



Claims Against the State

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Under the Wisconsin Statutes, the State of Wisconsin Claims Board, which is attached to the Department of Administration, is required to “receive, investigate and make recommendations on all claims of \$10 or more presented against the state” and referred to the board by DOA.¹ This edition of LRB Reports describes the claims board and its procedures, the types of claims handled by the board, the claims process, and significant court cases interpreting what constitutes an allowable claim against the state, including a brief overview of the Sovereign Immunity provision in Article IV, Section 27 of the Wisconsin Constitution. The report also contains an appendix which lists the number and types of claims handled by the board in recent years.

The claims board: an overview

The claims board consists of five members: a representative of the Department of Justice, designated by the attorney general; a representative of DOA, designated by the secretary of administration; a representative of the office of the governor, designated by the governor; and the two co-chairs of the Joint Committee on Finance.²

Any person who has a claim for monetary damages against a state agency may file a claim with the claims board without regard to whether the claimant is a Wisconsin resident.³ Filing a claim does not require an attorney, nor is any fee required to file.⁴ The range of cases considered by the claims board is quite diverse, including tax claims; torts;⁵ personal injuries; contract issues; damages to automobiles, real property, and personal property; claims by individuals wrongfully convicted of a crime who were imprisoned; and various claims by law enforcement officers and other state employees. The claims board meets approximately four times per year in Madison, Wisconsin, to consider claims that are referred to the board.⁶

Generally, the hearing procedures followed by the claims board are relatively informal; the board is not “bound by common law or statutory rules of evidence . . . [and] shall admit all testimony having reasonable probative value, excluding that which is immaterial, irrelevant or unduly repetitious.”⁷ The board is also authorized to take notice of generally recognized facts or generally accepted technical information or scientific facts, provided that the parties are notified of the board’s official notice of such information and are afforded an opportunity to dispute the validity of the official notice.⁸

1. Wis. Stat. § 16.007 (1).

2. The JCF co-chairs may appoint members of that committee to serve in their place per section 15.105 (2) of the Wisconsin Statutes. As of this writing, the JCF members of the board are Senator Luther Olsen and Representative Mary Felzkowski.

3. State of Wisconsin Claims Board, “[General Information](http://claimsboard.wi.gov),” <http://claimsboard.wi.gov>.

4. *Ibid.*

5. A tort is “A private or civil wrong or injury, other than breach of contract . . . A legal wrong committed upon the person or property independent of contract.” Black’s Law Dictionary 774 (Abridged 5th Ed. 1983).

6. State of Wisconsin Claims Board, “[The Claim Process](http://claimsboard.wi.gov),” <http://claimsboard.wi.gov>.

7. Wis. Stat. § 16.007 (2).

8. Wis. Stat. § 16.007 (2).

The statutes authorize the claims board to pay directly, meaning without legislative action, any claim that it believes is “justified,” provided that the amount paid is \$10,000 or less and the vote to pay the claim is unanimous.⁹ The \$10,000 limit is tied to the maximum allowable claim for a civil action in small claims court under section 799.01 (1) (d) of the Wisconsin Statutes.¹⁰ The claims board has a long-standing policy of compensating petitioners only for out-of-pocket damages and does not make payments for intangible claims such as pain and suffering;¹¹ nor does the board generally make payments for damages that are covered by insurance, even if the petitioner has not filed an insurance claim.¹²

In general, the claims board is considered a forum of last resort, which means that a petitioner should first seek relief from any other available administrative or legal remedy before filing a claim with the claims board.¹³ There is an exception to this general rule, however. As the claims board explains on its website, section 775.01 of the Wisconsin Statutes, specifies that contract claims must first be considered by the claims board before a petitioner may file a lawsuit against the state.¹⁴

Types of claims handled by the claims board

The claims board considers three broad categories of claims. As discussed below, each category has its own procedures.

Torts and contracts

This is the broadest category of claims, as it includes both torts and contracts, and relates to claims filed under section 16.007 of the Wisconsin Statutes. For example, at a meeting held on May 22, 2018, the claims board decided 15 torts and contracts claims, including the following: a claim that the petitioner’s licensed child care center was allegedly owed over \$163,000 by the Department of Children and Families through the Wisconsin Shares program; a claim for \$681.43 for tire damage due to an incident on I-94 where the petitioner’s car ran over spike strips allegedly placed by the State Patrol to stop a different vehicle; and various claims by prison inmates that their property was damaged by the Department of Corrections or that DOC made improper withdrawals from their inmate accounts.¹⁵

9. Wis. Stat. § 16.007 (6) (a).

10. The limit was previously \$5,000, but was increased to \$10,000 in 2011 Wisconsin Act 32, the state budget bill.

11. State of Wisconsin Claims Board, “[General Information](http://claimsboard.wi.gov),” <http://claimsboard.wi.gov>.

12. *Ibid.*

13. *Ibid.*

14. *Ibid.* It may not be clear from a cursory reading of Wis. Stat. § 775.01 that this is the case. As provided in the statute, the legislature cannot refuse to allow a claim, the condition precedent to filing a lawsuit, unless the claims board has heard the claim, recommended the legislature pass a bill, and the legislature refuses. Also see *Brown v. State*, 230 Wis. 2d 355 (Ct. App. 1999). It’s also not initially clear why this statute is limited to contract claims. These issues will be explored in the section, “Significant cases, sovereign immunity.”

15. State of Wisconsin Claims Board, “[Past Claims Board Meetings](#),” [May 22, 2018](#). Out of the 15 cases decided, in only one case, the claim against the Department of Children and Families, was a hearing held.

Innocent convicts

This category encompasses claims by innocent convicts that suffered damages due to their improper conviction and incarceration. Wisconsin was the first state in the nation to enact a statute to provide compensation to an individual who was convicted of a crime, imprisoned, and later found to be innocent.¹⁶ The Wisconsin legislature enacted its statute in 1913, during the state's Progressive era.¹⁷ As of this writing the federal government, the District of Columbia, and 33 states have all enacted some kind of compensation statute. Kansas, the most recent, enacted such legislation in May 2018.¹⁸

Although Wisconsin was the first state to compensate innocent convicts, the Innocence Project's survey of compensation statutes reports that Wisconsin's maximum per-year-of-incarceration payment (\$5,000) is the lowest in the country, and its overall maximum allowable compensation (\$25,000) is the second lowest.¹⁹ In contrast, the maximum innocent convict compensation allowed under Texas law is \$80,000 per year of incarceration, plus an annuity, reintegration financial assistance of up to \$10,000, attorney fees, and lost wages.²⁰ The maximum amounts allowed by Wisconsin and other states, as reported by the Innocence Project, are amounts that may be awarded by statute. In Wisconsin, if the claims board finds that the maximum amount it may award is inadequate compensation, it may submit to the legislature a report of what it considers an adequate amount, and the legislature may choose to act on that report.²¹

A recent Wisconsin example of this type of claim is that of Robert Lee Stinson. He was convicted of a 1985 murder and imprisoned for 23 years for a crime that DNA evidence later proved he did not commit, and the Wisconsin Innocence Project was able to exonerate Mr. Stinson. The claims board later awarded Mr. Stinson the maximum amount allowed under Wisconsin law (\$25,000), but the board also recommended that the legislature pass a bill to more adequately compensate Mr. Stinson. In 2014, Governor Scott Walker signed 2013 Wisconsin Act 206, which awarded Mr. Stinson \$90,000.²²

Other claims

Claims which do not fall into the first two categories above are quite rare and are of four types. One type is state law enforcement officer line of duty claims, related to law enforce-

16. Fite, Shelley. *Compensation for the Unjustly Imprisoned: a Model for Reform in Wisconsin*, 2005 WI L. Rev. 1181, 1182 (2005).

17. *Ibid.*

18. The Innocence Project, "[Compensating the Wrongly Convicted](#)" and "[Kansas Governor Signs One of the Strongest Compensation Laws in the Country](#)," www.innocenceproject.org.

19. The Innocence Project, "[Compensation Statutes](#)," <https://www.innocenceproject.org>.

20. *Ibid.* It should be noted that Wisconsin also pays attorneys fees.

21. Wis. Stat. § 775.05 (4) and Appendix X [Board and Legislature Payments]

22. Lichstein, Byron, "Compensation for the wrongly convicted: The story of Wisconsin Innocence Project exoneree Robert Lee Stinson," http://law.wisc.edu/current/Features/Compensation_for_the_wrongly_con_2014-07-01.

ment officers who have judgments against them for damages caused while acting in good faith and who have incurred legal fees related to the actions.²³ Second, the board reviews state employee attorney fee claims, which are limited to claims related to charges filed against the employee for the abuse of residents of penal facilities²⁴ if the employee is found not guilty but has incurred legal fees.²⁵ Third, the claims board considers extraordinary police services claims, related to claims by city, village, town, and county law enforcement agencies for costs incurred to provide law enforcement services to protect a state facility that “are required because of an assemblage or activity which is or threatens to become a riot, civil disturbance or other similar circumstance, or in which mob violence occurs or is threatened.”²⁶ The fourth type of claim is a claim for judicial branch attorney fees that are incurred by a judge or circuit or supplemental court commissioner who is affected by one of two conditions: (1) the individual is the subject of a petition filed by the judicial commission alleging that the individual is suffering from a permanent disability, which is found not to be the case, or (2) the individual is subject to a petition filed by the judicial commission alleging that the individual engaged in misconduct, which is found not to be the case.²⁷

An analyst for the claims board estimates that in the last 25 years, it is likely that fewer than five total claims have been paid for state law enforcement officer line of duty claims and state employee attorney fee claims. The analyst also reports that judicial branch attorney fee claims are quite rare. As for extraordinary police services claims, the analyst reports that, following a number of such claims being paid in the 1970s, they are also now quite rare.²⁸

The claims process for each category of claim

Torts and contracts

For a claim involving a tort or contract, the petitioner must obtain and fill out a claim form that is available on the board’s website. The form informs prospective claimants that it is considered a public record and may be “open to inspection by the public.”²⁹ The form includes the petitioner’s information, information concerning the agency that is the subject of the claim, insurance information that may be relevant to the claim, the total dollar amount claimed, and a statement of circumstances about the event giving rise to the claim. The petitioner must sign and notarize the form before submitting it to the claims board.³⁰

23. Wis. Stat. § 775.06.

24. Wis. Stat. § 940.29.

25. Wis. Stat. § 775.11.

26. Wis. Stat. § 16.008 (1).

27. Wis. Stat. § 757.99.

28. Conversations and emails with Program & Policy Analyst, State of Wisconsin Claims Board, August and September 2018.

29. State of Wisconsin Claims Board, “[Claims Board Form](http://claimsboard.wi.gov),” <http://claimsboard.wi.gov>.

30. Ibid.

Upon receipt, DOA reviews the claim and either rejects it outright or refers it to the board for its consideration and resolution. The claims most commonly rejected by DOA include the following: claims that are not made against a state agency, such as claims against a local unit of government; claims for something other than monetary damages; and claims that are only for subrogation damages to an insurance company or intangible damages such as pain and suffering.³¹ If DOA refers a claim to the claims board, the board forwards the claim to the state agency against which the claim is made for the agency's response.³² After the board receives the agency's response, the board forwards a copy to the petitioner, who has the option of submitting additional information to the board.³³

Following this exchange of claims and responses, either party may request a hearing before the claims board. If neither party requests a hearing, which is common, the board may decide the claim, in executive session, based on all of the written submissions. Although the hearings portion of a claims board meeting is open to the public, the decisions of the claims board are made in executive session, which is "closed to everyone except Board members and staff."³⁴ In rare cases, the board, on its own motion, will request a hearing even if neither party requests one.³⁵

If at least one party (or the board itself) requests a hearing, the claims board schedules the hearing, and the board must give the claimant at least 10 days' written notice of the date, time, and location of the hearing.³⁶ The hearing takes place in Madison at a scheduled meeting of the claims board.³⁷ The claimant or the claimant's representative, as well as a representative of the state agency in question, appear before the claims board to briefly present their position on the claim. The parties may also be asked to respond to questions from members of the board.³⁸ The proceedings are relatively informal and frequently are completed in fewer than 15 minutes.³⁹

Upon reaching a decision, the claims board prepares a written document that must be sent to the claimant within 20 days of the board's meeting.⁴⁰ In general, the board is required to report its findings and recommendations to the legislature.⁴¹

Depending on the conclusions reached by the board in closed session, it may vote to deny a claim, pay a claim directly of up to \$10,000 (no legislation is needed), or rec-

31. Conversations and emails with Program & Policy Analyst, State of Wisconsin Claims Board, August 31, 2018.

32. State of Wisconsin Claims Board, "[The Claim Process](http://claimsboard.wi.gov)," <http://claimsboard.wi.gov>.

33. Ibid.

34. Ibid.

35. Conversations and emails with Program & Policy Analyst, State of Wisconsin Claims Board, August and September 2018.

36. Wis. Stat. § 16.007 (3).

37. State of Wisconsin Claims Board, "[The Claim Process](http://claimsboard.wi.gov)," <http://claimsboard.wi.gov>.

38. State of Wisconsin Claims Board, "[The Claim Process](http://claimsboard.wi.gov)," <http://claimsboard.wi.gov>.

39. Ibid.

40. Ibid.

41. Wis. Stat. § 16.007 (5).

ommend a payment in excess of \$10,000 to the legislature. The board may also decide to pay a partial payment. For example, the board may decide to pay \$7,000 on a claim for \$20,000. For these types of claims, those made under section 16.007 of the Wisconsin Statutes, if the claims board recommends a payment of \$14,000, for example, which requires legislation, the board has historically not made a partial payment of \$10,000 and recommended legislation for the remaining \$4,000; instead, it would simply refer the \$14,000 recommendation to the legislature.⁴² Any vote to pay a claim directly, up to the \$10,000 limit, must be unanimous. According to the claims board's website, a unanimous vote is not required for the board to recommend to the legislature a payment in excess of \$10,000.⁴³ For claims filed under section 16.007 of the Wisconsin Statutes, there is no appeals process before the claims board and no administrative review process available under chapter 227 of the Wisconsin Statutes.⁴⁴

If the board concludes that the “claim is one on which the state is legally liable, or one which involves the causal negligence of any officer, agent or employee of the state, or one which on equitable principles the state should in good conscience assume and pay” and recommends a claims payment in excess of \$10,000, the board is required to have a bill drafted and submitted to JCF to accomplish that goal “at the earliest available time.”⁴⁵ As two members of the claims board are legislators, those board members take the lead in getting the bill drafted and submitted to JCF.⁴⁶

If a claimant is dissatisfied with the claims board's decision, the claimant may file a lawsuit under certain circumstances, although the claims board does not compile or maintain information concerning such lawsuits.⁴⁷ In general, if a claim relates to a contract dispute and the legislature has refused to pass a bill as recommended by the claims board for a payment in excess of \$10,000, the statutes allow the claimant to file a lawsuit against the state.⁴⁸ Under the doctrine of sovereign immunity, however, lawsuits for claims against the state for torts claims are barred, and most other suits against the state are generally barred as well, subject to a number of exceptions. These concepts are discussed briefly in the section, “Significant cases, sovereign immunity.”⁴⁹

42. Conversations and emails with Program & Policy Analyst, State of Wisconsin Claims Board, August 2018 to October 2018. In contrast, however, with regard to innocent convict claims, the claims board does make partial payments. For example, if the claims board determines that \$100,000 is the appropriate amount to compensate an innocent convict, the claims board will pay the statutory maximum, \$25,000 (plus attorney fees) and recommend that the legislature award additional compensation.

43. State of Wisconsin Claims Board, “[The Claim Process](http://claimsboard.wi.gov),” <http://claimsboard.wi.gov>.

44. *Ibid.*; conversations and emails with Program & Policy Analyst, State of Wisconsin Claims Board, August and September 2018.

45. Wis. Stat. § 16.007 (5).

46. Conversations and emails with Program & Policy Analyst, State of Wisconsin Claims Board, August 31, 2018.

47. *Ibid.*

48. Wis. Stat. § 775.01.

49. Also see Article IV, Section 27 of the Wisconsin Constitution. For a general discussion of sovereign immunity issues, also see *Brown* at 363–65.

Innocent convicts

Claims relating to compensation for innocent convicts use a different form than the one used for torts and contracts.⁵⁰ In general, the procedures a petitioner must follow in these types of claims is contained in a different statute, section 775.05 of the Wisconsin Statutes, which requires the claims board to “hear petitions for the relief of innocent persons who have been convicted of a crime.”⁵¹

The statute authorizes any individual “who is imprisoned as the result of his or her conviction for a crime in any court of this state, of which crime the person claims to be innocent, and who is released from imprisonment for that crime after March 13, 1980, [to] . . . petition the claims board for compensation for such imprisonment.”⁵² Upon receipt of the petition, the claims board must send a copy to both the prosecutor who prosecuted the petitioner’s case and the sentencing judge, or their successors, to obtain information from those persons about the case.⁵³

After reviewing the information received and hearing evidence on the matter, “the claims board . . . [must] find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she suffered imprisonment, or that the evidence is not clear and convincing that he or she was innocent.”⁵⁴ If the claims board determines that “the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation,”⁵⁵ the board must determine an amount of money that would equitably compensate the petitioner. The amount, however, may not exceed the annual and overall caps described above unless the board chooses to involve the legislature as described below. In addition to the direct compensation paid to the petitioner, the claims board must also “include . . . any amount to which the board finds the petitioner is entitled for attorney fees, costs and disbursements.”⁵⁶

If the claims board determines that the amount of compensation it is allowed to award under the statutes is inadequate to compensate the petitioner, it must submit to the chief clerk of each house of the legislature, for distribution to the legislature, a report

50. State of Wisconsin Claims Board, “[Filing a Claim](http://claimsboard.wi.gov),” <http://claimsboard.wi.gov>. This directs the person to contact the claims board.

51. Wis. Stat. § 775.05 (1).

52. Wis. Stat. § 775.05 (2).

53. *Ibid.*

54. Wis. Stat. § 775.05 (3). As noted above, Wisconsin was the first state to enact innocent convict compensation legislation. The original statute was different from the current statute in several significant ways. The standard of proof in the original statute required a finding that was “beyond a reasonable doubt” and limited the board to considering evidence that was discovered post-conviction (Fite 1193–94). In 1980, the legislature significantly changed the statute to its current form by substituting “clear and convincing” for the “reasonable doubt” standard, and the legislature also allowed the board to hear additional evidence by eliminating the limitation regarding evidence discovered post-conviction (*ibid.*, citing Act of Mar. 12, 1980, ch. 126, 1979 Wis. Sess. Laws 827). In addition, the legislature increased the compensation cap from \$1,500 per year to \$5,000 per year of imprisonment and the overall cap from a total of \$5,000 to a total of \$25,000 (Fite 1194).

55. Wis. Stat. § 775.05 (4).

56. Wis. Stat. § 775.05 (4).

“specifying an amount which it considers adequate.”⁵⁷ The claims board is required to “keep a complete record of its proceedings in each case and of all the evidence.”⁵⁸ Unlike a claim that is filed under section 16.007 of the Wisconsin Statutes, the “findings and the award of the claims board [is] subject to review as provided in ch. 227.”⁵⁹

Other claims

For a state law enforcement officer line of duty claim described above, the claim must set forth the amount of the judgment, fees, and other costs for which the law enforcement officer is liable, a description of the events in question, and the reasons the officer is claiming relief.⁶⁰ The claims board is required to set a time and place for a hearing and to so notify the petitioning officer. At the hearing, the claims board may review the trial record, but its findings, conclusions, and determination of award, if any, must be based on all of the evidence presented to the board.⁶¹ In reaching its decision, if the claims board determines that the petitioner was acting in good faith at the time of the events in question and was acting in the line of duty as a state law enforcement officer, the claims board must award the petitioner the amount he or she is required to pay under the terms of the judgment, as well as reasonable attorney fees and costs, although the total amount of the award may not exceed \$5,000.⁶² If the claims board determines that this amount is inadequate to compensate the petitioner, it must submit a report of the difference between the two amounts to the chief clerk of each house of the legislature for distribution to the legislature for legislative action.⁶³

For claims which relate to the payment of state penal institution employee attorney fee claims as described above, the statutes direct that such claims are to be handled using the same procedures outlined above for state law enforcement officer line of duty claims.⁶⁴ Again, according to the claims board, the total number of claims filed under sections 775.06 and 775.11 of the Wisconsin Statutes in the last 25 years is very low.

Another type of rare claim relates to “extraordinary police services” provided to a state facility as described above.⁶⁵ The municipal or county clerk submitting the claim to the claims board must include an itemized statement of charges, information about the specific facilities involved, and the name of the person who requested such services.⁶⁶

57. Ibid.

58. Ibid.

59. Wis. Stat. § 775.05 (5).

60. Wis. Stat. § 775.06 (2).

61. Wis. Stat. § 775.06 (3) and (4).

62. Wis. Stat. § 775.06 (5).

63. Wis. Stat. § 775.06 (6).

64. Wis. Stat. § 775.11 (2).

65. Wis. Stat. § 16.008 (1).

66. Wis. Stat. § 16.008 (2).

Upon receipt of the claim, the claims board must obtain a review and recommendation about the claim from the state agency that is responsible for the facility in question.⁶⁷ The claims board then proceeds under certain provisions related to claims filed under section 16.007 of the Wisconsin Statutes as described above.⁶⁸ As mentioned above, such claims have been extremely rare.

The final type of rare claim relates to judicial branch attorney fees as described above.⁶⁹ A judge or circuit or supplemental court commissioner seeking reimbursement for reasonable attorney fees incurred in response to a petition filed by the judicial commission and following a finding that the individual is not permanently disabled or did not engage in misconduct, contrary to the assertion in the petition, is required to file a claim with the claims board under section 16.53 of the Wisconsin Statutes.

Significant cases, sovereign immunity

Section 775.01 of the Wisconsin Statutes says, in part, that “upon the refusal of the legislature to allow a claim against the state the claimant may commence an action against the state” after complying with a number of procedural requirements. By simply reading the statute, it seems clear that one may not sue the state without the legislature first refusing the claim. It is not, however, readily apparent that this provision authorizes only contract claims against the state and only such contract claims which, should the plaintiff prevail, would result in the state becoming a debtor to the plaintiff, nor is it clear that the statute may not be used for equitable or tort actions. This section of the report will briefly describe the concept of sovereign immunity, which is closely related to the statute, and then discuss the significant cases which lead to the current interpretation of the statute.

The concept of sovereign immunity is expressed under Article IV, Section 27 of the Wisconsin Constitution, Suits Against the State. This provision states that “the legislature shall direct by law in what manner and in what courts suits may be brought against the state.” In effect, the provision stands for the proposition that “the state may not be sued unless it has given its consent.”⁷⁰ This proposition that the state must consent to be sued is also related to the 11th Amendment to the U.S. Constitution.⁷¹ Since the enactment of

67. Ibid.

68. Specifically, section 16.008 (2) of the Wisconsin Statutes references the hearing, notice, and procedure requirements under section 16.007 (3) of the Wisconsin Statutes; the provisions relating to findings, conclusions, and recommendations to the JCF for a bill to authorize a payment in excess of \$10,000 under section 16.007 (5) of the Wisconsin Statutes; and the provisions related to direct payments of claims of \$10,000 or less, without the need of legislation, under section 16.007 (6) of the Wisconsin Statutes.

69. Wis. Stat. § 757.99.

70. Stark, Jack. *The Wisconsin State Constitution, A Reference Guide* (Greenwood Press, 1997), 109, citations omitted.

71. The 11th Amendment states: “The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.”

the 11th Amendment, “the courts have uniformly held that no state could be sued in any court without its express consent.”⁷²

The concept of sovereign immunity is quite ancient, going back to the Middle Ages and the doctrine that “‘the king can do no wrong’ and is thus immune to legal challenge.”⁷³ In Wisconsin, the provision means that the state may be sued only if it has given its consent in the form of a statute authorizing such a suit, as is the case in section 775.01 of the Wisconsin Statutes.⁷⁴ Although it is clear that the legislature’s enactment of this section authorizes an exception to the state’s general immunity from suit, it is not clear how and why the statute is interpreted to apply only to contracts, subject to a limitation, and not to torts or other types of actions.

According to the court of appeals, the earliest cases that discuss the predecessor statute to section 775.01 of the Wisconsin Statutes are *Chicago, Milwaukee & St. Paul Railway Co. v. State*, 53 Wis. 509 (1881) and *Houston v. State*, 98 Wis. 481, 487 (1898).⁷⁵

The language in the current statute is essentially the same as the language in its predecessor statute, which was enacted in 1850.⁷⁶ “The purpose of the statute is to comply with and carry out Article IV, Section 27 of the Wisconsin Constitution.”⁷⁷

In its reading of the predecessor to section 775.01 of the Wisconsin Statutes, the *Chicago* court held that “it is manifest from the language of the section . . . that the statute relates only to actions upon those ordinary claims against the state which, if valid, render the state a debtor to the claimant; and not to an equitable action.”⁷⁸ Several years later, the Wisconsin Supreme Court applied the same principle, relating to the state becoming a debtor to the claimant, in a case holding that “this statute does not include a demand based upon the unlawful and tortious acts of officers or agents of the state . . . for the simple reason that the legislature has never authorized an action in this court for such misconduct.”⁷⁹ Many other Wisconsin cases are cited in *Koshick v. State*, 2005 WI App 232, 287 Wis. 2d 608, ¶8, for the proposition that tort claims aren’t allowed under section

72. *Houston v. State*, 98 Wis. 481, 487 (1898), citing *Louisiana v. Jumel*, 107 U.S. 711 (1883).

73. Stark 109.

74. *Ibid.*; *State v. P.G. Miron Constr. Co.*, 181 Wis. 2d 1045, 1052–1053 (1994). It should be noted, however, that although a long line of state supreme court cases have held that one may sue the state only if the state has given its consent by statute, as Stark points out, he also notes that one can sue the state directly (and without statutory consent) under Article I, Section 13, which requires the state to provide just compensation when it takes private property (see *Zinn v. State*, 112 Wis. 2d 417, 435 (1983) and Stark 109).

75. See *Koshick v. State*, 2005 WI App 232, 287 Wis. 2d 608, 613–614. Regarding the predecessor to section 775.01 of the Statutes, *Koshick* notes that “The original version of section 775.01 of the Wisconsin Statutes was enacted in 1850, and, although it has been renumbered since that time, the text has remained substantially the same as relevant to this appeal.” Other significant cases in the development of the current interpretation of s. 775.01., include *Trempealeau County v. State*, 260 Wis. 602, 605–605 (1952) (definition of “debt”), *Zinn, Brown, and State v. P.G. Miron Const. Co., Inc.* Many of these cases, and other significant cases in the area, are discussed in *Koshick*, which provides a good summary of the issues involved.

76. *Koshick*, ¶8; see also *Houston* at 487.

77. *Brown* at 366–367.

78. *Chicago* at 512. Also see *Koshick*, ¶8.

79. See *Houston* at 487 and 488, citing *Hill v. U.S.* 149 U.S. 149.

775.01 of the Wisconsin Statutes and its predecessor, such as *Holzworth v. State*, 238 Wis. 63, 67 (1941), *Chart v. Gutmann*, 44 Wis. 2d 421, 428-431 (1969), *Cords v. State*, 62 Wis. 2d 42, 50 (1974), and *Brown v. State*, 230 Wis. 2d 355 (Ct. App. 1999), 364. Based on its reading of the statute, then, the Wisconsin Supreme Court found it “manifest” that the statute did not apply to “an equitable action . . . to restrain [the state] from perpetrating an alleged threatened injustice,”⁸⁰ nor did the statute apply to a tort.⁸¹ Essentially, only actions in contract remained.

The *Koshick* court explained that in limiting the types of contract claims for which the statute may be used, the supreme court refined the definition of “debtor.”⁸² For example, in *Trempealeau County*, at 605, the court cited Corpus Juris Secundum for the proposition that debt includes “a sum of money due upon a contract, implied in law, 26 C.J.S., *Debt*, page 1.” *Koshick* then cites C.J.S. for the proposition that “debt” means “a specific sum of money which is due or owing from one to another.”⁸³

In *Koshick*, the plaintiff was using a breach of contract claim under section 775.01 of the Wisconsin Statutes, seeking lost profits due to the state failing to honor a lease of the State Fair Park grounds for a concert and festival. The plaintiff’s claim failed because although he filed a claim under a contract theory, the sum he was seeking was not “liquidated; they cannot be readily determined from the terms of the alleged contract or from fixed data or mathematical computation.”⁸⁴ To prevail, the plaintiff would have had to be seeking a debt, “a specific sum of money” as defined in *Trempealeau*, and the plaintiff would need to show that, should he prevail, the state would be a debtor to him.⁸⁵

Essentially, the constitutional provision and the line of cases discussed above mean that the Wisconsin Constitution “expressly delegates to the legislature the task of determining in what manner the State may be sued . . . [and] this responsibility rests exclusively with the legislature.”⁸⁶ Residents do not have a “right” to sue the state.⁸⁷ In enacting section 775.01 of the Wisconsin Statutes and its predecessor, the legislature has consented to be sued in certain specified actions. According to the *Chicago* and *Houston* line of cases, the statute authorizing certain suits against the state does not authorize suits in equity or tort. Only certain types of contract claims are allowed.

While the distinctions made between “debt” and other types of contract claims may seem to be “archaic” and “may well have no procedural or sustentative significance” in

80. *Chicago* at 512.

81. *Houston* at 487 and 488.

82. *Koshick*, ¶9.

83. 26 C.J.S. §1, as cited in *Koshick*, ¶9–11.

84. *Koshick*, ¶12.

85. *Koshick*, ¶13–16 and 19, also citing *Boldt v. State*, 101 Wis. 2d 566, 568 (1981), and *Brown* at 374.

86. *Koshick*, ¶20.

87. *Ibid.*, citing *Cords* at 51–52.

suits against defendants other than the state, “there has historically been a distinction.”⁸⁸ And the Wisconsin Supreme Court, in interpreting the predecessor to section 775.01 of the Wisconsin Statutes, “invoked this construction . . . [to determine] what the legislature meant . . . [by] ‘claim.’”⁸⁹ Based on the line of cases discussed above that interpret the doctrine of sovereign immunity under Article IV, Section 27 of the Wisconsin Constitution, the predecessor statute of section 775.01 of the Wisconsin Statutes, and the current statute, it is clear that the current statute may be used by a person to sue the state of Wisconsin only for certain contract claims, and following rejection of the claim by the legislature, but for no other causes of action.

Conclusion

The claims board reports that 690 claims were filed with the state between 2008 and 2017 using the statutory procedures under section 16.007 of the Wisconsin Statutes, regarding torts and contract claims, and section 775.05 of the Wisconsin Statutes, regarding innocent convict claims. This number includes stale checks that were reissued by DOA without claims board action. The claims board paid 81 of these claims either partially or in full, not including stale check reissues. The number of claims filed each year ranges from 45 to 129.

Looking only at torts and contract claims, which include stale checks, there were 480 claims filed and 160 claims paid between January 1, 2011, and August 31, 2018. The claims are broken down into 11 categories, ranging from attorney fees to taxes. The largest number of claims, by category, and the number of those claims that were paid are as follows:

Stale checks.....	204 filed/124 paid
Property damage/loss.....	133 filed/17 paid
Auto	29 filed/4 paid
Taxes	25 filed/1 paid
Other	39 filed/4 paid

Out of the tort and contract claims filed between 2008 and 2017, the claims board recommended legislative action to make a payment in excess of the statutorily allowed maximum amount in only one case, and that contract case did result in a bill being enacted.⁹⁰

With regard to innocent convict claims, 58 claims have been filed with the claims board since 1960. In only three cases did the legislature enact a bill to compensate an

88. *Koshick*, ¶21, citing 26 C.J.S. Debt §§ 1–4, and 11 Arthur Linton Corbin, *Corbin on Contracts* § 995 (interim ed. 2002).

89. *Ibid.*

90. See 2009 Wisconsin Act 353

innocent convict in an amount in excess of the statutorily allowed maximum limit, the most recent case being that of Robert Lee Stinson in 2013 Wisconsin Act 206. Out of the remaining 55 innocent convict claims, the claims board paid full or partial claims in 18 cases.

Although Wisconsin's statutory maximum annual payment amount (\$5,000) and overall maximum payment amount (\$25,000) are among the lowest in the nation,⁹¹ the claims board may recommend to the legislature payments in excess of those amounts if the statutorily allowable amounts do not adequately compensate the innocent convict. But as noted above, this is uncommon. Claims board data also indicate that it is rare for the legislature to compensate tort and contract claimants in amounts greater than the \$10,000 statutory limit for direct payments by the claims board. In the last several legislative sessions, bills were introduced to overhaul the innocent convict compensation statute,⁹² section 775.05 of the Wisconsin Statutes, but as of this writing no bills have been enacted. ■

91. As discussed above, these statutory maximum amounts do not include amounts that may be paid for attorney fees, costs, and disbursements.

92. 2015 AB 460 passed the state assembly 98-0 but did not receive a vote in the senate. Both 2017 AB 548 and 2017 SB 456 passed unanimously out of committee, but neither bill received a vote in its respective chamber.

Appendix

Table 1. Claims board annual summary of all claims

Year	Filed ¹	Rejected ²	Decided	Denied	Paid	Recom- mended to legislature ³	Amount recom- mended	Amount denied	Amount paid
2008	45	10	29	17	12	0	\$0.00	\$39,137.72	\$46,480.05
2009	62	4	32	24	7	1	30,000.00	154,270.15	6,547.41
2010	129	(NA)	43	36	6	1	90,000.00	28,400,202.83	25,928.47
2011	70	13	19	16	3	0	0.00	290,119.21	40,500.00
2012	77	7	42	15	26	0	0.00	369,675.88	32,464.81
2013	69	21	32	24	8	0	0.00	854,276.49	55,764.21
2014	81	15	27	19	8	0	0.00	66,425,835.73	176,140.76
2015	51	10	30	26	4	0	0.00	90,653.34	49,392.01
2016	56	20	20	17	2	0	0.00	341,556.64	6,770.00
2017	50	17	22	17	5	0	0.00	28,416.08	8,502.00

NA—This data is not available from the claims board.

1. This category includes all claims filed, including those that have been withdrawn, settled with the agency, not decided due to being filed late in the calendar year, or closed for lack of action taken by the petitioner in response to an information request from the claims board.

2. Some claims are rejected by DOA without being referred to the claims board, as explained in the article. For example, claims filed against a local government, claims for pain and suffering, and claims that might be covered by insurance are rejected by DOA out of hand and are not passed along to the claims board for review. See page 4, “Torts and contracts” under “The claims process for each category of claim.”

3. These are claims recommended to the legislature by the claims board. Such recommendations are made when the amount of compensation the claims board considers adequate exceeds the statutory maximum amount the claims board may pay directly.

Table 2. Claims board and legislature payments for innocent convicts

Claimant last name	Date filed	Total request	Decision	Amount paid by board	Amount recom- mended	Bill number	Law number	Amount paid by legislature	File closed
Hemauer	10/21/1983	500,000.00	Paid part	0.00	85,260.28	AB 1142	1983/312	85,260.28	5/11/1984
Donaldson	2/2/1984	25,000.00	Paid	0.00	25,000.00	AB 4	1983/548	25,000.00	6/7/1984
Stinson	12/16/2009	115,000.00	Paid	25,000.00	90,000.00	AB290	2013/206	90,000.00	1/4/2011

Table 3. Claims board denied and approved payments for innocent convicts

Claimant last name	Date filed	Total request	Statutory amount	Attorneys fees	Additional amount	Decision	Amount paid	File closed
Cook	1/1/1960	25,940.00				Paid part	550.00	4/13/1960
Gibson	1/1/1966	100,000.00				Denied	0.00	5/9/1967
Olig	1/1/1968	25,000.00				Denied	0.00	3/25/1969
Laabs	1/1/1972	39,100.00				Denied	0.00	8/8/1972
Kanieski	1/1/1973	250,000.00				Denied	0.00	10/15/1973
Roberts	1/1/1973	755.00				(NA)	0.00	3/5/1973

Table 3. Claims board denied and approved payments for innocent convicts, continued

Claimant last name	Date filed	Total request	Statutory amount	Attorneys fees	Additional amount	Decision	Amount paid	File closed
Bannier	1/1/1974	1,571.52				Denied	0.00	2/15/1974
McClellan	1/1/1974	20,000.00				Denied	0.00	2/15/1974
Pate	1/1/1975	0.00				Denied	0.00	6/21/1977
Hurst	8/9/1976	7,990.00				Denied	0.00	6/27/1977
Lambert	1/1/1977	32,000.00				Denied	0.00	4/25/1977
Simos	1/1/1977	30,000.00				Denied	0.00	5/9/1977
Reichhoff	10/31/1977	113,023.19				Denied	0.00	3/20/1978
Stanislawski	1/1/1978	75,000.00				Denied	0.00	3/20/1978
Leff	10/29/1979	5,349.00				Denied	4,889.47	6/16/1980
Hudson	7/10/1980	25,000.00				Denied	0.00	11/10/1980
Pugh	6/23/1981	7,500.00				Paid part	7,459.00	3/22/1981
Woods	7/16/1981	25,000.00				Paid part	23,890.80	3/22/1982
Proite	4/23/1982	25,000.00				Paid part	5,800.00	10/17/1983
Gulley	7/23/1982	15,230.00				Denied	0.00	5/16/1983
Williams	10/5/1983	25,000.00				Denied	0.00	6/28/1984
Balistreri	5/14/1984	2,250.00				Denied	0.00	8/13/1984
Duarte-Vestar	10/8/1987	500,000.00				(NA)	0.00	7/2/1996
Fillyaw	2/17/1988	275,000.00				Denied	0.00	3/1/1989
Ambler	7/7/1989	111,000.00				Denied	0.00	2/19/1993
Baugh	1/1/1992	6,720.00				Denied	0.00	6/23/1992
Henderson	6/4/1992	25,000.00				(NA)	0.00	5/9/1997
Grissom	5/15/1995	9,000,000.00				(NA)	0.00	1/13/2000
Hicks	11/26/1997	131,061.71	25,000.00	106,061.71		Paid part	109,767.64	12/11/2007
Saecker	7/16/1999	30,125.00	25,000.00	5,125.00		Paid	45,000.00	1/28/2003
Avery	10/21/2004	1,135,991.60	25,000.00	38,791.61	1,072,200.00	Paid part	48,791.61	1/5/2005
Moeck	11/28/2005	40,975.00	255,000.00		16,250.00	Denied	0.00	12/28/2006
Sanders	8/20/2007	23,240.00	5,000.00	18,240.00		Paid	23,240.00	2/15/2008
Rupp	2/4/2008	22,797.45	10,000.00	12,797.45		Denied	0.00	11/26/2008
Duarte-Vestar	12/9/2008	25,000,000.00				Denied	0.00	5/18/2010
Adams	2/5/2009	81,111.12	25,000.00	56,111.12		Denied	0.00	12/18/2009
Futch	3/2/2009	10,000.00	10,000.00			(NA)	0.00	10/7/2009
Turnpugh	7/24/2009	46,025.89				Paid part	36,847.89	1/3/2014
Ott	11/30/2009	25,000.00	25,000.00			Paid	25,000.00	5/24/2010
Burrowes	4/26/2010	15,000.00	15,000.00			Paid	15,000.00	11/23/2011
Isham	8/3/2010	3,650,000.00	25,000.00		3,625,000.00	Paid part	25,000.00	11/9/2011
Shomberg	4/27/2011	102,500.00				Paid part	97,500.00	5/23/2014
Washington	5/18/2011	30,000.00				(NA)	0.00	8/30/2011
Avery	9/13/2011	30,000.00	25,000.00		5,000.00	Paid part	25,000.00	1/8/2013
Reeves	10/28/2011	161,442.43	5,000.00	156,442.43		Denied	0.00	12/26/2012

Table 3. Claims board denied and approved payments for innocent convicts, continued

Claimant last name	Date filed	Total request	Statutory amount	Attorneys fees	Additional amount	Decision	Amount paid	File closed
Frey	11/1/2013	25,000.00	25,000.00			Paid	25,000.00	4/11/2014
Verkuilen	2/19/2014	450,000.00				Paid part	25,016.76	1/8/2015
Gavin	5/27/2014	48,703.50	25,000.00	23,703.50		Paid	48,703.50	6/17/2015
Reed	6/23/2014	100,000.00	25,000.00		75,000.00	Denied	0.00	2/1/2016
Werner	9/15/2014	560,000.00				(NA)	0.00	2/17/2016
Jackson	12/17/2014	25,000.00	25,000.00			Denied	0.00	4/12/2016
Clements	8/31/2015	40,000.00	5,000.00		35,000.00	Denied	0.00	4/12/2016
Corbine	11/9/2015	90,000.00	15,000.00		75,000.00	Denied	0.00	11/2/2016
Netz	7/24/2017	12,400.00				(NA)	0.00	12/1/2017
Visor	12/13/2017	125,000.00	12,000.00		113,000.00	(NA)	0.00	pending

NA—This data is not available from the claims board.