

STATE OF WISCONSIN

Senate Journal

One-Hundred and First Regular Session

WEDNESDAY, January 29, 2014

The Chief Clerk makes the following entries under the above date.

CHIEF CLERK'S ENTRIES

AMENDMENTS OFFERED

Senate Amendment 2 to **Senate Bill 301** offered by Senator Olsen.

Senate Amendment 4 to **Senate Bill 302** offered by Senator Kedzie.

PETITIONS AND COMMUNICATIONS

State of Wisconsin Claims Board

January 15, 2014

Enclosed is the report of the State Claims Board covering the claims heard on December 19, 2013. Those claims approved for payment pursuant to the provisions of s.16.007 and 775.05 Stats., have been paid directly by the Board.

This report is for the information of the Legislature. The Board would appreciate your acceptance and publication of it in the Journal to inform the members of the Legislature.

Sincerely,
GREGORY D. MURRAY
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on December 19, 2013, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Raymond Luick	Justice	\$8,873.72
2. Frank & Dominic Giuffre	State Fair Park	\$6,350.00

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
3. Bernice Matchey	Transportation	\$2,133.00
4. Kevin Hess	Natural Resources	\$1,123.58

5. Tom Hubl/ Hubl's Motel	Natural Resources	\$2,134.25
6. Jonathan P. Vote	Natural Resources	\$69.95
7. Aquan Mobley	Corrections	\$200.22
8. Roland Price	Corrections	\$10,000.00

The Board Finds:

1. Raymond Luick of Lodi, Wisconsin claims \$8,873.72 for reimbursement of attorney's fees associated with his employment with the Office of Justice Assistance (OJA), which was formerly attached to DOA and is now attached to DOJ. Beginning in 2008, the claimant was interviewed by the USDOJ Office of Inspector General (OIG) concerning the administration of a federal program by OJA. The claimant supervised employees directly involved in administering the federal program. The claimant was interviewed by the OIG on two occasions and subsequently learned that a federal grand jury had been empaneled as a result of the investigation and that the claimant might be subpoenaed to testify before the grand jury. The claimant was notified that the state does not provide legal services to employees and therefore retained his own legal counsel. Between August and November 2010, the claimant's attorney spent 23.5 hours representing the claimant. The claimant states that throughout the entire process, he cooperated fully with the state and the OIG. He requests reimbursement for his attorney's fees.

DOJ has no objection to payment of this claim. The attorney's fees claimed were incurred as a result of a federal investigation of OJA while the claimant was employed there. DOJ notes that at the time, OJA was an independent state agency attached to DOA for administrative purposes. In early 2013 OJA and its staff, including the claimant, were incorporated into DOJ. The department understands that the OIG investigation is now closed and therefore DOJ has no objection to payment of the claim at this time. However, DOJ believes that because the claimant was not actually employed by DOJ or DOA at the time the fees were incurred, that the claim should be paid from the Claims Board's sum-sufficient appropriation and not from DOJ or DOA funds.

The Board concludes the claim should be paid in the amount of \$8,873.72 based on equitable principles. The Board further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Claims Board appropriation §20.505(4)(d), Stats. [*Member Finkelmeyer not participating.*]

2. Frank and Dominic Guiffre of Milwaukee Wisconsin and Franklin Wisconsin, respectively, claim \$6,350.00 for value of pit passes, VIP parking passes, and use of a golf cart for two events at SFP in 2012. In 2005, the claimants and the SFP Board entered into a contract in which the claimants transferred the trade names “The Milwaukee Mile” and “Wisconsin State Fair Park Speedway” in exchange for tickets, pit passes, VIP parking passes, and golf cart use for “all events at the Milwaukee Mile” for either ten years or the rest of each of the claimants’ lives, whichever is greater. The claimants allege that SFP failed to provide them with pit passes, parking passes, and golf carts for the Milwaukee IndyFest event in June 2012 and the Howie Lettow Memorial race event in July 2012 as required pursuant to the 2005 contract. In support of the original contract, the claimants point to an affidavit by Martin Greenberg, who was chair of the SFP Board from 2003 to 2008, and signed the 2005 contract with the claimants. In response to SFP’s assertion that it has no control over the structure of private events and therefore is sometimes unable to provide the specific tickets, passes, and access required under the 2005 contract, the claimants note that SFP, as the Lessor of the facilities, can simply require its Lessees to agree as part of their lease to provide the items specified in the 2005 contract. The claimants’ valuation of their damages is based on their long experience in the racing industry. The claimants allege that the SFP Board is in breach of the 2005 contract and requests reimbursement for the costs they incurred.

SFP recommends denial of this claim. SFP believes the 2005 contract with the claimants is not valid because the then Chairman of the SFP Board was not authorized to sign contracts for the Board. SFP states that even if the contract was deemed valid, the SFP Board does not produce any events at the Milwaukee Mile, those events are produced by race promoters. SFP states that it has no control over the type of tickets, parking, or event access designed by race promoters. For example, the Lettow Memorial race had no reserved seating (general admission only) and both the Lettow and IndyFest races had no VIP parking available to the general public. SFP notes that, as a courtesy to the claimants, it asked the promoters of both these events what they could provide to the claimants. SFP states that the race promoters provided them with paddock passes, not pit passes but notes that the contract with the claimants allows for “pit/paddock” passes. SFP points to the fact that the claimants were provided with paddock passes, parking passes, and the use of a golf cart for both events. SFP states that it was not able to use taxpayer money to purchase pit passes for the claimants. SFP also notes that the pit passes purchased by the claimants cost far less than they allege in their claim. SFP believes it has fulfilled the obligations of the 2005 contract to the best of its abilities and that the claim should be denied.

The Board concludes the claim should be paid in the reduced amount of \$1,090.00 based on equitable principles. The Board further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Wisconsin State Fair Park appropriation §20.190(1)(H), Stats. The Board further recommends that the parties

undertake discussions to resolve any future disputes regarding the 2005 contract.

3. Bernice Matchey of Arcadia, Wisconsin claims \$2,133.00 for damages to her home allegedly related to a 2007 road construction project. The claimant alleges that the road construction company left a dip in the road in front of her house and that traffic from dump trucks and semis hitting the dip have caused vibrations in her home. The claimant states that these vibrations have caused windows to break and walls to crack. Trempealeau County has since repaired the dip in the road, however the claimant requests compensation to replace five broken windows in her home.

DOT recommends denial of this claim. DOT states that it does not own any dump trucks or semis. DOT states that these trucks would have been either construction vehicles owned by the road contractor or privately owned semi-trucks. DOT notes that Trempealeau County has repaired the dip in the road. DOT finally states that it has a contract with Trempealeau County to maintain and repair the road in question and therefore this claim should be pursued against Trempealeau County. DOT does not believe the claimant has presented any evidence of negligence on the part of DOT or its employees.

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 with the state should assume and pay based on equitable principles.

4. Kevin Hess of Waunakee, Wisconsin claims \$1,123.58 for damage to his pier caused by a branch that fell from a tree on Governor Nelson State Park on 9/28/13. The claimant states that after the incident he found out the tree was mostly hollow and believes that the winds that day caused the branch to break off. The claimant contacted the park manager, who came to the claimant’s property with a crew to clear the branch from the pier and shoreline. The claimant states that the pier was purchased new in 2012. One section of the pier was damaged and the claimant received an estimate of \$1,123.58 to replace that section. The claimant has homeowner’s insurance but his deductible is \$2,500, so his insurance would not cover the damage. He requests reimbursement for replacement of the damaged section of the pier.

DNR recommends denial of this claim. DNR states that it appears that the branch came down due to high winds (35 MPH gusts on 9/28/13), not due to any DNR activity or negligence. DNR notes that when damage occurs to a neighbor’s property due to a falling tree, it is generally accepted that the neighbor is obliged only for the cost of clean-up and removal of the tree, not for any damaged caused; the individual with the damaged property makes a claim to his homeowner’s insurance for the cost of any damage. DNR believes it has no legal liability to pay for the damaged pier. DNR understands that the board may also consider reimbursing the claimant based on equitable principles but finds no basis in equity for paying the claim. DNR notes that during the course of any given year, several of its trees fall on neighboring livestock fences, and trees from DNR’s neighbors fall on DNR livestock fences. DNR states that in these instances, they have never had a neighbor

request reimbursement for damages, nor has DNR requested payment for damages to DNR fences damaged by its neighbor's trees. DNR is concerned about the precedent that would be set by paying this claim, especially in light of the lack of any extraneous factors. DNR believes that it has already done what is fair and necessary—cleaning up the branch from the claimant's property—and believes there is no legal or equitable basis for the state to provide compensation for the claimant's damages.

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 with the state should assume and pay based on equitable principles.

5. Tom Hubl d/b/a Hubl's Motel of Boscobel, Wisconsin claims \$2,134.25 for property damages caused by two instances of falling trees from DNR land in spring of 2012 and October 2012. In the spring of 2012, six trees blew down from DNR property and fell on the claimant's wood fences and took out a section of washline. In October 2012, an oak tree from DNR land fell onto a storage building roof and damaged the roof and the building's chimney. The claimant contacted the DNR and DNR staff came and cut up the fallen trees. The claimant states that some of the pieces left by the DNR staff were too large to pick up or move with a wheelbarrow or dolly. The claimant states that he paid to have the larger logs cut into smaller pieces. The claimant believes that if these incidents had occurred in a residential neighborhood, the neighbor's property insurance would cover the damages. The claimant has not made a claim to his property insurance because he does not want his rates to go up. The claimant believes the DNR is not acting as a good neighbor. He requests reimbursement for repair to his fences and storage building, the cost of cutting up the larger logs, and the cost of filing this claim. The claimant also believes that the DNR should remove a large oak tree which has branches that reach within 3 or 4 feet of his TV tower. The claimant is concerned that if this tree comes down it could cause substantial damage to his property.

DNR recommends denial of this claim. DNR denies that it has not been a good neighbor to the claimant. DNR notes that it has had many communications with the claimant about trees surrounding his property and has even sent a forester to meet with the claimant and walk around his property. DNR notes that the forester did not find any health problems with the trees. Regarding the specific incidents leading to this claim, DNR notes that the trees in question came down due to a windstorm, not due to any negligence by the department. DNR states it sent staff to the claimant's property to cut up the fallen trees and a few other trees leaning onto the claimant's property. DNR states that when damage occurs to a neighbor's property due to a falling tree, it is generally accepted that the neighbor is obliged only for the cost of clean-up and removal of the tree, not for any damaged caused; the individual with the damaged property makes a claim to his homeowner's insurance for the cost of any damage. DNR also notes that the claimant's property is at the base of a tree-covered bluff and any tree blown over on the bluff has the potential of sliding onto the claimant's

property. DNR states that short of clear cutting the entire bluff, it is simply not possible for the department to eliminate the risk of trees falling onto the claimant's property during a storm. DNR understands that the board may also consider reimbursing the claimant based on equitable principles but finds no basis in equity for paying the claim. DNR notes that during the course of any given year, several of its trees fall on neighboring livestock fences, and trees from DNR's neighbors fall on DNR livestock fences. DNR states that in these instances, they have never had a neighbor request reimbursement for damages, nor has DNR requested payment of damages to DNR fences damaged by its neighbor's trees. DNR also questions the repair estimate provided by the claimant for the storage building; noting the poor condition of the building as shown in the photos provided by the claimant. DNR is concerned about the precedent that would be set by paying this claim, especially in light of the lack of any extraneous factors. DNR believes that it has already done what is fair and necessary—cleaning up the trees from the claimant's property—and believes there is no legal or equitable basis for the state to provide compensation for the claimant's damages.

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 with the state should assume and pay based on equitable principles.

6. Jonathan P. Vote of Montello, Wisconsin claims \$69.95 for cost of a multi-tool stolen from a DNR wildland fire truck that was on display at the Wisconsin State Fair on 8/11/13. The claimant is a DNR forester/firefighter and uses the tool in his duties as a DNR employee. The truck was brought to the State Fair to be placed on static display for viewing by the public. Unbeknownst to the claimant and without his consent, other state workers allowed the fair-going public into the cab of the truck. The claimant's multi-tool was stored in the cab out of plain sight, however at some point in the day a member of the public apparently stole the tool. The claimant requests reimbursement of the cost to replace the multi-tool.

DNR recommends payment of this claim. DNR believes that there was some negligence on the part of the department's staff in allowing the public to access the cab of the truck. The claimant was not aware this would happen and did not give his permission for this access. If staff had warned the claimant that they would be opening up the cab of the truck to the public, he would have had the opportunity to remove any personal items from the vehicle, however, by the time he was aware access had been given to the cab of the truck, it was too late and the multi-tool had already been stolen. DNR notes that there was no reason to give the public access to the cab of the vehicle as there was nothing particularly interesting about the interior of the vehicle that could not be observed by simply looking in the windows. DNR also notes that in situations where the public is given access to the interior of department vehicles, staff normally keeps a watchful eye on those going into the vehicle. DNR understands that this did not happen in this case and that the public was given access to the truck with minimal oversight.

DNR believes that in addition to bearing legal responsibility to pay the claim, there is an equitable basis for payment as well. DNR states that the stolen tool is used by the claimant in the performance of his duties as a DNR employee. Any item used by and necessary for the performance of an employee's duties stolen from a DNR vehicle would need to be replaced. Whether the item was owned by the department or the employee is immaterial; the department should bear the cost of the replacement. Therefore, for both legal and equitable reasons, DNR supports payment of this claim.

The Board concludes the claim should be paid in the amount of \$69.95 based on equitable principles. The Board further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation §20.370(1)(mv), Stats.

7. Aquan Mobley of Columbia, South Carolina claims \$200.22 for shirts and a television confiscated as contraband by DOC staff in January 2013 while the claimant was an inmate at Kettle Moraine Correctional Institution (KMCI). KMCI staff confiscated the TV and shirts while packing up the claimant's property. KMCI staff alleged that the claimant did not have receipts proving ownership of the items and the claimant was given a conduct report for violating property rules. The claimant alleges that he does have receipts proving ownership of the confiscated items. He appealed the conduct report and the confiscation of his property. During the course of his appeal the claimant was transferred to Green Bay Correctional Institution. The claimant corresponded with the KMCI warden several times, indicating that he had receipts for the confiscated items, however, the KMCI warden refused to return the items. The claimant requests reimbursement for his confiscated property.

DOC recommends denial of this claim. DOC states that while KMCI staff was packing the claimant's property, they discovered that the label on the TV had been sanded and the claimant's name and inmate ID number scratched onto it. DOC's Administrative Code defines as contraband "property that is damaged or altered," "item[s] which come into an inmate's possession thorough unauthorized channels," and "[p]roperty in excess of established limits." Contraband property is subject to seizure and disposal in accordance with institution policies and procedures. Because the ownership label on the TV in the claimant's possession had been altered, KMCI staff appropriately confiscated the TV as contraband. KMCI staff also discovered the claimant had 7 t-shirts/tank tops in his possession but was only able to produce receipts for 2 t-shirts. KMCI staff therefore properly confiscated 4 t-shirts and 1 tank top. DOC states that it was not until he filed his Claims Board claim that the claimant produced receipts purporting to prove ownership of the contraband items. DOC notes that the claimant's receipts date from 2006 to 2012, therefore, it is impossible to determine whether the shirts they reference are the same ones that were in his possession in January 2013. DOC believes it is reasonable to assume the claimant came by the property items through unauthorized channels and that the items were therefore appropriately seized as contraband by DOC staff. DOC

believes the claimant has failed to provide any legitimate evidence to support his claim.

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 with the state should assume and pay based on equitable principles.

8. Roland Price of New Lisbon, Wisconsin claims \$10,000.00 for the full replacement value of various property items allegedly improperly seized and destroyed by DOC staff during various incidents at Columbia Correctional Institution (CCI) and the Wisconsin Secure Program Facility (WSPF) in 2011 and 2012. The claimant alleges that DOC staff at these institutions is biased against him, violated DOC rules by destroying property while his appeals were pending, and conspired to seize and destroy his property in retaliation for his litigation. The claimant alleges that CCI and WSPF staff violated his constitutional rights by confiscating religious items and legal transcripts, negatively impacting his religious freedom and access to the courts. He also alleges DOC staff violated his due process rights by failing to follow DOC's rules regarding property allowances and the process for appealing the seizure of property. The claimant requests reimbursement of 100% of the value of legal transcripts, legal books, personal items, typewriters and typewriter supplies, religious materials, and hobby items. The claimant believes DOC's response to his claim is moot and that DOC staff does not have qualified immunity because of their intentional violation of his due process rights.

DOC recommends denial of this claim. DOC notes that the claimant's submissions are virtually unintelligible. DOC believes the claimant has failed to state a clear claim explaining the "who, what, where, when and how" that would allow DOC the opportunity to investigate the claimant's allegations. DOC states that "[a]lthough the Claims Board is not governed by the rules of civil procedure, there should be some requirement that claimants clearly articulate the basis of their claim." DOC notes that, from what it can discern of the claimant's submissions, he appears to be bringing a claim for alleged intentional torts, therefore, DOC believes that the state is protected from this claim by the doctrine of Sovereign Immunity.

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 with the state should assume and pay based on equitable principles.

The Board concludes:

That the following identified claimants are denied:

- Bernice Matchey
- Kevin Hess
- Tom Hubl d/b/a Hubl's Motel
- Aquan Mobley
- Roland Price

That payment of the amounts below to the identified claimants from the following statutory appropriations is justified under § 16.007, Stats:

Raymond Luick	\$3,912.00	§ 20.505(4)(d), Stats.
Frank & Dominic Guiffre	\$3,414.88	§ 20.190(1)(j), Stats.
Jonathan P. Vote	\$69.95	§ 20.370(1)(mv), Stats.

Dated at Madison, Wisconsin this 14th day of January, 2014.

COREY FINKELMEYER

Chair, Representative of the Attorney General

GREGORY D. MURRAY

Secretary, Representative of the Secretary of Administration

BRIAN HAGEDORN

Representative of the Governor

JOSEPH LEIBHAM

Senate Finance Committee

PATRICIA STRACHOTA

Assembly Finance Committee