 =	1,584.00 x 1.1845 =			<u>1,876.25</u>
On inventory		42,132 pounds				\$17,568.52
				Cream dumped		- 5,021.82
						\$12,546.70

Sincerely,

Tayt Wuethrich
Vice President

TDW:cje

2003

Date (time) needed Thur 6/26

LRB - 2790, 1

BILL

JTK: gjs:

Use the appropriate components and routines developed for bills.

AN ACT... [generate catalog] to repeal...; to renumber...; to consolidate and renumber...; to renumber and amend...; to consolidate, renumber and amend...; to amend...; to repeal and recreate...; and to create... of the statutes; relating to:

INS A

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

INS B

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

SECTION #.

INS C

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2790/lins

JTK.....

Wanted Thu 6/26

inline marker
missing: please
recreate

INS
A

AN ACT relating to: expenditure of \$17,568.12 from the general fund in payment of a claim against the state made by Mullins Cheese, Inc. ←

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

INS
C

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, \$17,568.12 in payment of a claim against the state made by Mullins Cheese, Inc., Mosinee, Wisconsin, to compensate it for the costs of destruction of whey cream originating in its plant after the Department of Agriculture, Trade and Consumer Protection performed tests on May 1, 2002, ^{delete xtra space} that indicated excessive antibiotic residue in its milk. Acceptance of this payment releases this state and its officers, employees, and agents from any further liability resulting from damages incurred by the claimant as a result of state testing of its milk on this date.

(END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2790/1ins2
JTK.....

INS
B

This bill directs expenditure of \$17,568.12 from the general fund in payment of a claim against the state made by Mullins Cheese, Inc., against the Department of Agriculture, Trade and Consumer Protection (DATCP). On May 1, 2002, DATCP made an inspection of the claimant's plant to test its dairy products. The results of its tests were not immediately available, and the claimant transferred some of its whey cream that was affected by the tests to a dairy. DATCP then claimed that the test results at the claimant's plant indicated excessive antibiotic residue. The claimant also performed its own tests, which indicated that antibiotic residue was not excessive. At the claimant's request, the federal Food and Drug Administration also performed tests, and was able to identify the specific drug contained in the product and determine that the residue of that drug was not excessive. While the DATCP test results were pending, the dairy to which the claimant shipped whey cream mixed it with product from other sources. While the federal test results were pending, the claimant and the dairy destroyed some original and mixed products that were affected by the tests and the claimant reimbursed the dairy for its loss. DATCP asserts that it advised the claimant to hold and not intermingle any tested products until the final test results were received. The claimant claimed \$17,568.12, representing the total value of the whey cream that was destroyed as a result of DATCP's tests. On May 15, 2003, the claims board recommended that this claim be paid on the basis of equitable principles (see *Senate Journal*, pp. 188-189).

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

2003
Plain
text

Mentkowski, Annie

From: Mentkowski, Annie
Sent: Thursday, July 24, 2003 4:04 PM
To: Cosh, Bill; Rep.Meyer
Subject: LRB-2790

Jeff Kuessel is concerned you never recieved a copy of this bill. So here it is.

Thanks

Annie Mentkowski
Legislative Program Assistant
Legislative Reference Bureau
(608) 266-3561
annie.mentkowski@legis.state.wi.us