STATE OF WISCONSIN
Senate Journal
One-Hundred and Second Regular Session

MONDAY, June 15, 2015

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

CHIEF CLERK'S ENTRIES

AMENDMENTS OFFERED

Senate Amendment 1 to **Senate Bill 158** offered by Senator Petrowski.

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

June 5, 2015

Enclosed is the report of the State Claims Board covering the claims heard on May 11, 2015.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 May 11, 2015, upon the following claims:

Claimant	Agency	Amount
1. James P. LaVenture	Revenue	$4,154.36
2. James P. LaVenture	Revenue	$4,057.32
3. James P. LaVenture	Revenue	$6,081.69
4. Willie Gavin	Innocent Convict Compensation	$48,703.50

The following claims were decided without hearings:

Claimant	Agency	Amount
5. Shana Zuhlke	Transportation	$687.53
6. Myron E. Edwards	Corrections	$449.26
7. Darrell Otis	Corrections	$359.38
8. Ralph H. Jurgens, III	Corrections	$12.76
9. David Czapiewski	Corrections	$84.73
10. Tony C. Franklin, Jr.	Corrections	$32.50

With respect to the claims, the Board finds:

1. James P. LaVenture of Frederic, Wisconsin claims $4,154.36 for reimbursement of monies taken through DOR wage assessments for payment of an estimated assessment for 2003 income taxes. The claimant admits he is at fault for failing to file his 2003 tax return in a timely fashion, however, he believes an overpayment of over $4,000 for the taxes actually due is excessive, even when penalties and late fees are assessed. The claimant states that he was in regular contact with a DOR employee, who assured him that any excess money taken through wage certification would be refunded by DOR and/or applied to outstanding federal taxes. The claimant states that because of this assurance, he did not believe he needed to appeal the assessment. The claimant filed his 2003 return in December 2013, with no taxes due. The claimant believes it is unjust for DOR to keep any monies in excess of actual taxes due, plus any appropriate penalties.

DOR recommends denial of this claim. The estimated tax assessment for failure to file 2003 income taxes was issued on 9/18/07 and the actual return was filed on 12/10/13. DOR states that on 1/30/08, the claimant called DOR to inform the collection agent that he was working on preparing his tax returns for 2003 and other outstanding years. DOR states that the claimant contacted DOR a number of times over the next four years but never followed through to resolve the estimated assessment. DOR notes that it sent over 30 notices to the claimant regarding his multiple years of late tax filings. DOR began certification of the claimant's wages in February 2012. The certification ended in December 2013 when the claimant filed the outstanding return. DOR points to § 71.75(5), Wis. Stats., which prohibits DOR from refunding the overpayment on the original assessment because no refund was claimed within the prescribed two-year period.

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. *[Member Olsen dissenting.]*

2. **James P. LaVenture** of Frederic, Wisconsin claims $4,057.32 for reimbursement of monies taken through DOR wage assessments for payment of an estimated assessment for 2004 income taxes. The claimant admits he is at fault for failing to file his 2004 tax return in a timely fashion, however, he believes an overpayment of over $4,000 for the taxes actually due is excessive, even when penalties and late fees are assessed. The claimant states that he was in regular contact with a DOR employee, who assured him that any excess money taken through wage certification would be refunded by DOR and/or applied to outstanding federal taxes. The claimant states that because of this assurance, he did not believe he needed to appeal the assessment. The claimant filed his 2004 return in December 2013, with no taxes due. The claimant believes it is unjust for DOR to keep any monies in excess of actual taxes due, plus any appropriate penalties.

DOR recommends denial of this claim. The estimated tax assessment for failure to file 2004 income taxes was issued on 1/10/08 and the actual return was filed on 12/10/13. DOR states that on 1/30/08, the claimant called DOR to inform the collection agent that he was working on preparing his tax returns for 2004 and other outstanding years. DOR states that the claimant contacted DOR a number of times over the next four years but never followed through to resolve the estimated assessment. DOR notes that it sent over 30 notices to the claimant regarding his multiple years of late tax filings. DOR began certification of the claimant's wages in February 2012. The certification ended in December 2013 when the claimant filed the outstanding return. DOR points to § 71.75(5), Wis. Stats., which prohibits DOR from refunding the overpayment on the original assessment because no refund was claimed within the prescribed two-year period.

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. *[Member Olsen dissenting.]*

3. **James P. LaVenture** of Frederic, Wisconsin claims $6,081.69 for reimbursement of monies taken through DOR wage assessments for payment of estimated assessments for 2005 and 2006 income taxes. The claimant admits he is at fault for failing to file 2005 and 2006 tax returns in a timely fashion, however, he believes an overpayment of over $6,000 for the taxes actually due is excessive, even when penalties and late fees are assessed. The claimant states that he was in regular contact with a DOR employee, who assured him that any excess money taken through wage certification would be refunded by DOR and/or applied to outstanding federal taxes. The claimant states that because of this assurance, he did not believe he needed to appeal the assessments. The claimant filed his 2005 and 2006 returns in December 2013 with no taxes due for either year. The claimant believes it is unjust for DOR to keep any monies in excess of actual taxes due, plus any appropriate penalties.

DOR recommends denial of this claim. The estimated tax assessments for failure to file 2005 and 2006 income taxes were issued on 5/30/08 and the actual returns were filed on 12/10/13. DOR states that on 1/30/08, the claimant called DOR to inform the collection agent that he was working on preparing his tax returns for 2005, 2006, and other outstanding years. DOR states that the claimant contacted DOR a number of times over the next four years but never followed through to resolve the estimated assessments. DOR notes that it sent over 30 notices to the claimant regarding his multiple years of late tax filings. DOR began certification of the claimant's wages in February 2012. The certification ended in December 2013 when the claimant filed the outstanding returns. DOR points to § 71.75(5), Wis. Stats., which prohibits DOR from refunding the overpayment on the original assessments because no refund was claimed within the prescribed two-year period.

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. *[Member Olsen dissenting.]*

4. **Willie Gavin** of Riverdale, Illinois claims $48,703.50 for innocent convict compensation related to his 1997 conviction for sexual assault. In April 1997 the claimant was charged with multiple counts of sexual assault of a child during 1993-1995. The claimant had no prior record as an adult or a juvenile. The alleged victim was the claimant's stepdaughter (S.H.) and her testimony was the only evidence against him. At the preliminary hearing the claimant pled "not guilty." The claimant states that he had a conversation with his minister, who expressed concern that the claimant would not receive a fair trial. The claimant states that he changed his plea to "no contest" because of this conversation. The claimant states that he has a learning disability and lacks the ability to read and write well. He does not recall ever discussing the possibility of entering an Alford plea with his attorney. Despite entering a "no contest" plea, he continued to maintain his innocence including during the plea hearing, his sentencing hearing, and throughout his incarceration. In November 1997 the claimant was sentenced to eight years in prison and 15 years of probation. The claimant served five years and three month in prison and was released in July 2002.

The claimant states that in 2001, when S.H. was 15 years old, she confessed to her minister that the sexual assault allegations were false. At her minister's instruction, S.H. made a written statement that the assaults never happened. She gave this written statement to her minister. S.H. stated that sometime during 2001-2004, she also told her aunts, a cousin, and her grandmother that the allegations against the claimant were false. S.H. stated that at the time she gave the false statements to the police, she felt pressured to say that something sexual had happened between the claimant and herself. S.H stated that her foster mother had questioned her extensively and that the more she was questioned, the more

she felt pressured to make the allegations, even though she originally told her foster mother that nothing had happened. S.H. stated that she later confessed to her falsehoods because she felt badly about the claimant going to prison because of her false statements.

After his release, the claimant contacted a number of attorneys seeking representation. He states that it took several years to find his current attorney, who contacted S.H. and discovered that she had recanted her testimony. In January 2013, the claimant's attorney filed a motion to withdraw the claimant's no contest plea and obtain a new trial. S.H. testified at the motion hearing, recanting her testimony and explaining why she had lied. The court found S.H.'s testimony credible, granted the claimant's motion to withdraw the no contest plea, and remanded the case for a new trial. In February 2014, the State dismissed the charges against the claimant.

The claimant takes issue with the State's position that a no contest plea represents an admission of guilt. (See State v. Block and Williams v. Milwaukee.) The claimant has maintained his innocence during this entire process and only changed his plea because he felt he would not get a fair trial.

The claimant states that, although the ADA responding to this claim alleges that S.H.'s recantation was not credible, the trial court judge found her testimony to be very credible. The claimant notes that S.H. would have no reason to fabricate this recantation many years later, especially because she ran the risk of being prosecuted for perjury. Finally, the clamant points to the fact that the State dropped all charges against him.

The claimant requests reimbursement in the maximum amount of $25,000. He also requests payment of $18,286.50 attorneys' fees for post-conviction representation, including this claim. Finally, the claimant requests $,5417 for supervision and court fees related to his conviction.

The Kenosha County District Attorney's Office recommends denial of this claim. The DA believes the claimant contributed to his own conviction and has failed to provide clear and convincing evidence of his innocence.

The DA does not believe that S.H.'s recantation is credible. S.H. was 11 years old when she testified at the claimant's preliminary hearing and her testimony at that time was consistent with the original report of the assaults. The DA also finds it unbelievable that S.H. allegedly recanted her testimony to four adults between 2001 and 2004 but that none of those individuals ever took any action or contacted the authorities. The DA notes that the family members to whom S.H. allegedly recanted are related to the claimant's and therefore would have had some interest in seeing him freed if he had been unjustly convicted. (S.H.'s minister died in 2010.) The DA also points to the fact that, despite S.H.'s assertion that she felt guilty for making false allegations, there is no evidence she ever reached out to the police, probation, the DA's Office, or any other court official to remedy the claimant's allegedly unjust imprisonment.

The DA believes the letter allegedly provided by S.H. to her minister was fabricated. The DA notes that this man was also Mr. Gavin's minister and it is therefore unlikely that he would not have come forward on the claimant's behalf as soon as he received such a letter.

The DA also believes the claimant's assertion of innocence is not credible. The claimant alleges he contacted law firms for assistance, however, there is no evidence he made any effort to do so through his probation agent or via pro se letters. Finally, and most importantly, the DA believes the claimant contributed to his own conviction by entering a no contest plea. The DA states that the claimant's allegation that no contest pleas are an assertion of innocence is incorrect. The DA points to Lee v. Wisconsin State Board of Dental Examiners which states that a no contest plea "constitutes an implied confession of guilt for the purposes of the case to support a judgment of conviction and in that respect is equivalent to a plea of guilty." The DA notes that maintaining an assertion of innocence while entering a no contest plea is accomplished by way of an *Alford* plea. The claimant did not enter an *Alford* plea.

The DA believes the claimant has not met his burden to show clear and convincing evidence that he was innocent of the crime for which he was convicted and that he contributed to his own conviction and is therefore ineligible to receive compensation pursuant to § 775.05, Wis. Stats.

Based on the written and testimonial evidence in this case, the Board concludes Mr. Gavin should be awarded compensation for five years and three months wrongful imprisonment. The Board notes the facts of this case establish clearly and convincingly that Mr. Gavin was innocent of the crime for which he was imprisoned. Those unique facts and circumstances are based upon the following findings:

The only evidence linking Mr. Gavin to the crime was the testimony of S.H when she was 11 years old, and which S.H., fully recanted as an adult. There was no physical evidence produced at the time of the conviction or at the hearing to substantiate the original conviction. There was no credible reason for the recantation other than the fact that Mr. Gavin was innocent of the crime. In the official court record, Judge Milisauskas found S.H.'s recantation to be credible and that it constituted newly discovered evidence. Significantly, Judge Milisauskas specifically found that Mr. Gavin "was not negligent in seeking this evidence because he continued to maintain his innocence." Moreover, Judge Milisauskas found that the recanted testimony constituted a "manifest injustice" warranting the withdrawal of the no contest plea. Following withdrawal of the plea the case was dismissed.

In addition, the Board finds that Mr. Gavin did not by his actions or failure to act contribute to bring about his conviction. The Board historically has ruled that the entry of a "no contest" plea by a defendant constitutes substantial evidence that the defendant's own actions contributed to the conviction. We do not in this ruling seek to change this historic past practice, and absent unique and compelling circumstances the Board intends to continue this practice going forward. However, the specific facts of this case demonstrate that Mr. Gavin's entry of a no contest plea at the time of his conviction was a legal error and therefor the

Board cannot find that Mr. Gavin contributed to his own conviction. The unique facts supporting such a finding include: the fact that the defendant sought a withdrawal of his plea following his incarceration; the fact that he met the high legal standard to merit withdrawal in such circumstances; the fact that Judge Milisauskas expressly found that Mr. Gavin "continued to maintain his innocence"; and the fact that the claimant's educational level significantly contributed to his misunderstanding the difference between a no contest plea and an Alford plea at the time of original conviction.

The Board concludes that equitable principles justify an award in the amount of $25,000 to compensate Mr. Gavin for his five years and three months wrongful imprisonment. In addition, the Board concludes that the compensation should include $18,286.50 for Mr. Gavin's post-conviction legal fees and $5,417 for supervision and court fees related to the original conviction. The Board further concludes, under authority of § 16.007(6m), Stats., that the total award of $48,703.50 should be made from the Claims Board appropriation § 20.505(4)(d), Stats.

5. Shana Zuhlke of Beaver Dam, Wisconsin claims $687.53 for vehicle damage and lost wages. On 11/24/14, the claimant's son (Jacob Zuhlke) was driving her vehicle on Hwy. 16/60 (aka W. James St.) near Columbus, WI. Mr. Zuhlke exited a parking lot on Hwy. 16/60. intending on proceeding to the Hwy. 151 on-ramp. As he crossed Hwy. 16/60, the driver's side front and rear tires hit a pothole located near the ditch that divides the east/west traffic lanes. Mr. Zuhlke estimates his maximum speed was around 15 mph, since he had just exited the parking lot. Upon impacting the pothole, the left rear tire was immediately flattened. Mr. Zuhlke pulled the vehicle to a safe location and called AAA. While waiting for assistance, the left front tire also flattened. The claimant had to replace both tires and rims on the driver's side of the vehicle. The claimant requests reimbursement for the tires and rims in the amount of $603.53. The claimant also requests $84 reimbursement for her son's lost night of wages/tips. Mr. Zuhlke was scheduled to work that night but was not able to do so because the vehicle was not drivable.

DOT recommends denial of this claim. DOT states that the State is liable for damages only in situations where it can be shown that its employees acted in a negligent manner. The claimant has provided no evidence of negligence on the part of any employee of the State. DOT notes that the area where this incident took place is on the border of Columbia and Dodge Counties. DOT has a contract with Columbia/Dodge County for maintenance of State and Interstate roads within the county. Therefore, DOT believes it is the responsibility of the Columbia/Dodge County Highway Department to investigate and address any claim for damage allegedly due to improper road maintenance.

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. Myron E. Edwards of Waupun, Wisconsin claims $449.26 for refund of monies seized from his inmate account for obligations allegedly discharged by a 2012 bankruptcy. The claimant states that he filed for Chapter 7 Bankruptcy in December 2011, and listed two DOC obligations on his Schedule E-Creditors Holding Unsecured Priority Claims (a $53,449.68 court debt and a $5,000 release fund debt). The claimant states that DOC was notified on 1/1/12 that they had until 3/30/12 to object to discharge of these debts but that DOC failed to do so. The claimant believes DOC did not file an objection because they do not take prisoner litigation seriously. The Bankruptcy Court granted a Discharge of Debtor Order on 4/13/12. The claimant alleges that because DOC failed to contest discharge of these two debts, that they were barred from further collection of those debts by the 2013 Discharge Order. The claimant states that despite this Order, DOC continued to deduct monies from his inmate account for payment of these two debts. The claimant disputes DOC's use of 11 USC § 523 (a)(19)(B)(ii) as a defense of their actions. The claimant believes that this code defines non-dischargeable debts as only those debts resulting from a violation of securities laws, and therefore does not apply to his debts. The claimant believes DOC's continued deductions from his inmate account for these debts are illegal. As of the dated this claim was filed (8/24/14), DOC had deducted $449.26 towards these allegedly discharged debts. The claimant requests reimbursement of this amount, plus any additional amounts DOC deducts from 8/24/14 to the date this claim is decided by the Board.

DOC recommends denial of this claim. DOC states that the two obligations referenced in this claim were not discharged as a matter of law. DOC points to the 2012 Discharge Order submitted by the claimant, which clearly notified him that some debts cannot be discharged, including "most fines, penalties, forfeitures [and] criminal restitution obligations." DOC also cites 11 USC § 523 (a)(19)(B)(iii), which states that a discharge under section 727 will not eliminate debt that results from any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor. DOC states that the Bankruptcy Court did not discharge the claimant's court-ordered obligations because they are presumed non-dischargeable as a matter of law. DOC believes it has acted legally in continuing to deduct money from the claimant's inmate account for payment of these debts and recommends this claim be denied.

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.

7. Darrell Otis of Waupun, Wisconsin claims $359.38 for a keyboard allegedly damaged by DOC staff. The claimant purchased a keyboard, power cord, and case in February 2009, while at Green Bay Correctional Institution. On 8/22/13, while at Oshkosh Correctional Institution

(OSCI), the claimant was placed in Temporary Lock-Up (TLU). Per procedure, all of his property was inventoried and packed by DOC staff upon his transfer to TLU. DOC procedures for TLU property handling require staff to lay out all property, check electronics for engraving and tamper evident seals, and ensure proper functioning of all electronics. DOC staff is also required to follow proper procedures for any property deemed contraband after this inspection. The claimant points to the fact that no damage was noted to the keyboard by DOC staff on the property inventory. He states he remained in TLU and therefore had no access to his keyboard between 8/22/13 and his transfer to Waupun Correctional (WCI) on 12/13/13. At the time of his transfer, OSCI staff again inspected, inventoried, and packed his property and again made no note of any keyboard damage on the outgoing property inventory. WCI staff then unpacked, inventoried and inspected his property and again made no note of any damage to the keyboard on the incoming property inventory (although other damaged property was noted). On 1/30/14 the claimant was notified by the WCI music room staff that they'd received his keyboard on 1/3/14 and that it was damaged (part of the chassis was broken off on the bottom) and therefore declared contraband. The claimant finds it highly unlikely that DOC staff at two different institutions inspected his keyboard on three separate occasions and somehow missed this damage, which is clearly visible if the keyboard is turned over. (He notes that the tamper resistant seals—which staff must inspect—are located on the bottom of the unit.) The claimant points to the fact that he had no access to the keyboard after he was placed in TLU on 8/22/13; therefore, it was impossible for him to have damaged the keyboard. The claimant states that DOC's arguments regarding the placement of the tamper resistant seals, and the missing broken piece are speculative, at best. He notes that if he had wanted to hide something in the keyboard, he would have removed all the tamper resistant seals, unscrewed the bottom of the chassis and then replaced the seals when the unit was reassembled. The claimant also notes that the missing broken piece could easily have been overlooked or discarded by DOC staff. He states that based on DOC's own property inventory records, the keyboard was undamaged when it was placed in DOC's custody on 8/22/13 and remained undamaged until after it was received at WCI. The claimant believes the evidence shows that the keyboard was damaged while under staff control and requests reimbursement for his damages.

DOC recommends denial of this claim. DOC states that it is the claimant's burden to establish proof that DOC negligently handled his property and that he has failed to meet that burden. DOC states that, at best, the claimant has shown that DOC staff failed to inspect his keyboard closely enough to notice the damage. DOC notes that a close inspection of the keyboard shows that the damage was most likely not caused by staff negligence, but rather occurred in a deliberate attempt to tamper with the unit, probably to create a hiding space inside of the keyboard. DOC states that if the keyboard had been accidentally dropped by staff, the upper chassis would have also been damaged. DOC notes that the four tamper resistant seals on the bottom of the unit are oddly located and that there is a sticky residue in one location, suggesting a seal had been removed. DOC also notes there are four distinct pry marks on the bottom of the unit, which is evidence of prior tampering. Finally, DOC notes that the unit was stored in a keyboard case, therefore, if it had been damaged by staff, the broken piece of chassis would have been found in the case. It was not.

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. Ralph H. Jurgens, III of Portage, Wisconsin claims $12.76 for cost of postage and photocopies allegedly incurred because of improper mail handling by DOC staff. On 4/16/13, the claimant mailed an Affidavit of Indigence and a Petition to Terminate Parental Rights to the LaCrosse County Clerk of Courts. The claimant included a self-addressed, stamped envelope (SASE) with his correspondence so the court could return a date stamped copy of his petition to him. Receiving no response, the claimant wrote to the clerk on 5/6/13 to find out the status of his petition. After waiting several more weeks for a response, the claimant wrote the clerk again on 5/22/13. The claimant received no response therefore, on 6/24/13, he wrote to the Chief Judge of the district and lodged a complaint that he was being denied access to the courts. On 8/20/13, the claimant received a letter from the LaCrosse County Clerk which stated that they had received his petition and had returned a date stamped copy in the SASE on or around 4/23/13. The clerk stated that the SASE was returned to the clerk's office stamped "Refused by Addressee" on 5/1/13. The claimant states that DOC 310.09(4), requires that inmates attempt to informally resolve issues with institution staff prior to filing an inmate complaint. This policy also requires inmates to give staff 5 days to respond to all correspondence sent by the inmate during the informal resolution process. The claimant states that he made copies of the clerk's letter and all of his correspondence with the courts. He then contacted mailroom staff on 9/1/13 to ask why the letter was refused and why he was not notified of that refusal per DOC policy. He did not receive a response and contacted mailroom staff again on 9/5/13. The mailroom sergeant responded that he did not know who had refused the letter or why it was refused. Having attempted to resolve the issue with staff per DOC 310.09(4), the claimant filed an inmate complaint. DOC stated that the complaint was past the 14-day time limit and rejected it as untimely. The claimant states that he asked DOC how they had determined the start of the 14-day limit, because he had not received the clerk's letter until 8/20/13 and had followed the mandatory procedure set forth in DOC 310.09(4) but DOC refused to answer. The claimant believes that staff improperly rejected his SASE without notifying him they had done so, which caused him to incur unnecessary costs for copies and postage. The claimant rejects DOC's claim of Sovereign Immunity. He also rejects DOC's argument that he could have called a friend or family member

and had them contact the clerk's office. The claimant notes that parental rights actions are not open to the public (Ch. 48 Stats.). He also notes that it is not the responsibility of his friends and family to ensure proper processing of his court petitions and that he has a constitutional right to access the courts.

DOC recommends denial of this claim. DOC states that it is not legally liable for tort damages due to the doctrine of sovereign immunity. DOC believes the claimant has presented no evidence that DOC staff rejected his SASE and notes that it may simply have been mis-delivered by the post office and was rejected by another party. DOC states that mailroom staff make note of all refused correspondence and have no record of refusing this letter. DOC believes that, even if the letter was rejected by DOC staff without properly notifying the claimant, DOC is not liable for his costs. DOC states that the claimant chose to write multiple letters to various court officials, when he could have simply called a friend or family member and asked them to check with the court, which could have been accomplished with little to no cost to the claimant. Finally, DOC notes that, because his inmate complaint was untimely filed, the claimant has failed to properly exhaust his administrative remedies.

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.

9. David Czapiewski of Waupun, Wisconsin claims $84.73 for the value of one pair of tennis shoes and one pair of sandals (shower shoes) allegedly lost by DOC. The claimant states that when he arrived at Waupun Correctional Institution (WCI), he had 2 pair Adidas tennis shoes and 1 pair Reebok sandals. (He states his sandals were incorrectly identified as Adidas on his property inventory.) On 8/15/14 the claimant was transferred to Temporary Lock-Up (TLU) and was also taken to Waupun Memorial Hospital. The claimant alleges that he wore his Adidas tennis shoes to the hospital and that DOC staff allowed hospital personnel to throw them away. He also alleges that WCI staff did not pack up his property in a timely manner when he was transferred to TLU; therefore allowing someone to steal his Reebok sandals. When the claimant received his property inventory and realized the tennis shoes and sandals were missing, he filed an inmate complaint, which DOC denied. The claimant notes that the 9/2/14 receipt for sandals referenced by DOC was for replacing the Reebok sandals lost by DOC. The claimant rejects DOC's claim of sovereign immunity.

DOC recommends denial of this claim. DOC states that it is not legally liable for tort damages due to the doctrine of sovereign immunity. DOC states that due to his placement in TLU, the claimant's property was packed and held for inventory on 8/15/14. DOC notes that inmates are not allowed to possess personal shoes while in TLU. Pursuant to this policy, all personal shoes owned by the claimant were packed and he was issued WCI boots. DOC notes that the claimant was wearing these WCI boots when he was taken to Waupun Memorial; therefore it is not possible for hospital staff to have thrown away his personal tennis shoes. The claimant filed an inmate complaint related to his allegedly missing property. In response to this complaint, DOC staff reviewed the claimant's property file and found one receipt for Adidas tennis shoes dated 3/20/14, which indicated he exchanged the new pair of tennis shoes for an older one. DOC found no receipts for any other shoes or sandals dated prior to this incident. (DOC found one receipt for sandals dated 9/24/14.) DOC believes the evidence shows the claimant has owned and exchanged various pairs of tennis and shower shoes over time. DOC states that between the time he purchased the new tennis shoes (3/20/14) and his transfer to TLU (8/15/14), the claimant's shoes easily could have been lost, traded, sold, or stolen. DOC believes the claimant has not provided evidence that DOC staff is responsible for his allegedly lost shoes.

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.

10. Tony C. Franklin, Jr. of Waupun, Wisconsin claims $32.50 for restitution money deducted from his inmate account in an allegedly improper manner by DOC. The claimant is an inmate at Waupun Correctional Institution (WCI). He states that his February 2011 Judgement of Conviction indicates that he had to pay restitution as a condition of his extended supervision. In May 2011, DOC began deducting restitution payments from the claimant's inmate trust account. The claimant states that he contacted the WCI business office several times to inform them that the court had ordered restitution payments only as a condition of his extended supervision and that DOC did not have authority to deduct the payment from his inmate account. DOC continued the deductions and the claimant contacted the sentencing judge to clarify. The claimant points to the fact that the judge sent a letter to WCI on 10/19/11, supporting the claimant's assertion that restitution was only imposed as part of his extended supervision, not during the confinement portion of his sentence. WCI stopped deducting the restitution payments after receiving this letter. The claimant requests reimbursement for the amount deducted from his account.

DOC recommends denial of this claim. DOC states that the claimant was found guilty of armed robbery and received a bifurcated sentence of 15 years confinement and 7 years extended supervision. The court ordered payment of $210 restitution as a condition of his extended supervision. DOC began deducting restitution from the claimant's account on 5/19/11. DOC remitted all restitution payments to the claimant's victim. DOC stopped making restitution deductions from the claimant's account after 8/25/11 and inactivated the restitution obligation on the claimant's inmate account on 9/17/11. On 10/19/11, DOC received a letter from the court indicating that there was no requirement that restitution for the case be taken from the claimant's inmate

account. However, DOC states that it has broad authority permitting such deductions. Pursuant to § 301.31, Stats., DOC has control of inmate funds arising from wages and may take deductions from those funds to pay down inmate obligations. § 303.01(8)(c), Stats., gives DOC the authority to determine how inmate earnings are spent and allows DOC to distribute inmate earnings for court-ordered obligations. And § 301.32(1), Stats., provides that any funds gifted to an inmate are under the control of the warden and may only be used for the benefit of the inmate. DOC believes that making payments towards court-ordered obligations benefits an inmate by reducing his debt. In addition, DOC states that WI case law had determined that gifted monies can be considered an available resource of a defendant when the court calculates restitution. DOC believes it is permitted to make deductions from inmate accounts to satisfy an inmate's lawful obligations, including restitution. However, once DOC became aware the claimant's Judgment of Conviction stated that restitution was part of his extended supervision, DOC ceased the deductions. Finally, DOC notes that victims of crime in WI are granted an explicit constitutional right to restitution. The funds deducted by DOC have been passed on to the claimant's victim in furtherance of that constitutional right and are not being held for the benefit of the state.

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:

James P. LaVenture (3 claims)
Shana Zuhlke
Myron E. Edwards
Darrell Otis
Ralph H. Jurgens, III
David Czapiewski
Tony C. Franklin, Jr.

That payment of the amounts below to the identified claimants from the following statutory appropriations is justified under § 775.05, Stats:

Willie Gavin $43,703.50 § 20.505 (4)(d), Wis. Stats.

Dated at Madison, Wisconsin this 31st day of June, 2013.

COREY FINKELMEYER
Chair, Representative of the Attorney General
GREGORY D. MURRAY
Secretary, Representative of the Secretary of Administration
LUTHER OLSEN
Senate Finance Committee
MARY CZAJA
Assembly Finance Committee

REFERRALS AND RECEIPT OF COMMITTEE REPORTS CONCERNING PROPOSED ADMINISTRATIVE RULES

The joint committee for review of **Administrative Rules** reports and recommends:

Senate Clearinghouse Rule 14-027
Relating to the processing of WPDES permits and other permit issuance procedural matters.

No action taken on June 15, 2015.

Senate Clearinghouse Rule 14-068
Relating to practical exams for chiropractors.

No action taken on June 15, 2015.

Senate Clearinghouse Rule 14-069
Relating to the duty to inform patients of treatment options.

No action taken on June 15, 2015.

STEPHEN NASS
Senate Chairperson