

STATE OF WISCONSIN
Senate Journal

One-Hundred and Fourth Regular Session

TUESDAY, September 1, 2020

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Legislative Reference Bureau

August 31, 2020

The Honorable, the Legislature:

The following rules have been published in the August 31, 2020 Wisconsin Administrative Register No. 776:

<u>Clearinghouse Rules</u>	<u>Effective Date(s)</u>
18-097	9-1-2020
19-025	9-1-2020
19-082	9-1-2020
19-087	9-1-2020
19-090	9-1-2020
19-132	9-1-2020
19-137	9-1-2020
19-138	9-1-2020
19-156	9-1-2020
19-157	9-1-2020
20-002	9-1-2020

Sincerely,
JILL KAUFFMAN
Senior Legislative Editor

State of Wisconsin
Wisconsin Ethics Commission

September 1, 2020

The Honorable, the Senate:

Pursuant to Wis. Stats. §13.685 (7), we are providing the enclosed information. Please visit the Wisconsin Ethics Commission’s *Eye on Lobbying* website, <https://lobbying.wi.gov>, for more detailed information about lobbyists, lobbying principals (organizations), and state agency liaisons.

- Conway, Steven.....Wisconsin Humanities
- Fenley, James.....New Glarus Brewing Company
- Fenley, James.....Wisconsin Chiefs of Police Association Inc
- Heifetz, Michael.....Cigna Corporate Services, LLC

Schreibel, Thomas..... Earnin
Taffora, Brian..... Earnin
Sincerely,
DANIEL A. CARLTON, JR.
Administrator

Pursuant to Wis. Stats. 13.172 (2) and (3), attached is the list of agency reports received from executive branch and legislative service agencies for the month of August, 2020.

Wisconsin Ethics Commission

Lobbyist Update
Pursuant to 13.685 (7), Wis. Stats.
Received on August 4, 2020.

Department of Health Services

Wisconsin Hospital Association Information Center Reports
Pursuant to 153.05 (2m)(c), Wis. Stats.
Received on August 13, 2020.

Wisconsin Ethics Commission

Lobbyist Update
Pursuant to 13.685 (7), Wis. Stats.
Received on August 11, 2020.

Clark County Clerk of Circuit Court

Annual Restitution Report
Pursuant to 973.20 (11)(e), Wis. Stats.
Received on August 12, 2020.

State of Wisconsin Investment Board

Charges to Funds Quarterly Report
Pursuant to 25.17 (13m), Wis. Stats.
Received on August 14, 2020.

WisconsinEye

Progress Report
Received on August 19, 2020.

Wisconsin Ethics Commission

Lobbyist Update
Pursuant to 13.685 (7), Wis. Stats.
Received on August 18, 2020.

Department of Corrections

Annual Restitution Report
Pursuant to 973.20 (11)(e), Wis. Stats.
Received on August 19, 2020.

Department of Health Services

2019 Statewide Immunization Program Report

Pursuant to 252.04 (11), Wis. Stats.
 Received on August 28, 2020.
 Referred to the committee on **Health and Human Services**.

Legislative Audit Bureau

Best Practices for Transitioning from Virtual Instruction to In-Person Instruction

Pursuant to 2019 Wisconsin act 185.
 Received on August 21, 2020.

Wisconsin Ethics Commission

Lobbyist Update

Pursuant to 13.685 (7), Wis. Stats.
 Received on August 25, 2020.

Office of the Commissioner of Insurance

2019 Wisconsin Insurance Report

Pursuant to 601.46 (3), Wis. Stats.
 Received on August 27, 2020.

University of Wisconsin System

FY 2019-20 Wisconsin Environmental Policy Act Report

Pursuant to 1.11 (2)(j), Wis. Stats.
 Received on August 28, 2020.

State of Wisconsin Claims Board

Claims heard on August 11, 2020

Pursuant to 16.007 and 775.05, Wis. Stats.
 Received on August 28, 2020.

Douglas County Clerk of Circuit Court

Annual Restitution Report

Pursuant to 973.20 (11)(e), Wis. Stats.
 Received on August 31, 2020.

Department of Natural Resources

2020 Groundwater Coordinating Council Report

Pursuant to 15.347 (13)(g), Wis. Stats.
 Received on August 31, 2020.

Referred to the committee on **Natural Resources and Energy**.

Department of Administration

Temporary Reallocation of Balances

Pursuant to 20.002 (11)(f), Wis. Stats.
 Received on August 31, 2020.

Referred to the joint committee on **Finance**.

**State of Wisconsin
 Claims Board**

August 28, 2020

Enclosed is the report of the State Claims Board covering the claims heard on August 11, 2020. 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,
 AMY KASPER
 Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on August 11, 2020, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Carter Dedolph	University Of Wisconsin	\$2,882.00
2. Benjamin Werlein	Corrections	\$9,369.16
3. Ryan and Richard Leaver	Office of the Governor	\$8,294.53

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
4. Glenn Lemmenes	Natural Resources	\$1,214.40
5. Richard A. Lawrence Jr.	Agriculture, Trade & Consumer Protection	\$85,000.00
6. Robert Schultz	Agriculture, Trade & Consumer Protection	\$9,000.00
7. Timmy Johnson	Corrections	\$466.00
8. Norman Rhodes	Corrections	\$229.60
9. Robert Tatum	Corrections	\$255.37
10. Dominique Tovsen-Caseres	Corrections	\$157.17
11. Jibril Wilson	Corrections	\$148.98
12. George Wilson	Corrections	\$96.70

With respect to the claims, the Board finds:

(Decisions are unanimous unless otherwise noted.)

1. Carter Dedolph of Hudson, Wisconsin claims \$2,882.00 for the value of seven sails not provided as allegedly promised by an online boat auction. In September 2018, claimant was the winning bidder of the “Cow Sailboat” (Soma), put up for auction by UW-Madison’s Hooper Sailing Club (HSC). Claimant points to the online auction description provided by HSC which stated: “All the parts and sails are still available to complete the refit that was started a few years back before funding ran out.” Claimant notes that when he picked up Soma it was heavily tarped, and he did not access the cabin to see that no sails were provided. In addition, there were no staff present with whom he could raise questions. In January 2019, claimant received a new “found” mainsail but no other sails. At that time claimant also received other parts for the Soma. Claimant states that he was told several times that there were “multiple boxes” of Soma’s parts and materials which had been removed from the boat and were “in storage.” Claimant continued to communicate with HSC for several more months. In July 2019, HSC told him they could not find any other sails for Soma. Claimant understands that Soma was “SOLD AS IS, WHERE IS” but he does not believe that statement negates the clear description on the auction site that “All the...sails are still available ...” Claimant notes that Soma was a fully functioning sailboat through the 2015 sailing season and therefore would have had multiple sails. Claimant’s damage amount represents the cost of seven used sails in “fair to good condition,” one mainsail (\$464), four headsails (\$379 each), and two spinnaker sails (\$451 each). Claimant believes the UW and HSC did not fulfill the terms of the auction and requests

payment for the missing sails.

UW points to the fact that the auction description clearly stated “SOLD AS IS, WHERE IS.” In addition, the auction description did not state that any specific number, type, or quality of sails were included in the purchase, only that they were “available” so that a purchaser would be able to complete refitting the boat. While it was the intention to provide the winning bidder with all of the parts that had been accumulated by UW to refit the sailboat, there was never a promise that all of the parts and sails that were original to Soma would be included in the purchase. There was certainly no promise of any specific number of sails “in good or fair condition.” Claimant had every opportunity to inspect Soma before accepting it. In fact, it was assumed he would need to remove the tarps in order to safely transport the boat by road. He chose not to do so and therefore accepted it “AS IS, WHERE IS.” UW notes that claimant’s winning bid was \$250. As documented by claimant’s own exhibits, UW undertook great effort to satisfy his expectations, including conducting multiple searches to locate any parts related Soma, and providing a tiller, spinnaker pole and brand new mainsail after claimant had accepted and transported the sailboat. UW believes it is unreasonable for claimant to now demand a refund of more than 10 times the amount he paid for Soma 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.

2. Benjamin Werlein of Carmel, Indiana claims \$9,369.16 for refund of restitution money related to a 2006 conviction, which was deducted from his inmate account by the Department of Corrections. Claimant states that the victim in his case did not appear at a restitution hearing or provide a restitution amount within the appropriate time frame as required by law. A restitution hearing was never scheduled by the court, also in violation of the law. Claimant points to the fact that the court admitted its negligence in not scheduling a restitution hearing and vacated the restitution order on 4/15/19. Although claimant filed this claim against the Department of Corrections, he agrees that DOC was not negligent in collecting the restitution. However, it is not clear to claimant who bears responsibility to reimburse him. Claimant believes his rights were violated and that the State of Wisconsin Claims Board should take responsibility for paying this claim. Finally, claimant notes that there would be no “re-victimization” of the victim in this case because the medical expenses related to the restitution were paid by insurance companies that are no longer in business.

DOC collected this restitution money pursuant to a valid court order that was not vacated until 2019. DOC notes that the amended JOC did not order DOC to reimburse claimant for money already collected and points to *State v. Minniecheske*, which supports DOC’s position that it is not required to reimburse claimant.

DOC also points to Division of Adult Institution Policy 309.45.02, which provides that DOC is not responsible for clawing back money already disbursed to a victim when an amended Judgement of Conviction is received. In addition, DOC is authorized to use inmate funds to pay prisoner obligations that have been reduced to judgement and Wis. Stat., § 301.32 (1) authorizes DOC to use inmate funds to pay surcharges, victim restitution, or for the benefit of the prisoner. Finally, DOC points to the fact that claimant agrees that DOC was not negligent in collecting this money from his account. Because there was no negligence, DOC 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.

3. Ryan Leaver of Missoula, Montana and **Richard Leaver** of Beaver Dam, Wisconsin claim \$8,294.53 for attorneys’ fees related to Ryan Leaver’s extradition from Montana to Wisconsin in 2011. In March 2011, the Outagamie County District Attorney’s Office filed charges against Mr. Leaver for theft of a rental car. Mr. Leaver states that he was innocent of this crime. He was arrested in Montana and in July 2011, the Outagamie County DA sent Wisconsin Governor Scott Walker a request to extradite Mr. Leaver to Wisconsin. Governor Walker issued the extradition order and transmitted it to the State of Montana. Mr. Leaver was extradited to Wisconsin on 8/5/11. Claimants allege that Mr. Leaver’s extradition was unlawful and illegal because prior to his extradition he submitted exculpatory evidence to Governor Walker’s Office proving Leaver was innocent of any crime and that there was no probable cause to arrest or extradite him. Claimants believe that based on this evidence, Governor Walker should have dropped the charges against Mr. Leaver and not issued the extradition order. As proof of Mr. Leaver’s innocence, claimants point to the fact that the charges against him were dismissed in January 2012. Claimants state that they incurred attorneys’ fees (\$7,500 paid by Richard Leaver and \$794.53 paid by Ryan Leaver) because of Governor Walker’s extradition order.

The Office of the Governor states that the extradition process is a mechanism for obtaining physical custody of an individual facing criminal charges in a state. The focus of the process is to ensure the correct individual is being extradited and that they do face charges in the state demanding the extradition. The Governor’s Office points to Wis. Stat., § 976.03 (20), uniform criminal extradition act, which prohibits the governor from inquiring into or considering the guilt or innocence of the person being extradited. The Governor’s Office also notes that the eventual dismissal of the charges against Mr. Leaver is irrelevant to his extradition, which was compliant with the law. Claimants have provided no evidence that either the Outagamie County DA’s extradition application or Governor Walker’s extradition order were illegal. The

Governor's Office notes that there is no record that Mr. Leaver challenged his extradition and that none of the claimed attorneys' fees are for representation during the extradition. Mr. Leaver hired these attorneys after his extradition to Wisconsin and the fees relate to defending his criminal charge. The Governor's Office believes claimants are not entitled to reimbursement from the state for Mr. Leaver's criminal defense fees 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. *[Member Nilsestuen did not participate in deciding this claim.]*

4. A. Glenn and Lorraine Lemmenes of Sheboygan Falls, Wisconsin claim \$1,214.40 for vehicle damage and increased insurance premiums related to an accident at Kohler-Andre State Park on 11/27/19. Claimants are regular park visitors and proceeded to the south side of Parking Lot 6, where they routinely park in order to view Lake Michigan. When they attempted to enter the lot, they felt and heard their vehicle strike something. They immediately stopped and discovered that a low hanging rope had been strung across the entrance and caught on the underside of their vehicle, damaging the fender. Claimants note that there were no flags, signs, caution tape, or barricades giving clear warning that the lot was closed; only a low-hanging rope, which claimants did not see. They point to the fact that when they visited the park on 6/24/20, they saw a different parking lot entrance blocked by multiple sawhorses and orange cones, proving that Department of Natural Resources staff understand how to clearly mark a closed area. Although DNR's recommendation to deny this claim relies on the recreational immunity statute, claimants are not attorneys and simply believe DNR should have made a reasonable effort to make it obvious that the lot was closed. They request reimbursement for their \$1,000 insurance deductible and for two years of premium increases instituted by their insurance carrier as a result of the accident.

DNR appreciates claimants' patronage of Kohler-Andre State Park but unfortunately cannot recommend payment of this claim. DNR notes that the north part of Lot 6 was open that day, and there were cars parked in that location. There were no vehicles parked in the south part of the lot, which was closed due to high water conditions. The rope was attached to a wood post on one side of the south lot entrance and to a wooden sawhorse on the other side and had been in place the entire day without incident before claimants drove into it. DNR believes it is unfortunate that claimants failed to see the rope but that the department is not liable for the damage to their vehicle. DNR is entitled to immunity pursuant to Wis. Stat., § 895.52, which relieved DNR of any duty of care to warn about the rope, and grants immunity from liability for any damages incurred because claimants were engaged in

recreational activity. Finally, DNR believes it would be unreasonable to reimburse claimants for speculative and undocumented future insurance premium increases.

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.

[Member Katsma did not participate in deciding this claim.]

5. Richard Lawrence of Shell Lake, Wisconsin claims \$85,000.00 for the value of deer injured or killed when they were spooked by low-flying planes conducting gypsy moth spraying in May 2019. Claimant states that the planes were extremely loud and flew low, directly over his pens. Claimant received notification that spraying would take place, however, the postcard stated that the planes would be flying "above treetops." The closest trees to his pens are an eighth of a mile away, therefore, claimant never thought the planes would fly directly over the pens and had no concerns about his animals. He notes that planes did not fly over his pens during spraying conducted north of his farm in 2019. Claimant believes the postcard should have made it clear that the planes would be flying low over open areas, which would have caused him to take steps to protect his animals. Because the planes flew directly over the pens, his animals panicked, resulting in the death of one buck, one doe, one doe carrying three fawns, one doe carrying a single fawn, and two fawns aborted by an injured doe. Claimant had a \$48,500 offer to purchase the buck. He had the remaining deceased deer and unborn fawns appraised based on the value of their genetics. He is not requesting reimbursement for the value of future breeding potential, even though the deceased does could have produced animals for years to come.

On 5/2/19, the Department of Agriculture, Trade & Consumer Protection mailed notices that gypsy moth spraying would take place in the area. The postcard stated the planes "will soon fly near or over your home or business," that the planes would "fly low-just above the treetops" and would be very loud, and that the "noise may startle pets or livestock, so keep them inside, if possible, or monitor them." There was a phone number, email address, and website on the card for any questions, however, claimant never contacted DATCP with any concerns. Had he done so, DATCP would have removed him from the spraying area. Despite the warning on the notice, claimant took no steps to protect his animals or mitigate any potential damage. DATCP notes that the planes flew a standard grid pattern that day, which is routine procedure during gypsy moth spraying. The last time DATCP sprayed in the vicinity of claimant's farm was in 2012 when treating for gypsy moths west of the farm. Although DATCP admits no liability and has not encountered this problem with other deer farms, out of an abundance of caution the department will exclude deer farms from future gypsy moth spraying. DATCP objects to payment of this claim in the amount of \$85,000. If the Claims Board believes

payment should be made, DATCP recommends that the value of claimant's animals be determined consistent with the department's other indemnity programs. Those programs do not make awards for unborn or aborted animals and pursuant to Wis. Stat., § 95.31(4), "no payment may exceed \$1,500 for an animal." For that reason, DATCP believes any award made to claimant should be no more than \$6,000.

The Board concludes the claim should be paid in the reduced amount of \$6,000 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation § 20.115 (7)(qc), Stats.

6. Robert Schultz of Shell Lake, Wisconsin claims \$9,000.00 for the value of a doe that died because she was spooked by low-flying planes conducting gypsy moth spraying and her two fawns, which starved after her death. Claimant does not recall receiving a postcard notifying him about the spaying. He was home on 5/29/19 when the planes flew over his property but was unable to check on his deer because he was headed back to work as an over the road trucker. He called his neighbor, Richard Lawrence, and asked him to check on his deer. Later that day, Lawrence called claimant and told him that he had found a severely injured doe that he had to put down. The doe had two fawns, which claimant hoped would be able to steal milk from another doe until he got home. Lawrence attempted to catch the fawns that afternoon and the next day without success. Claimant returned home on 6/5/19 and found one fawn dead. He returned again on 6/10/19 and found the second fawn dead. He requests reimbursement of \$5,000 for the doe, \$1,500 for the doe fawn, and \$2,500 for the buck fawn.

The doe and two fawns at issue in this claim appear to have been housed on the property of Richard Lawrence. Although claimant states he does not recall receiving the postcard, the Department of Agriculture, Trade & Consumer Protection mailed notices that gypsy moth spraying would take place in the area. The postcard stated the planes "will soon fly near or over your home or business," that the planes would "fly low-just above the treetops" and would be very loud, and that the "noise may startle pets or livestock, so keep them inside, if possible, or monitor them." There was a phone number, email address, and website on the card for any questions or concerns. Richard Lawrence received the postcard but did not contact DATCP with any concerns and took no action to mitigate potential damage to the animals on his property, which included claimant's deer. DATCP notes that the planes flew a standard grid pattern that day, which is routine procedure during gypsy moth spraying.

DATCP also notes that claimant does not appear to have made any significant effort to save the two orphaned fawns. Claimant did not visit the pens until five days after Lawrence failed to catch the fawns, then did not visit them again for another five days, and during that time apparently did not send anyone else to care for them. DATCP points to

the fact that the statements made in this claim appear to contradict statements made to department staff during an investigation in September 2019. At that time, claimant told agency staff that Lawrence never handled his deer and that he lost "1 or 2 fawns, I think" due to the spraying. Nicole Harris, who does chores for claimant when he on the road, told staff she did not believe they lost any animals due to the spraying. Although DATCP admits no liability and has not encountered this problem with other deer farms, out of an abundance of caution the department will exclude deer farms from future gypsy moth spraying. DATCP objects to payment of this claim in the amount of \$9,000. If the Claims Board believes payment should be made, DATCP recommends that the value of claimant's animals be determined consistent with the department's other indemnity programs, which would allow a maximum payment of \$1,000 for the doe fawn and \$1,500 each for the buck fawn and the adult doe. For that reason, DATCP believes any award made to claimant should be no more than \$4,000.

The Board concludes the claim should be paid in the reduced amount of \$4,000 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation § 20.115 (7)(qc), Stats.

7. Timmy Johnson of Waupun, Wisconsin claims \$466.00 for value of property that Department of Corrections staff allegedly lost or damaged and a related restitution deduction. Claimant alleges that when he was sent to segregation, DOC staff intentionally "lost" his radio; damaged his television, headphones, and sweatshirt; declared his tablet charger and cable cord/splitter contraband; and falsely denied the existence of his tablet. He believes staff did this in retaliation for an earlier dispute. Claimant filed an inmate complaint on 6/24/19 and DOC admitted losing the radio and awarded him \$82 reimbursement, the depreciated value of the \$95 radio. DOC then deducted restitution from that award, which lowered the reimbursement amount to \$65. Claimant alleges that it is illegal for DOC to deduct restitution from money that inmates are awarded for lost or damaged property. Claimant states that his headphones and sweatshirt were not damaged before he was sent to segregation. Regarding his television, he points to the fact that DOC staff gave inconsistent statements about the damage, first claiming that the screen was broken and later saying that the cord was pulled out. Claimant denies that he ever approved destruction of the television and alleges that staff forged a document in order to make it appear that he did so. Claimant has provided a receipt and other documents as proof that he owned a tablet when he was sent to segregation, and that it should have been returned to him along with the charger. DOC declared contraband. Claimant believes that numerous inconsistent and incorrect statements made by DOC staff are evidence of staff misconduct.

In response to his 6/24/19 complaint, DOC appropriately responded to the loss of claimant's radio by

awarding him the depreciated amount of \$82. Claimant is incorrect that the deduction of restitution from this award was illegal. Because claimant had not purchased the radio himself, this award was considered “new money” and was therefore subject to restitution deductions. If he had purchased the radio himself, restitution would not have been applied. Because claimant’s headphones had a broken earpiece and the sweatshirt’s shoulder was torn, DOC staff properly designated those items as contraband. Claimant’s television was also declared contraband because it was damaged. Although a staff member initially described the damage incorrectly, the complaint examiner corrected the error and concluded that the television had a missing cord, not a broken screen. DOC notes that either type of damage would cause the unit to be confiscated as contraband. DOC states that on 8/8/19, claimant gave permission for the destruction of the television, which staff clearly noted on his TLU form. Finally, although claimant has provided a receipt showing he purchased a tablet in January 2019, he has provided no proof that the tablet was in his possession in June 2019, when he was taken to segregation. Items are traded by inmates and DOC cannot be held responsible for items not in an inmate’s possession at the time his property is packed by staff. DOC believes claimant has failed to prove his claim and that it should 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.

8. Norman Rhodes of Redgranite, Wisconsin claims \$229.60 for the full value of a typewriter damaged by Department of Corrections staff. Claimant purchased the typewriter in February 2016. He was transferred to Redgranite Correctional Institution in November 2019. When he received his property, the typewriter print wheel would not “read” the correct letter. Claimant filed a complaint and DOC admitted it was at fault for the damage. DOC offered claimant the full replacement value of the typewriter or he could accept the unit “as is.” Because claimant was able to get the typewriter to work if he turned it off and on again, he accepted the typewriter. Claimant notes that a fire at the manufacturer in China impacted his decision because he believed he might not be able to get a replacement in a timely fashion, and that a partially working machine was better than none. Several days after he accepted the typewriter, it stopped working completely. He sent a request to DOC staff for the full replacement value of the typewriter, but staff told him his complaint had been closed when he accepted the machine “as is.” Claimant filed an appeal and DOC confiscated the typewriter as contraband but reimbursed him at a depreciated value of \$56, instead of the full replacement value previously offered. Claimant believes DOC did this in retaliation because he filed an appeal. He disagrees with DOC’s assertion that the typewriter was “further” damaged while under his control, arguing that it was the same damage DOC staff observed when they allowed him to take

typewriter. Finally, claimant alleges that, pursuant to DOC § 303.38, staff should never have allowed him to take the typewriter once it was damaged. He requests reimbursement for the full replacement cost of the typewriter.

DOC recommends denial of this claim. DOC admitted that the typewriter was damaged while under staff control. Claimant was informed by the Inmate Complaint Examiner that the typewriter had a depreciated value of \$56. Claimant was allowed to test the machine in the presence of the ICE, and the machine was not fully functional. However, DAI policy 309.20.03(I)(F)2 allows that “[p]roperty items that have minor damage, are still in working order and are not a safety risk may be allowed to be retained by the inmate.” Because the damage to the machine was observed to be minor, claimant was given the option of receiving the full replacement value of the typewriter—a generous offer that exceeded DOC requirements—or accepting it “as is.” Claimant chose to keep the typewriter. DOC notes that DOC § 303.38, which is cited by claimant, relates to inmates damaging or altering their own property without permission, and is therefore not relevant to this claim. DOC points to the fact that claimant’s own statements prove that the machine suffered additional complications to the point that it became unserviceable; it was not the same damage as when he first tested it. DOC believes claimant’s allegation of retaliation is baseless. DOC allowed claimant to keep the typewriter when the damage was “minor” however, once the machine became unserviceable it was appropriately designated as contraband and confiscated by DOC. Pursuant to DOC policy, the appropriate depreciation schedule was applied, and claimant was fairly reimbursed for the four-year-old typewriter in the amount of \$56.

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.

9. Robert Tatum of Green Bay, Wisconsin claims \$255.37 for the value of a television, two bowls, and 25 newspapers allegedly damaged or wrongly confiscated by Department of Corrections staff during a cell search. Claimant states that the search of his cell violated Division of Adult Institutions policy 306.16, which only allows one cell search per month. He alleges that officers conducted the search and damaged and confiscated his property in retaliation for his prior complaints against them. Claimant states that his television had some minor damage prior to the search but was further damaged by the officers. He disputes that he was always next to the TV during the search, as DOC alleges. He points to the fact that DOC did not review video from outside his cell, which could have proven that staff intentionally damaged his TV. DOC confiscated two bowls during the cell search. Claimant submits a March 2019 property receipt as proof that he owned the bowls and that they should not have been confiscated. DOC also confiscated 25 Wall Street Journals

as “over the limit” for publications. Claimant alleges that he was not over the limit of 25 publications, but that the officers wrongly counted his cellmate’s publications together with his own. He alleges that after the search there were only 25 publications left in the entire cell when there should have been 50, because both he and his cellmate are allowed 25 publications. Claimant disputes DOC’s assertion that the mark on his property inventory indicates he had been left with 25 publications. He alleges that the “mark” is actually the number one, which proves that he was only left with one publication. Claimant filed an inmate complaint regarding this incident, but his complaint was denied.

DOC recommends denial of this claim. There is no DAI policy 306.16 that limits cell searches to once per month as claimant alleges. In fact, DOC 306.16(1) of the Administrative Code allows DOC to “search the living quarters of any inmate at any time.” The Inmate Complaint Examiner investigating the alleged damage to claimant’s TV found that the television was placed on a back table and that claimant was standing right next to that table the entire time. DOC also notes that if any further damage had occurred during the search, the TV would have been confiscated. DOC states that it was not able to review video related to the search because that video had been taped over by the time claimant filed his complaint. DOC states that two bowls were confiscated from claimant’s cell because he did not have any bowls on his property list. Claimant submitted a March 2019 property receipt as “proof” that he owned the bowls, however DOC notes that the original March 2019 receipt does not list the bowls, proving that claimant forged the receipt he submitted to the board. DOC states that claimant had almost 70 publications in his cell at the time of the search. Officers confiscated 42 of the older publications and left claimant with 25. DOC points to the fact that all the confiscated publications had claimant’s name on them, which proves his publications were not mixed up with those of his cellmate. Finally, DOC states that claimant’s property inventory does not show the number one in the publications field, but simply has a mark to indicate claimant had his full allowance of 25 publications.

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. Dominique Towsen-Caseres of Waupun, Wisconsin claims \$157.17 for the value of a television damaged on 1/8/19, allegedly due to negligence by staff at Waupun Correctional Institution (WCI). Pursuant to DOC policy, inmates are required to leave their cells open when they are taken to the showers. Claimant states that staff is responsible for supervising the open cells but that there are rarely staff left stationed at the “bridge” when the inmates on his unit go to shower. Claimant alleges that on the date of this incident, no staff were supervising the open cells on his unit. When he returned from his shower, he discovered

that someone had punched a fist-sized hole in the screen of his television, cut the power cord to his radio, and poured water over both the TV and radio. Claimant points to a statement by inmate Mark Walters, who lives two cells down, that he saw another inmate enter claimant’s cell and heard a smashing sound before the inmate ran out of the cell. Claimant filed an inmate complaint, which was denied. Claimant notes that it would be absurd for him to damage his own property and risk not being reimbursed, or if reimbursed, only at a depreciated value that would not cover the cost of a new TV. Claimant alleges that WCI has been found negligent in its dealings with inmates more than any other institution in the state and is chronically understaffed, which may explain why open cells are routinely left unmonitored. Finally, although DOC alleges that it is not liable for property loss or damage caused by another inmate, *Foy v. State*, 182 AD 2d 670, found that a state is not immune from liability when it negligently failed to secure an inmate’s cell. Claimant had his radio repaired and is only seeking reimbursement for his destroyed TV.

The Inmate Complaint Examiner’s investigation found that Officer Smith, who was on duty at the time claimant’s unit was showering, reported no incident of an unauthorized inmate entering claimant’s cell. DOC points to the fact that staff at both the Officer and Sergeant stations are within 30 feet of claimant’s cell and would have seen if another inmate had entered the cell. Because DOC found no evidence that another inmate entered claimant’s cell his complaint was denied, and claimant did not appeal that denial. DOC believes claimant has provided no evidence of negligence by DOC staff and that his claim should 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.

11. Jibril Wilson of Green Bay, Wisconsin claims \$148.98 for the value of a television allegedly damaged by Green Bay Correctional Institution staff. On 10/5/19, Officer Pecor asked claimant a question about his cellmate. Claimant refused to answer and alleges that Pecor threatened to “destroy” his cell if he did not cooperate. Pecor sent claimant and his cellmate downstairs while he searched their cell. Claimant alleges that his TV was working prior to the search but when he returned to the cell afterwards, his TV was broken. Claimant asked Pecor why he’d broken the TV and Pecor allegedly laughed and said the TV was not broken. Claimant reported the broken TV to Sgt. Linssen and filed an Inmate Complaint, which was denied. Claimant notes that the ICE investigator failed to interview his cellmate, who could have testified that claimant’s TV worked prior to the cell search. Claimant believes it is unlikely that Officer Pecor would not return to remove broken property from his cell and that he falsified the cell search report. Claimant believes Pecor broke his television in retaliation because claimant did not answer his question. He requests reimbursement for the full value of

the TV.

An investigation into claimant's complaint found that Officer Pecor had noted on the cell search form that claimant's TV was already damaged when the search occurred. The Inmate Complaint Examiner spoke with Pecor, who indicated that he had removed the cellmate's TV, which was also damaged, but forgot to return to remove claimant's damaged television. DOC believes claimant's complaint was properly investigated and denied, and that claimant has provided no evidence to support his allegation that Officer Pecor damaged his television. The Department of Corrections 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.

12. George Wilson of Waupun, Wisconsin claims \$96.70 for the value of tennis shoes, headphones, and a t-shirt allegedly lost by Department of Corrections staff at Waupun Correctional Institution. Claimant was sent to segregation on 1/18/20, and his property was packed and removed by staff. When he later received his property inventory, he noticed that several items were missing. Claimant notes that he has receipts for the items and points to a 6/14/19 document where staff acknowledges he owned the tennis shoes. Claimant alleges that another inmate saw staff carry claimant's white tennis shoes out of the cell. Claimant disputes DOC's assertion that his cellmate was present when his property was packed; his cellmate was out on a medical appointment. Claimant filed an inmate complaint regarding this matter, which DOC denied. Claimant notes that it is not possible to fit all property inside the footlocker provided by DOC. Finally, claimant states that the fact that he had another inmate's television in his property is proof that DOC staff is careless when handling inmate property.

DOC recommends denial of this claim. DOC states that when claimant was sent to temporary lock-up, Officer Hibma went to his cell to remove his property. Hibma asked claimant's cellmate to separate his property from claimant's and after he did so, she removed claimant's property from the cell. DOC records indicate that claimant's cellmate was scheduled to leave the institution at 1:20 PM and that claimant's property was packed at 1 PM, which leads to the reasonable conclusion that the separating of claimant's property occurred prior to 1 PM, while his cellmate was present. Officer Hibma noted that

claimant's footlocker was locked at the time. DOC states that inmates are directed to lock valuables in their footlocker to prevent theft. DOC points to the fact that there have been numerous incidents of claimant possessing property belonging to other inmates and notes that when his property was inventoried in this incident, he had a television belonging to another inmate. DOC states that this is not proof of staff negligence, but of claimant's long history of trading property with other inmates. DOC believes it is likely that claimant traded away the property that he now alleges was lost by DOC staff.

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 payment of the amounts below to the identified claimants from the following statutory appropriations is justified under Wis. Stat. § 16.007 (6)(b).

Richard A. Lawrence Jr. \$6,000.00

Robert Schultz \$4,000.00

That the following identified claimants are denied:

Carter Dedolph
 Benjamin Werlein
 Ryan and Richard Leaver
 Glenn & Lorraine Lemmenes
 Timmy Johnson
 Norman Rhodes
 Robert Tatum
 Dominique Tovsen-Caseres
 Jibril Wilson
 George Wilson

Dated at Madison, Wisconsin this 28th day of August, 2020.

COREY FINKELMEYER

Chair, Representative of the Attorney General

AMY KASPER

Secretary, Representative of the Secretary of Administration

LUTHER OLSEN

Senate Finance Committee

TERRY KATZMA

Assembly Finance Committee

RYAN NILSESTUEN

Representative of the Governor