

STATE OF WISCONSIN

Senate Journal

One-Hundred and Second Regular Session

TUESDAY, November 8, 2016

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin Legislative Reference Bureau

November 8, 2016

The Honorable, the Legislature:

The following rules have been published in the October 31, 2016 Wisconsin Administrative Register No. 730:

<u>Clearinghouse Rules</u>	<u>Effective Date(s)</u>
16-005	11-1-2016

Sincerely,
BRUCE J. HOESLY
Senior Legislative Attorney/Code Editor

State of Wisconsin Wisconsin Ethics Commission

November 8, 2016

The Honorable, the Senate:

Pursuant to Wis. Stats. §13.685 (7), we are providing the enclosed information. Please visit the Government Accountability Board's *Eye on Lobbying* web site, <https://lobbying.wi.gov>, for more detailed information about lobbyists, lobbying principals (organizations), and state agency liaisons.

McDermott, Catherine.....Badger State Sheriffs'
Association

Pirlot, Randall.....Badger State Sheriffs'
Association

Sincerely,
BRIAN BELL
Administrator

State of Wisconsin Claims Board

November 2, 2016

Enclosed is the report of the State Claims Board covering the claims heard on October 13, 2016. 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 October 13, 2016, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Monroe & Weisbrod	University of Wisconsin Administration	\$24,000.00
2. Ronald Fouts	Administration	\$48,637.73
3. George & Sharon Thuecks	Transportation	\$7,500.00
4. Donna Cvetan	Revenue	\$6,487.12+

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
5. Thomas Hetzel	Revenue	\$38,377.67
6. Larry E. Jones	Revenue	\$9,307.60
7. Renee Miller	Transportation	\$3,524.44
8. Bill Ross	Transportation	\$3,286.00
9. DeAndre Johnson	Corrections	\$199.00
10. Izelia A. Golatt	Corrections	\$18.88
11. Mark Brown	Corrections	\$19.93
12. Antonia D. Manns	Corrections	\$220.00

The Board Finds:

1. Monroe & Weisbrod of Austin, Texas, claims \$24,000.00 for monies allegedly owed for recruitment services performed by the claimant for the UW. In October 2013, the UW contracted with the claimant to provide psychiatrist recruitment services for two positions at UW-Madison University Health Services (UHS). The search began in November 2013. In December 2013, the claimant began discussions with Dr. Claudia Reardon regarding one of the positions. Because Dr. Reardon worked elsewhere at the UW, the claimant contacted UHS to clarify that Dr. Reardon would be considered a "hire" under the contract. Dr. Van Orman at UHS confirmed that Dr. Reardon would be

considered a new hire even though she already worked at the University. In February 2014, Dr. Reardon declined one of the positions and removed herself from consideration. As part of its recruitment work, the claimant sent a series of “auto-drip” emails to Dr. Reardon regarding whether she had reconsidered accepting the position. Auto-drip emails were sent in May, August, and November of 2014, and February of 2015. During this period the claimant successfully recruited two psychiatrists for UHS. Later in 2015, the claimant saw on UHS’s webpage that Dr. Reardon had been appointed to a part-time position at UHS. The claimant contacted Dr. Van Orman at UHS regarding whether the hire of Dr. Reardon was covered under their contract with UW. Dr. Van Orman agreed that Dr. Reardon’s hire was conducted under that contract and told the claimant to send an invoice for the placement fee. The claimant’s placement fee for a single hire is \$24,000 and the claimant sent an invoice in that amount to the UW. In December 2014, the UW informed the claimant that it could not pay the invoice because the purchase order related to their contract was closed and that they could not issue payment without a purchase order. The claimant states that the UW has received the benefit of the claimant’s work recruiting Dr. Reardon but the claimant received no payment for their work. The claimant believes they are due this money under the theories of *quantum meruit* and unjust enrichment. The claimant states that it reasonably relied on the assurances made by Dr. Van Orman that Dr. Reardon’s recruitment was legitimate work under the contract and that her eventual hire was related to the contract. The claimant believes the UW has been unjustly enriched and requests payment of its single hire fee of \$24,000.

The UW recommends denial of this claim. The UW points to the terms of the contract, which called for a 12 month search to fill two positions. Under the contract the claimant was paid a \$10,000 flat fee, two \$17,000 placement fees, and approximately \$2,000 for expenses. UW notes that the search began in November 2013; therefore, the contract expired in November 2014. The UW states that Dr. Van Orman misinterpreted the contract when she stated that Dr. Reardon would be considered a “new hire.” Because Dr. Reardon already worked for the UW, her eventual appointment to a part time position at UHS was, in fact, a partial transfer, not a new hire. In addition, UW points to the fact that neither Dr. Van Orman nor anyone else at UW ever agreed to extend the terms of the contract past one year and Dr. Reardon’s transfer occurred after the expiration of the contract. Dr. Van Orman was not authorized to modify the terms of the contract and the purchase order clearly stated that no modifications could be made without the authorization of UW purchasing services. The UW also believes it is unreasonable to interpret the contract as allowing the claimant to indefinitely lay claim to individuals the claimant contacted during the original search. The claimant made contact with a number of individuals during the search who were not hired. Are they forever to be considered as falling under the claimant’s contract simply because the claimant continues to send them “auto-drip” emails? UW also points to the fact that the theories of *quantum meruit* and unjust enrichment do not apply when there is a valid contract in place. And even if they did apply, the claimant has provided no evidence of any work

done in addition to the work completed under the contract, for which the claimant has already received \$46,000. The claimant’s discussions with Dr. Reardon were performed under the original contract which has been paid in full. The claimant’s only additional contact with Dr. Reardon after the original recruitment was in the form of two automatically generated emails. The claimant cannot justify a fee of \$24,000 for sending two emails. Finally, UW notes that \$24,000 placement fee requested by the claimant is 7,000 more than the placement fee negotiated under the original contract. UW believes that the claimant has presented no evidence that the partial transfer of Dr. Reardon to UHS after the expiration of the contract, was included in the original contract terms, or that it was a separate search conducted by the claimant in addition to the original contract, for which additional payment is due.

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. Ronald Fouts of Madison, Wisconsin, claims \$48,637.73 for monies allegedly owed by DOA in relation to a 2008 flooding event in the City of Beaver Dam. The claimant owned four buildings that were flooded. The claimant states that his buildings were not damaged by the flood and passed inspections after they were cleaned up. The claimant alleges that the city wanted to create a TIF district for a condominium project and that the only way they could do so was by falsely labeling his buildings and others as blighted. The claimant alleges that the city and DNR made public announcements that the buildings were going to be torn down and that because of these announcements; he was unable to rent his buildings. The claimant states that the city told him he must either sell his buildings or be forced to tear them down at his own expense. He denies that the sale was voluntary or that he approached the city about selling the buildings. The claimant believes this was an unjust taking of his property. The claimant hired an attorney to protect his rights but was forced to sell the buildings to the city in 2009 at the 2008 appraised value. The claimant states that he was never informed of the availability of federal relocation funds. In 2012, the Department of Housing and Urban Development (HUD) contacted DOA, the claimant alleges, to correct DOA’s illegal actions. The claimant notes that DOA’s own staff person told them that what they were doing was illegal. DOA hired a contractor to determine if the building owners were eligible for federal relocation and acquisition funds. The claimant disputes DOA’s assertion that this person was “independent,” noting that he was paid money by DOA. Finally, the claimant points to HUD’s 6/15/16 letter to DOA, which he alleges proves that DOA broke state and federal law.

DOA recommends denial of this claim. DOA states that following the June 2008 flooding, a group of building owners, including the claimant, approached the city regarding selling their flood-damaged buildings. The city agreed to purchase the buildings at the appraised value. In June 2009, the city received a grant which included federal monies to be used (in part) to reimburse the city for the

property purchases. In December 2012, HUD informed the state that because the city received federal money, they should have made payments to the property owners pursuant to the Uniform Relocation Act (URA). In response to this information, DOA hired an independent contractor to determine what additional monies were due to the building owners under the URA. Based on the contractor's work, DOA approved the maximum for all payments that were justified under the URA. The claimant received an additional \$20,000. DOA states that the current claim is for payment of expenses which the contractor determined to be ineligible. The claimant appealed this determination and the appeal was denied. The claimant could have petitioned for judicial review under Ch. 227 but failed to do so. DOA believes this claim exemplifies the old saying "no good deed goes unpunished." Had the city refused to purchase the flood-damaged properties, it would never have been obligated to pay relocation benefits to the claimant. DOA states that the claimant has received the full, pre-flood fair market value of his properties, plus all additional monies required by law. Finally, DOA points to HUD's 6/15/16 letter, which states "HUD is very pleased with the State's continued diligence in addressing the Beaver Dam acquisition and relocation project deficiencies. Actions taken by DOA to resolve the Findings have been excellent."

The Board defers decision of this claim at this time so that additional information may be obtained from the claimant and DOA. *[Member Green not participating.]*

3. George and Sharon Thuecks of Nekoosa, Wisconsin, claim \$7,500.00 for the collateral value of a motorcycle allegedly lost due to a title error by DOT. On 8/30/13 the claimants entered into a contract to sell a motorcycle to Gina Langridge for the amount of \$7,500. On 9/4/13 a title application was submitted to DOT with Ms. Langridge listed as the owner and the claimants listed as lienholders. Ms. Langridge made the agreed payments on the motorcycle until 2/19/15. Sometime prior to 3/31/15, Ms. Langridge sold the motorcycle to a new owner. Upon not receiving payments, the claimants discovered that Ms. Langridge had sold the bike, which was now registered in Illinois with a clean title. The claimants requested a copy of the Wisconsin title for which Ms. Langridge applied on 9/4/13 and discovered that, despite the fact that the claimants were listed as lienholders on the title application, DOT had not added them as such when it issued the title. The claimants state that Ms. Langridge would not have been able to sell the motorcycle had DOT not issued an incorrect title. The claimants state that but for DOT's error, they could have recovered the bike and resold it when Ms. Landgridge stopped making payments. Because DOT has admitted the title error, the claimants believe they should be reimbursed for the full sale value of the motorcycle, which they lost due to DOT's error.

DOT recommends denial of this claim. DOT acknowledges an error was made when an employee failed to list the claimants as lienholders on the title issued to Ms. Langridge. However, DOT believes the primary cause of the claimants' damages is Ms. Langridge's failure to make the payments required by the contract. Ms. Langridge then sold the motorcycle with full knowledge that she still owed the remaining payments to the claimants. DOT notes that at the

time of default, the remaining balance for the bike was \$1800 with \$200 in late fees. DOT states that it is not the state's responsibility to enforce the contract between the claimants and Ms. Langridge. DOT also notes that the claimants have been awarded a \$2000+ judgment against Ms. Langridge for the remaining payments and fees. When Ms. Langridge pays the court-ordered judgement, the claimants will be made whole. Awarding an additional \$7500 would make the claimants better than whole as they would be paid twice for the motorcycle, once by Ms. Langridge and once by the state. Finally, DOT notes that, pursuant to Wis. Stat. § 342.19, lien holders receive a copy of an issued title. Being lienholders, the claimants would have known this information and should have contacted DOT when they did not receive a copy of the title back in September 2013. DOT regrets the titling error but does not believe it was the primary cause of the claimants' losses.

The Board concludes the claim should be paid in the reduced amount of \$2,000.00 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation § 20.395(5)(cq), Stats.

4. Donna Cvetan of Sheboygan, Wisconsin, claims \$6,487.12+ for return of amounts garnished from her wages for a tax liability for which the claimant believes she is not liable. The claimant and her husband entered into a Marital Property Agreement in 1994, which clearly states that D&M Plumbing & Heating, which claimant's husband owned for many years prior to the marriage, was his individual property. The claimant points to Section 4.1.b. of the Agreement, which provides that "without any obligation or liability on the part of the other" party, each party is responsible for "debts, obligations, taxes, assessments, and expenses at any time incurred...relating to the acquisition, holding, disposition, operation, management, or administration of his or her solely owned property." The claimant states that during a routine audit of D&M, it was discovered that some sales and use taxes had inadvertently not been paid. The claimant states that she has never had any involvement whatsoever in D&M and points to Section 4.4. of the Agreement, which states that "each party shall have full and exclusive powers of management and control over the property classified as his or her individual property...free from all rights, claims, or property interests of the other..." The claimant points to the fact that the Agreement also provides "that the classification of [her husband's] W-2 wages as marital shall not constitute a 'mixing' of marital and individual property" (Section 2.1.a.). D&M Plumbing & Heating closed in February 2015. DOR began garnishing 25% of the claimant's wages in June 2015 to recover the sales and use taxes owed by D&M. The claimant believes that the Marital Property Agreement clearly states that she is not responsible for payment of these taxes. She requests reimbursement of all monies garnished by DOR and that DOR cease any further garnishment of her wages for payment of this debt. As of the date this claim was filed, October 28, 2015, the DOR garnishment totaled \$6,487.12.

DOR recommends denial of this claim. DOR states that, pursuant to § 71.10(6)(c), Wis. Stats., "no provision of a marital property agreement...adversely affects the interest of

a creditor unless the creditor had actual knowledge of that provision when the obligation to that creditor was incurred.” DOR did not receive a copy of the claimants’ MPA until well after the sales tax debt was assessed against Mr. Cvetan. Therefore, the MPA had no impact on the tax obligation. DOR notes that, even had the MPA been timely filed with DOR, the MPA categorizes Ms. Cvetan’s wages as marital property, not individual property. DOR points to § 71.91(3), Stats., which provides that all tax obligations incurred during a marriage by a spouse are incurred in the interest of the marriage and may be satisfied under Wis. Stat. § 766.55(2)(b). § 766.55(2)(b) provides that an obligation incurred by a spouse in the interest of the marriage may be satisfied from all property of the incurring spouse and all marital property. DOR states that it has appropriately followed the law with regards to this matter and recommends denial of the 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 which the state should assume and pay based on equitable principles.

5. Thomas Hetzel of Kenosha, Wisconsin, claims \$38,377.67 for refund of overpayment of taxes for 2004. Prior to 2002, the claimant’s only sources of income were non-taxable SSDI and a non-taxable disability pension from the Veterans’ Administration. In 2002, the claimant received a sizeable inheritance from his mother’s estate. The claimant states that he used this money to engage in options and day trading in the stock market over the next several years. The claimant states that he eventually lost all of the inheritance money through this activity. The claimant states that, because he incurred more losses than gains and had no other taxable income during these years, he knew there would be no taxes due and did not file income taxes for any of the years involved. Despite the fact that he had no net capital gains during these years, the 1099-B forms reported to DOR only showed the amount of the sale and not the related cost basis. The claimant alleges that despite the fact that DOR was aware there would be a cost basis involved, the department issued a tax assessment based on the total amount of the sale reported on the 1099-B forms. The claimant alleges that DOR knew this would grossly overstate the amount of reportable income. DOR levied \$38,713.64 from the claimant’s accounts. The claimant states that he asked DOR to release the levy in March 2014 because he was in the process of preparing the missing tax returns but that DOR refused to release the levy. All three levies issued by DOR were applied to tax year 2004. When filed, the 2004 return resulted in a tax due of \$108, resulting in an overpayment of \$38,377.67. The claimant notes that DOR is adopting federal regulations, which allow for refund of income tax overpayments if the request is made within two years of the date the payment is made, even if the tax year is outside the statute of limitations. The claimant believes DOR has been unjustly enriched by the overpayment and requests reimbursement.

DOR recommends denial of this claim. DOR points to § 71.75(5), Wis. Stat., which prohibits the department from refunding the overpayment because no refund was claimed within four years of the original assessment. The estimated

assessment for tax year 2004 was filed in February 2010. The claimant appealed the assessment to the Wisconsin Tax Appeals Commission, which ruled in DOR’s favor in June 2011. DOR levied the claimant’s bank accounts in August 2013 and February 2014. In March 2014, the claimant’s Power of Attorney advised DOR that he needed sixty days to file the 2004 return. DOR waited ten months before levying the claimant’s account again in March 2015. The claimant’s 2004 return was filed on 3/5/15.

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.

6. Larry E. Jones of Sturtevant, Wisconsin, claims \$9,307.60 for reimbursement of overpayments related to late-filed 2004 and 2005 income tax returns. In 2008, DOR issued an estimated tax assessment for the missing returns and began garnishing the claimant’s wages. In 2015, the claimant hired an accountant to assist him with filing the late returns. The returns were filed in February 2016. The 2004 return showed a refund of \$300 and the 2005 return showed a refund of \$252. The claimant realizes that he should have filed his taxes on time. However, he alleges that he was repeatedly told by the DOR agent assigned to his case that regardless of when he filed the returns, he would receive any refunds owed. The claimant alleges that DOR never told him about the statute of limitations. The claimant now realizes he is not able to get the 2004 and 2005 refunds due to the statute of limitations, however, the \$9,307.60 garnished by the state from 2008 to 2015 has caused him financial hardship. Because the garnishment continued into 2015, the claimant requests reimbursement for the monies garnished from his wages. The claimant does not believe it is fair that when taxpayers owe money to DOR, the state can come after that money no matter how much time has passed, however, when DOR owes money to the taxpayer, a statute of limitations is imposed.

DOR recommends denial of this claim. DOR issued estimated tax assessments for failure to file 2004 and 2005 returns in March 2007. DOR issued a wage attachment in March 2010 to collect the estimated tax assessments and other outstanding tax liabilities. The returns were filed in February 2016. In an effort to be fair and equitable, DOR compromised \$3,298.14, the claimant’s balance due for 2006, 2007 and 2009. Finally, DOR points to the numerous notices sent to the claimant which notified him that claims for refund of payments made to estimated assessments can only be granted within 4 years of the assessment date.

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.

7. Renee Miller of Somerset, Wisconsin, claims \$3,524.44 for vehicle damage allegedly related to DOT road construction on Hwy 35/64 in St. Croix County. The claimant states that on 9/28/15, she was traveling west on Hwy 35 when she hit a sink hole in the construction area. The claimant states that the roadway she was traveling was a temporary pavement constructed to re-route traffic from the

old Hwy 35 to the new Hwy 35 and that the hole was located where the temporary pavement met the old Hwy 35. The claimant states that she contacted DOT and was told that the hole was repaired after her accident but that it reopened the next day, damaging additional vehicles. The claimant believes the temporary pavement was poorly constructed, which led to the sink hole. The claimant is aware of at least nine other drivers who hit the same hole and suffered tire and vehicle damage. The claimant states that DOT referred her to St. Croix County for reimbursement but that the county referred her to DOT. She requests reimbursement for vehicle and tire damage, roadside assistance cost, and lost wages.

DOT recommends denial of this claim. The state has a contract with St. Croix County for maintenance of state and interstate roads within the county. This contract has a hold harmless agreement which provides that the county will indemnify the state for damages related to maintenance of these roads. When St. Croix County was notified of the hole, they responded in a timely manner to repair the roadway. Because of the severity of the pothole, it was decided that the contractor working on the Hwy 35 project should remove and replace the pavement in the area. This work was completed as part of a change order to DOT's contract with the road contractor, H. James and Sons. DOT believes that its contracts with St. Croix County and H. James and Sons absolve the state of any responsibility for the claimant's damages and that she should pursue her claims for reimbursement against these parties, not the State of Wisconsin.

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.

8. Bill Ross of Greenfield, Wisconsin, claims \$3,286.00 for monetary damages allegedly caused by errors of DOT employees. The claimant's son is disabled and receives government assistance. The claimant established a trust with his son as the beneficiary in order to protect his son from his own poor decisions. In 2012, the claimant purchased a 1999 Honda and titled it in the name of the trust so that his son would have a vehicle he could drive that he would not be able to sell. In November 2013, the claimant's son applied for a replacement title in his own name. DOT employees made multiple errors during this transaction including not requesting a required form and not scanning a driver's license. With the new title, the claimant's son was able to obtain a \$1000 loan using the vehicle as collateral. He gambled away the \$1000. The claimant notified DOT of the errors they had made. In 2015, the claimant titled a 2004 Toyota in the name of the trust. In December 2015, the claimant's son applied for a new title to the Toyota. Again, multiple errors were made by DOT employees when processing the title application: a required form was missing the signature of the trustee, no driver's license was scanned, and the signature and the purchaser's name did not match. The claimant's son was again able to obtain a title in his own name and obtained a \$3000 loan using the vehicle as collateral. The claimant's son gambled away the \$3000. The claimant's son has very little income and is therefore unable

to pay back the loan. In order to keep the vehicle from being repossessed, the claimant paid off the loan taken by his son. The claimant states that it was only due to errors by DOT employees that his son was able to obtain new vehicle titles not once, but twice. The claimant requests reimbursement for the \$3,286 spent paying off the loan against the 2004 Toyota.

DOT recommends denial of this claim. The claimant's son is the sole beneficiary of the trust. He filed an application to retitle a car titled to the trust into his own name and in doing so, made falsified applications to DOT. DOT believes these falsified applications may be a criminal offense. DOT notes that as the sole beneficiary of the trust, the claimant's son only harmed himself by deceiving DOT and the lenders from whom he obtained loans. DOT notes that the claimant was under no legal or moral obligation to pay off the loan taken out by his son and was therefore not harmed by DOT's actions. Regarding the errors made by DOT employees, the department does its best to establish practices that reduce the risk of fraud, however, those systems are not really set up to prevent individuals from stealing from themselves, as occurred in this case. DOT believes that any shortcomings in DOT's handling of the paperwork did not cause any injury to the claimant, it was the fraud committed by his son which caused the problem. Therefore, DOT considers this to be a civil matter between a father and son and recommends denial of the claim.

The Board defers decision of this claim at this time so that additional information may be obtained from DOT.

9. DeAndre Johnson of Green Bay, Wisconsin, claims \$199.00 for the value of a television set allegedly damaged by DOC personnel. The claimant is an inmate at Green Bay Correctional Institution. The claimant states that on 11/29/15, he returned to his cell after work and found his TV screen shattered. He was told that an officer had conducted a cell search while the claimant was at work. The claimant filed an inmate complaint regarding the broken television. His complaint was denied based on the fact that the officer who searched the cell stated that he did not recall knocking anything over. The claimant states that officers are notorious for breaking property during cell searches and believes that DOC is covering up their negligence. He requests reimbursement for his damaged television.

DOC recommends denial of this claim. DOC points to the fact that the claimant told staff his TV had been on top of a shelf with multiple magazines on it but that when he returned to his cell, it was sitting upright on top of a desk. DOC believes it is unlikely that the TV would have landed in an upright position had it been knocked off the shelf. DOC states it is more likely that the TV was already broken or that it fell prior to the cell search and was placed upright on the desk by the claimant. The officer who searched the claimant's cell clearly stated that he did not recall knocking anything over and did not hear anything fall as he left the cell. DOC does not believe the claimant has presented evidence showing negligence on the part of DOC staff and that the claim should therefore 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 which the state should assume and pay based on equitable principles.

10. Izelia Z. Golatt of Waupun, Wisconsin, claims \$18.88 for the value of fan allegedly broken by DOC staff. The claimant is an inmate at Waupun Correctional Institution (WCI). On 6/11/15 he was transferred to Temporary Lock Up (TLU). DOC staff inventoried the claimant's property at the time of his transfer to TLU. The claimant points to the fact that DOC staff would have tagged his fan as contraband if it had been broken at the time of the inventory. They did not do so. The claimant notes that he had no access to the fan while in TLU; it was completely under control of DOC staff. The claimant was released from TLU and his property was returned on 8/13/15. The claimant states that when he received his property back, his fan did not work at all. The claimant alleges that he verbally informed a DOC sergeant that same day that his fan came back broken from the property room. He states that the sergeant told him to write to the property room and that he did so. The claimant filed an inmate complaint on 8/19/15. The claimant alleges that the only reason for the delay in filing this complaint was that he was waiting for the property room to reply. The claimant's inmate complaint was denied. The claimant believes DOC's suggestion that he broke his own fan is absurd because the only person harmed by the broken fan is the claimant himself. He requests reimbursement for the value of the fan.

DOC recommends denial of this claim. DOC believes the claimant has failed to provide any evidence that DOC staff is responsible for breaking the fan. DOC notes the claimant waited six days before filing his inmate complaint and believes the fan could have been broken during that time. In addition, the claimant alleges that a crack on the leg of the fan was what rendered it inoperable. DOC's inspection of the fan showed that the crack, which had debris in it, was not new and furthermore, would not have impacted the functioning of the fan. DOC notes that the fan was over 2 years old and had been moved many times because of the claimant's movement within WCI. DOC believes the fan simply stopped working due to age and recommends denial of this 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 which the state should assume and pay based on equitable principles.

11. Mark Brown of Redgranite, Wisconsin, claims \$19.93 for the value of a fan allegedly broken due to DOC negligence. The claimant was an inmate at Waupun Correctional Institution (WCI). In August 2015, he was transferred to Redgranite Correctional Institution (RGCI). His property was packed in preparation for the transfer. The claimant states that on the day of the transfer DOC staff told him there was no room for his property box in the van and that they would come back for it. The claimant received his property the next day and noticed the knob on his fan was loose and that the fan no longer worked. The claimant states that he immediately notified WCI staff about his broken fan. He also filed the appropriate inmate complaints, however, they were dismissed. The claimant points to the fact that if the fan had been broken either before transfer at WCI or upon

receipt at RGCI, the corresponding property inventory sheets would have made note of that and he would not have been given the fan. The claimant believes DOC was negligent by leaving his property unattended during his transfer. He requests reimbursement for the value of his broken fan.

DOC recommends denial of this claim. DOC points to the fact that neither the outgoing WCI nor incoming RGCI property inventory sheets note any damage to the fan, which suggests it was damaged after receipt by the claimant at RGCI. DOC also notes there is no sign of damage to the box in which the fan was transported, which might have indicated rough handling during transport. DOC states that inmates are encouraged to thoroughly inspect their property upon receipt before leaving the property room and that the claimant failed to do so. DOC believes the claimant has presented no evidence that DOC staff was negligent in the handling of his property and recommends the 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 which the state should assume and pay based on equitable principles.

12. Antonio D. Manns of Waupun, Wisconsin, claims \$220.00 for the value of a television allegedly lost by DOC. The claimant is an inmate at Waupun Correctional Institution (WCI). He states that he used to own a 13" Zenith TV. He alleges that in December 2012, he was released from segregation and that his Zenith TV was missing when his property was returned to him. He also alleges that a DOC officer gave the claimant a 13" RCA TV to replace the lost Zenith. He states that DOC engraved his name and ID number on the RCA. In November 2015, the claimant was sent to segregation and a new property inventory list was completed. WCI staff confiscated the RCA because it was not listed in the computer as the claimant's property. The claimant states that he explained to WCI staff how he had been given the RCA by a former employee, however, DOC told him that the proper forms had not been completed, therefore the RCA was contraband. The claimant filed a complaint but it was denied. The claimant states that DOC destroyed the RCA before he could pursue his appeal and thereby denied him the opportunity to show that his name and ID were properly engraved on the TV, which only DOC staff has the ability to do. The claimant states that it is not his fault that the officer who gave him the RCA failed to fill out the required paperwork and he does not feel he should be penalized for the officer's mistake. The claimant notes that the officer no longer works at WCI and is therefore not available as a witness. The claimant disputes DOC's assertion that he somehow altered his original property inventory form. He notes that inmates sign the form right in front of the property officer and that inmates are only given a copy of the form, not the original. The claimant requests reimbursement for the value of a new television. He also requests reimbursement for the coaxial cable and headphones which were used with the TV, since DOC confiscated those items when they took the RCA television.

DOC recommends denial of this claim. DOC states that the claimant was released from segregation in September of 2012 and that the property inventory form filled out at the

time show that the claimant received his Zenith television. DOC notes that if the television had been lost, an incident report would have been filed and there is no incident report on record. DOC also notes that, had the claimant been given a replacement television, another form would have been completed, showing why he was given the TV and recording the serial number. DOC states that the claimant could have disposed of his Zenith through inappropriate channels and acquired the RCA by the same means. DOC notes that on the property form showing an RCA television, "RCA" is written in a different handwriting than that used on the rest of the form. DOC therefore believes the claimant altered the property form. Finally, DOC notes that there is no record of headphones or a coaxial cable being confiscated from the claimant. DOC does not believe the claimant has submitted evidence of any negligence on the part of DOC staff and recommends denial of the 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 which the state should assume and pay based on equitable principles.

The Board concludes:

That the following identified claimants are denied:

Monroe & Weisbrod
 Donna Cvetan
 Thomas Hetzel
 Renee Miller
 DeAndre Johnson
 Ize;oa Z. Golatt
 Mark Brown
 Antonio D. Manna

That decision of the following claims are deferred to a later date:

Ronald Fouts
 Bill Ross

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

George & Sharon \$2,000.00 § 20.395 (5)(cq), Stats.
 Thuecks

Dated at Madison, Wisconsin this 1st day of November, 2016.

COREY FINKELMEYER
 Chair, Representative of the Attorney General
CHRISTOPHER N. GREEN
 Secretary, Representative of the Secretary of Administration
KATIE E. IGNATOWSKI
 Representative of the Governor
LUTHER OLSEN
 Senate Finance Committee
MARY CZAJA
 Assembly Finance Committee

**STATE OF WISCONSIN CLAIMS BOARD
 CLAIM OF: MAURICE J. CORBINE
 CLAIM NO. 2015-047-CONV**

Decision

The Claims Board considered this matter on March 16, 2016. Claimant, Maurice J. Corbine, did not request a hearing. The Claims Board reviewed the written materials submitted by Corbine. The Sawyer County District Attorney's Office declined to submit a written response to this claim.

Background

This is a claim for Innocent Convict Compensation pursuant to § 775.05, Wis. Stats. The claim relates to Corbine's 2011 conviction for Operating While Intoxicated (5th) and Operating While Revoked (2nd). Corbine states he is innocent of this crime. He requests \$90,000 for the three years he spent in prison.

Claimant's Facts and Argument

Corbine states that on September 28, 2007, he was a passenger in a truck driven by his cousin, Rodney. He states that Sawyer County/Lac Courte Oreilles Tribal Police Officer, Twyla Dailey, pulled in behind the truck approximately 10-15 seconds after Rodney parked it in the parking lot of a local tavern. Officer Dailey arrested Corbine for OWI. Officer Dailey's report stated that she followed the truck into the parking lot because she had observed it speeding and that she pulled in immediately after the truck. Officer Dailey also reported that she observed Corbine exit the driver's side door, walk around the front of the truck and up to the passenger side door. Corbine alleges that he had already exited the vehicle and was approaching the tavern when Officer Daily arrived and that he had walked back to the passenger side of the truck because he did not have a driver's license.

Corbine alleges that both he and Rodney told Officer Dailey that Rodney had been driving the truck, not Corbine, who admits that he was intoxicated at the time. Corbine states that Officer Dailey informed him that her in-car camera was recording the incident. Officer Dailey transported Corbine to the Sawyer County Jail, where he saw her insert a DVD into the booking room recording equipment. Corbine states that Dailey again told him the interview was being recorded. Corbine alleges that during the entirety of his interaction with Officer Dailey, both in the parking lot and at the jail, he repeatedly told her that he was not the driver of the vehicle but she persisted in arresting him. Corbine believes that Officer Dailey targeted him personally because she is corrupt.

Prior to his trial, Corbine's attorney requested copies of the in-car and booking room videos from the night of the arrest, however, the Sawyer County District Attorney's Office did not produce the videos, claiming that they could not find them. Corbine was convicted in 2011 and sentenced to 3 years in prison and 3 years supervision.

In 2013, Corbine appealed his conviction based on ineffective assistance of counsel because his trial attorney

(Hoffman) had failed to adequately investigate the failure of Sawyer County to produce the jailhouse video recording. The court of appeals remanded to the trial court for a Machner hearing. After the Machner hearing, the trial court ruled that Hoffman had adopted a reasonable strategy by not pursuing the video recording because it would have shown Corbine intoxicated and behaving aggressively and that the recording would likely not have changed the outcome of the trial. Corbine appealed the trial court's ruling.

On February 10, 2015, the court of appeals reversed his conviction. Corbine was released on that same day, having completed serving his sentence. The court pointed to Hoffman's testimony at the Machner hearing that he had relied on a description of what was on the jailhouse video based on a conversation he had with an unknown individual at Sawyer County. The court found: "Hoffman acknowledged he did not know the identity of the person who had allegedly viewed the video and therefore had no basis on which to determine whether that person was reliable...Further, Hoffman testified that his belief that the video portrayed Corbine in a poor light was based upon his review of the police report—not from something the unidentified person may have said. Finally, Hoffman testified he took no further steps to locate the DVD after he was told it was missing, and he never considered further action such as filing a motion." In addition, the court also found that Hoffman was deficient by failing to ask Corbine at trial whether he denied being the driver, which would have been "highly relevant to the credibility of the defense theory."

Corbine states that the DVD recording which Sawyer County failed to provide would have supported his defense that he was not the driver and that he had repeatedly denied being the driver during his interactions with Officer Dailey. Corbine believes the Sawyer County District Attorney intentionally withheld the DVD, which would have proven his innocence.

DA's Response and Argument

The Sawyer County District Attorney's Office (DA) recommends denial of this claim. The DA points to the sworn testimony of Officer Dailey that she never lost sight of the vehicle and was therefore clearly able to identify the claimant as the driver when he stepped out of the car. The DA notes that the jury heard the sworn testimony of Officer Dailey, the claimant, and Rodney Corbine, and apparently found Officer Dailey's testimony more credible.

The DA also notes that the claimant has presented no evidence to support his allegations that Officer Dailey targeted him personally and lied under oath. In order to find in favor of the claimant, the board would have to completely ignore Officer Dailey's report and sworn testimony, without any evidence to justify doing so.

The DA states that the claimant has also failed to provide any proof of evidence tampering on the part of Officer Dailey or the DA. Although the claimant alleges there was a dash cam video, there is no reference to such a video in the Officer's report. In addition, his allegation that the DA somehow orchestrated the disappearance of the jail house

tape is without merit. In fact, the DA believes the state would have benefited from use of the tape at trial, because it would have shown the claimant's level of intoxication and aggressive behavior at the time of his arrest. The DA notes that, while the tape may have supported the claimant's allegation that he told Officer Dailey he was not the driver, it would not have proven that he was not the driver.

Finally, the DA disputes the claimant's assertion that the DA did not pursue a second trial because it could not prove its case. The DA notes that there were good public policy reasons not to retry the claimant—the costs simply outweighed the benefits. The claimant had already served the maximum sentence, so no additional jail time could be ordered. In addition, regardless of a second trial, the claimant's next OWI conviction would be a felony. There was simply no benefit to the state that justified the cost of a second trial.

The DA believes that the claimant has not presented clear and convincing evidence that he was not the driver of the vehicle and that his claim should therefore be denied.

Discussion and Conclusion

Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he was imprisoned.

The primary evidence provided by Corbine in support of his petition was that the court of appeals reversed his conviction due to ineffective assistance of counsel. However, based on long-standing precedent, the Claims Board does not automatically equate such a reversal with innocence. A claimant like Corbine must prove his innocence by clear and convincing evidence, whereas in order to obtain a reversal based on ineffective assistance of counsel he only had to make a showing that there was a reasonable probability that the trial result would have been different if he had had more effective counsel. These are two very distinct standards with different burdens of proof and cannot be conflated. Therefore, the reversal, standing alone, does not mean that a claimant has proven his innocence by clear and convincing evidence.

Aside from the reversal noted above, Corbine cites the missing jailhouse video tape as evidence to substantiate that he was innocent of the charges. While it is true that the tape may have supported Corbine's allegation that he told Officer Dailey he was not the driver, Corbine presented no evidence that the tape would have proven that he was not the driver.

Based on the above, and after reviewing all of the written submissions, the Board concludes and finds that the evidence is not clear and convincing that Corbine was innocent of the 2011 conviction for Operating While Intoxicated (5th) and Operating While Revoked (2nd) for which he was imprisoned.

Dated at Madison, Wisconsin this 1st day of November, 2016.

COREY FINKELMEYER

Chair, Representative of the Attorney General

CHRISTOPHER N. GREEN

Secretary, Representative of the Secretary of Administration

KATIE E. IGNATOWSKI

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