STATE OF WISCONSIN
# Senate Journal
One-Hundred and First Regular Session

MONDAY, October 20, 2014

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

## PETITIONS AND COMMUNICATIONS

**State of Wisconsin**
**Office of the Senate Majority Leader**

October 20, 2014

The Honorable, the Senate:

Pursuant to Senate Rule 20 (7), I am making the following temporary committee appointments:

I appoint Senator Fitzgerald as a temporary replacement for Senator Vukmir on the Joint Committee for Review of Administrative Rules. This replacement is effective only for the committee's public hearing and executive session on Tuesday, October 21, 2014.

I appoint Senator Risser as a temporary replacement for Senator Harris Dodd on the Joint Committee for Review of Administrative Rules. This replacement is effective only for the committee's public hearing and executive session on Tuesday, October 21, 2014.

Please feel free to contact me with any questions.

Sincerely,
*SCOTT FITZGERALD*
Chair, Committee on Senate Organization

**State of Wisconsin**
**Claims Board**

October 18, 2014

Enclosed is the report of the State Claims Board covering the claims heard on September 30, 2014. 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 September 30, 2014, upon the following claims:**

| Claimant | Agency | Amount |
|---|---|---|
| 1. Stanley Johnson | Revenue | $6,700.00 |
| 2. Robert F. Munson | Administration | $550.00 |

**The following claims were decided without hearings:**

| Claimant | Agency | Amount |
|---|---|---|
| 3. Cheryl Neupert | Employee Trust Funds | $107,249.40 |
| 4. Amanda Faessler | Wisconsin Court System | $749.99 |
| 5. Catherine Nelsen | Transportation | $500.00 |
| 6. Maria Dominguez | Health Services | $6,525.26 |
| 7. Anthony J. Machicote | Corrections | $75.01 |
| 8. Oscar Garner | Corrections | $69.84 |
| 9. Jermaine McFarland | Corrections | $237.21 |

***The Board Finds:***

**1. Stanley Johnson** of Cadott, Wisconsin claims $6,700.00 for reimbursement of overpayments collected on estimated income tax assessments. The claimant states that from 1994-1999, he worked as a farm laborer and earned approximately $9,600 per year. Because the claimant earned so little and did not receive W-2s for those years, he believed he did not need to file tax returns. DOR issued estimated assessments against the claimant, which resulted in a wage attachment, bank levies, and the interception of his federal tax refunds. The claimant hired an accountant to assist him with filing the overdue tax returns. The returns were filed in November-December 2012. The claimant states that DOR collected more than $10,000 on an actual tax debt of $946. The claimant notes that the IRS generated 1099 forms for the years in question and that DOR had access to those 1099s. The claimant does not understand why DOR's assessments were so high when DOR had access to the claimant's actual income amounts from the 1099s. The claimant believes that DOR's assessments were unreasonable and requests that he be reimbursed for the funds collected in excess of the actual amounts owed, including penalties and interest.

DOR recommends denial of this claim. In September 1997, DOR issued an estimated assessment for failure to file Wisconsin income tax returns for 1994-1995. In September 2001, DOR issued an estimated assessment for failure to file income tax returns for 1997-1999. DOR began collecting on the estimated assessments in 2003 by intercepting the claimant's federal income tax refunds. DOR continued collecting through levies and a wage certification that began in 2010. DOR states that the clamant contacted the department in 2010 and stated that his records had been destroyed in a fire. DOR states that its staff gave the claimant several options to resolve the issue in light of the destroyed records but the claimant never followed through. DOR states that, although it had access to the 1099 forms generated by the IRS, these forms alone do not give a complete picture of all sources of a taxpayer's income. DOR states that the overpayment on the first assessment was $3,932.18 and the overpayment on the second assessment was $7,272.72. DOR states it is prohibited by §71.75(5), Wis. Stats. from refunding the overpayments on the original assessments because no refund was claimed within the prescribed two-year period.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one with the state should assume and pay based on equitable principles.

**2. Robert F. Munson** of Oregon, Wisconsin claims $550.00 for unreimbursed medical expenses related to a slip and fall at the Hill Farms State Office Building. The claimant works in the cafeteria in the building. He states that he left work at 3:45 on 1/10/14 and exited out the west end of the building. He states that there was ice on the landing in front of the steps leading to the parking lot and that his feet went out from under him due to the icy conditions. The claimant fell onto the steps, hitting his hip, back, and head. A nearby employee came to his assistance and called an ambulance. The claimant states that due to a prior head injury, he was required to go to the hospital for examination because he hit his head in the fall. The claimant notes that within minutes of his fall, the building manager arrived and began to salt the area. The claimant was transported to the hospital where he was treated and released. The claimant believes there is insufficient maintenance staff at Hill Farms to adequately monitor conditions at the building. He requests reimbursement for costs not covered by his medical insurance: $500 for the ambulance and $50 for his emergency room care.

DOA recommends denial of this claim. DOA, through its Division of Facilities Management, is responsible for maintaining the Hill Farms office complex. DOA notes that on the date of the incident, Madison had a high temperature of 36 degrees, a low temperature of 26 degrees, and received .16 inches of rain. DOA states that the daytime temperatures were well above freezing but that temperatures fell rapidly as the sun went down and surfaces began to freeze. The on-site building manager noted that it was still raining at the time of the accident and that he observed the salt he applied being washed away by the rain. DOA notes that in order to recover under Wisconsin's Safe Place Statute, a plaintiff must show that the unsafe condition was present for a long enough time for a vigilant owner to discover and resolve the problem. DOA notes that it began raining around 2:30 p.m. and that this incident occurred around 3:45 p.m. DOA states that due to the rapidly falling temperatures that afternoon, it is likely that the icy conditions lasted for less than an hour, an insufficient amount of time for the building manager to become aware of and remedy the conditions throughout the facility. DOA notes that, regardless of the number of maintenance staff at Hill Farms, it would have taken some time to salt all the walkways and entrances on the property had the staff been aware of icy conditions prior to the claimant's fall. Given the short period of time the icy conditions had been present, it is unlikely staff would have been able to salt all the walkways and entrances prior to this incident. DOA believes this incident was the unfortunate result of the combination of inclement weather and falling temperatures but that there was no negligence on the part of the state or its employees.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one with the state should assume and pay based on equitable principles. *[Member Murray not participating.]*

**3. Cheryl Neupert** of Lake Mills, Wisconsin claims $107,249.40 for damages related to an error made by an ETF employee when calculating the claimant's retirement annuity. In early 2013, the claimant requested and received a Retirement Benefit Estimate from ETF. The February 2013 estimate indicated the claimant had 13.41 years of eligible service and would receive $2,095 until age 62 and $1,005 after age 62 under the Life with 180 Payments Guaranteed Option with accelerated payments. The claimant met with an ETF Trust Fund Specialist and discussed her retirement options at length. Based on the information provided by ETF, the claimant made the decision to retire and selected the 180 Payments Guaranteed Option with accelerated payments. The claimant selected a retirement date of 6/8/13. In April 2013, the claimant received a Notice to Retirement Applicant from ETF, which did not show eligible years of service, but confirmed a gross monthly annuity amount of $2,095.95. The claimant began receiving this monthly amount on 7/1/13.

In late December 2013, almost seven months after her retirement, ETF sent the claimant a letter stating that they had computed her final annuity amount and that ETF had overpaid her by $3,816.13. The letter indicated that her original Benefit Estimate had been calculated using 22.41 years of service, instead of 13.41 years. The letter stated that the claimant's monthly annuity would be reduced to $1,515.48 per month, which represented the correct annuity amount ($1,537.06) plus an offset to recover the overpayment. The claimant contacted ETF in order to determine what had happened. On 1/9/14 ETF sent the

claimant a letter explaining how the error occurred. ETF stated that at the time her original Benefit Estimate was completed, system limitations required manual calculation of benefits for participants like the claimant, who had creditable service in more than four employment categories. During the manual calculations, an ETF employee misplaced a decimal point, using 9.95 years of service in one category instead of .95 years. The letter indicated that the original Benefit Estimate should have shown an annuity of $1,537.06 until age 62 and $406.48 after age 62.

The claimant again contacted ETF and requested they double-check her creditable years of service. ETF conducted a creditable service breakdown calculation and notified the claimant that her years of service had been reduced from 13.41 to 13.17. On 1/29/14 ETF sent the claimant an Annuity Correction Notice informing her that, due to the reduction in her years of service, she had been overpaid $3,910.37 and that her monthly annuity would be reduced to $1,500.12 (with the overpayment offset) or $1,522.26 (without the offset).

The claimant states that she followed ETF's process correctly, gathered the required information, and made a critical, life-changing decision based on the financial information provided by ETF professionals. The claimant notes that the years of service shown on her original Benefit Estimate were correct and that she reviewed and discussed this document with ETF staff for an hour without any mention of a possible error. The claimant states that she would not have retired had ETF provided her with the correct annuity amounts. The claimant also notes that ETF's error caused a significant change to her annuity amount—an over 30% monthly decrease until age 62 and an almost 60% decrease after age 62, resulting in a loss of tens of thousands of dollars over her lifetime. The claimant believes that an employee error of this magnitude constitutes negligence on the part of the employee and that an employer is responsible for the errors of its employee. The clamant believes that she should be compensated for the overpayment and the reduction to her annuity caused by ETF's error based on equitable principles.

ETF recommends denial of this claim. Wis. Stats. §40.03(2)(c), provides that ETF: "[s]hall process all applications for annuities and benefits and may initiate payment based upon estimated amounts, when the applicant is determined to be eligible, subject to correction upon final determination of the amount of the annuity or benefit." ETF states that the Notice to Retirement sent to the claimant in April 2013, clearly stated that the benefit amounts were based on an estimated calculation and that the claimant would receive a final calculation notice at a later date. Pursuant to §40.03(2)(c), Stats., ETF initiated the claimant's benefit payments in July 2013, based on this estimated calculation. Wis. Stats. §40.03(2)(w), states: "If the secretary determines that an otherwise eligible participant has unintentionally forfeited or otherwise involuntarily ceased to be eligible for any benefit provided under this chapter principally because of an error in administration by the department, may order the correction of the error to prevent inequity…" ETF states that it is prohibited from paying the claimant the incorrectly calculated benefit amount provided in her estimate because she is not entitled to receive that amount.

ETF notes that in April 2013, it also sent the claimant her January 1, 2013 Annual Statement of Benefits, which listed her retirement benefit projections if she chose to retire in 2013. The benefit amounts in that statement were $426 per month for a Money Purchase benefit and $633 per month for a Formula benefit. ETF notes that both of these amounts are significantly less than the estimates ETF provided earlier, however, the claimant never contacted ETF regarding this discrepancy.

ETF states that, while it is very regrettable that a clerical error occurred when calculating the claimant's estimated monthly benefit amount, the final calculation accurately reflects her years of service and the benefit she is entitled to receive. Pursuant to Wis. Admin. Code ETF 11.03(2)(a) and (b), ETF "has no equity powers, except as provided under s. 40.03(1)(a), Stats., to correct inequity in the computation of the amount of an annuity or death benefit resulting from a participant's combination of full-time and part-time service, a change in annual earnings period during the high years of earnings or the previous receipt and termination of an annuity." In addition: "Erroneous or mistaken advice or negligence in performance of a duty may not be the basis for granting a right or benefit to an appellant under ch. 40, Stats."

Finally, ETF reminds the board that the Attorney General has issued an official opinion that the Claims Board lacks authority to order payment from the Public Employee Trust Fund including the ETF appropriations in §20.515, Stats. 74 Op. Atty. Gen 193, 196 (1985).

The Board concludes the calculation errors and misinformation provided to Ms. Neupert prior to her making her retirement decision are grave. The fact the Ms. Neupert's retirement estimates require manual calculation by ETF is quite concerning given the volume of information and importance of such information. Despite the fact that Ms. Neupert's annuity calculations did require hand calculation, we find that ETF has an obligation to ensure the accuracy of such calculations. Moreover, while a small error or even single error could perhaps be excused, ETF erred in its calculations three separate times (once in the estimate, once in the annual statement, and then again in the notice of final retirement annuity calculation) resulting in a greater than 25% change in benefits. Given the repeated and significant errors by ETF in the context of such an important and life changing decision, the Board concludes that this claim should be paid in the reduced amount of $10,000.00 based on equitable principles. The Board further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Claims Board appropriation §20.505(1)(d), Stats.

**4. Amanda Faessler** of Cross Plains, Wisconsin claims $749.99 for value of a personal cell phone stolen from her work area at the Wisconsin Supreme Court (CCAP) office in the Tenney Building. The claimant states that on 1/3/14, she

left her work area to attend a meeting elsewhere in the office and that while she was away from her desk an unknown individual stole her personal cell phone, which she had left on the surface of her desk. The claimant reported the theft to the Capitol Police. A Capitol Police review of the security video from the building verified that an unknown person entered the building and was subsequently seen by two staff members on the same floor as the CCAP offices. The claimant states that prior to this incident, several requests had been made by CCAP staff for additional security, including specific requests in February 2013 that stairwell access be changed to require a key card, but that no action was taken. The claimant notes that after the theft of her phone, the elevators and stairwells were changed to require a key card, "No Trespassing" signs were posted, and daily security walkthroughs were added. The claimant believes these changes show that security was inadequate prior to the theft. The claimant believes that if these security measures had been implemented when first requested by staff, it would have been unlikely for this theft to occur. The claimant states that she uses her personal phone at work for calendaring purposes. She states that the only secure space in her work area is a lockable filing cabinet, for which she has never been provided a key. The claimant requests reimbursement for the replacement value of her phone. She notes that she is not eligible for a discounted price under her current cell phone contract. She also notes that her homeowner's insurance policy does not cover cell phones.

The Director of State Courts (DSC) recommends denial of this claim. DSC states that the state is not responsible for insuring employee personal property. DSC notes that the claimant is not required to have access to a personal cell phone as part of her job responsibilities. DSC notes that its offices are open to the public from 7 a.m. to 5 p.m. and that there have been no reports of thefts or other crimes in the DSC offices for over five years. DSC believes that the claimant should have taken minimal precautions to protect her personal property, rather than leaving the phone in plain sight on her desk. DSC states that until this claim was filed, the claimant had never notified her supervisor that she did not have a key to her filing cabinet. (A replacement key has since been ordered.) DSC believes there has been no showing of negligence on the part of the state and that there are no equitable reasons for payment 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 with the state should assume and pay based on equitable principles.

**5. Catherine Nelsen** of Milwaukee, Wisconsin claims $500.00 for reimbursement of her insurance deductible. On 5/14/14 the claimant was driving northeast on Appleton Avenue in Milwaukee, WI. As she entered the curve under the Hwy. 41/45 bridge, she encountered a large piece of concrete in the middle of the road. Due to the proximity of other traffic she was unable to swerve to avoid hitting the concrete. The claimant states that her vehicle was totaled by the impact with the concrete. At the time of the accident, the claimant believed the concrete had fallen from the underside of the Hwy. 41/45 bridge. She now believes the concrete most likely fell from a dump truck or other vehicle. The claimant states that this large piece of concrete in the middle of the road created a very dangerous situation and she requests reimbursement in the amount of her insurance deductible.

DOT recommends denial of this claim. After receiving DOT's response disproving her initial allegation that the concrete fell from underneath the Hwy. 41/45 bridge, the claimant now alleges that the concrete fell from the back of another vehicle. DOT points to the fact that the claimant has provided no evidence of negligence on the part of any DOT or state employee. DOT notes that the roadway where this incident occurred is under a maintenance contract with the Milwaukee County Highway Department. DOT believes there is no evidence of liability on the part of the state and that the claimant should pursue her claim with Milwaukee County.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one with the state should assume and pay based on equitable principles.

**6. Maria Dominguez** of Madison, Wisconsin claims $6,525.26 for damage to her vehicle caused by a tree at Mendota Mental Health Institute (MMHI) on 6/18/14. The claimant is employed at MMHI. She states that the large oak tree next to the MMHI designated employee parking lot has been dripping sap and dropping limbs for several years. The claimant states that on 6/18/14 a large limb broke off of the tree and damaged several cars. The claimant states that she has since been informed that the tree will be taken down because it is unsafe. The claimant believes the tree should have been cut down several years ago and that if it had been, this damage would have been avoided. She requests reimbursement for the cost to repair her vehicle.

DHS recommends denial of this claim. DHS notes that the MMHI campus consists of 100+ acres and that the grounds include numerous trees of varying species, age, height, and girth. DHS states that between 6/16/14 and 6/18/14, Dane County and the surrounding area experienced severe adverse weather with extremely high winds and rain. A tornado warning was issued at approximately 8 a.m. on 6/18/14 and the National Weather Services reported that at least two tornadoes with estimated winds of 120 mph touched down in Dane County. DHS states that due to this severe weather, a number of trees on the MMHI campus suffered branch and limb breakage. DHS states that the branch that fell on the claimant's car broke off due to the high winds that hit the MMHI campus. DHS states that this oak tree was mature and had been inspected and pruned in November 2012. DHS states that at the time of the inspection, there was nothing notable about the condition of this tree and it was not identified as a hazard. In fact, the 2012 inspection indicated

that this tree was alive and healthy, showing vigorous foliage throughout the entire tree. DHS notes that while some twigs and branches may have occasionally fallen from the tree in the years leading up to the 6/18/14 incident, this is a natural occurrence and by no means indicated that the tree was in distress or a hazard. DHS points to the fact that there is no record of any written complaints about the tree going back to 1998. The tree has been inspected and cared for by a professionally certified arborist since 1999. DHS believes it exercised reasonable diligence and ordinary care in the pruning and maintenance of the trees on the MMHI campus. DHS points to case law which states that in order for an employer to be liable for an unsafe condition, it must have actual or constructive notice of it. DHS states that, although the tree has now been deemed unsafe due to the damage caused by the severe weather on 6/18/14, there was nothing between the November 2012 inspection and the severe weather incident that would have given notice to DHS that the tree was unsafe. DHS notes that tornadoes and tornado-like winds are common throughout Wisconsin and that such winds can reach a velocity that will break limbs and uproot trees. DHS believes that if the department or other government agencies are held liable for all damage cause by falling tree limbs, agencies would be forced to cut down large trees in public spaces to avoid the possible hazards caused by high winds. DHS believes the more appropriate standard is that agencies only be held liable if it can be proven they were negligent in the care and maintenance of a tree and/or had notice of an unsafe condition. DHS believes this accident, while unfortunate, was in no way caused by the negligence of DHS staff or other state employees. This was an "Act of God" caused by severe weather and the 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 with the state should assume and pay based on equitable principles.

**7. Anthony J. Machicote** of Portage, Wisconsin claims $75.01 for value of property allegedly lost or improperly destroyed by DOC personnel. In February 2013, the claimant was transferred from the Wisconsin Resource Center (WRC) to Columbia Correctional Institution (CCI). The claimant states that his property was properly inventoried by WRC staff but that when he arrived at CCI and was given his property a number of items were missing. The claimant states he contacted the property staff at CCI but received no reply. He states that he filed an inmate complaint, which was dismissed. He appealed the dismissal and submitted as evidence the outgoing WRC and incoming CCI property inventories, which he alleged clearly showed that he did not receive property sent by WRC. The claimant's appeal was denied. The claimant points to DOC policy, which states that the department is responsible for property lost while under the control of DOC staff. He requests reimbursement for his missing property.

DOC recommends denial of this claim. DOC states that the evidence provided by the claimant, at best, shows that the property in question was either properly destroyed consistent with the policies and procedures of the WRC and CCI, or was misplaced by WRC, CCI or a third-party carrier. (DOC notes that WRC is a Department of Health Services facility.) DOC believes the claimant has provided no evidence that DOC staff were negligent in the handling of his property. DOC believes the doctrine of Sovereign Immunity protects the state from any legal liability regarding this claim. DOC further believes there is no equitable basis for payment 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 with the state should assume and pay based on equitable principles. The Board continues to be perplexed as to why DOC continues to press a sovereign immunity defense in its responses to claims brought to this Board. Sovereign immunity is simply not a defense to claims brought to this Board. DOC would be better served dedicating more of its response addressing the facts presented as opposed to a legal defense that is inapposite. DOC's 1 ½ pages of boiler plate language on sovereign immunity does nothing aid the Board in making its decision.

**8. Oscar Garner** of Boscobel, Wisconsin claims $69.84 for the value of 5 books allegedly lost by DOC personnel in September 2013. The claimant was transferred from Waupun Correctional Facility (WCI) to the Wisconsin Secure Program Facility (WSPF). He states that when he left WCI he had 14 books but that when he arrived at WSPF, the outgoing property inventory from WCI indicated they had sent 12 books and the incoming inventory at WSPF showed receipt of only 9 books. The claimant filed an inmate complaint regarding the missing books but the complaint was denied. The clamant states that he did not have access to the books and that they therefore could only have been misplaced by DOC staff. The claimant disputes DOC's assertion that the discrepancy between the incoming and outgoing property inventories could be due to a difference in the way publications are counted at each institution. The claimant states that a book is clearly a publication and it is therefore unlikely that it would not be counted as such at each institution. The claimant requests reimbursement for the cost of his 5 missing books.

DOC believes the claimant has not met his burden to show that DOC staff negligently handled his property and therefore recommends denial of this claim. DOC states that the property inventories presented as evidence by the clamant, at best, show that the staff at each institution simply counted the publications differently. DOC believes the doctrine of Sovereign Immunity protects the state from any legal liability regarding this claim. DOC further believes there is no equitable basis for payment 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 with the state should assume and pay based on equitable principles. The Board continues to be perplexed as to why DOC continues to press a sovereign immunity defense in its responses to claims brought to this Board. Sovereign immunity is simply not a defense to claims brought to this Board. DOC would be better served dedicating more of its response addressing the facts presented as opposed to a legal defense that is inapposite. DOC's 1 ½ pages of boiler plate language on sovereign immunity does nothing aid the Board in making its decision.

**9. Jermaine McFarland** of Fox Lake, Wisconsin claims $237.21 for value of property allegedly lost, stolen, or improperly destroyed by DOC personnel. The claimant is an inmate at Fox Lake Correctional Institution (FLCI). He states that when he was sent to segregation on 12/29/12, his property was packed up by FLCI officers. The claimant notes that he did not have access to his property while in seg. The claimant states that he became aware that some of his property was missing when he was escorted to the seg property room on 1/4/13 and told that he had too much property and that some of it would have to be destroyed. The clamant states that he told the seg property officer, Officer Richter, that he believed some of his property was missing and that Officer Richter told the claimant that "was of no concern". The claimant states that Officer Richter told him to find out who packed his property and file an inmate complaint. The claimant states that he made several attempts to contact various FLCI staff to find out who packed his property. Because the 14-day time limit to file an inmate complaint was approaching, the claimant was forced to file his complaint before he was able to determine exactly what property was missing. The claimant states that when he was released from seg and again had access to his property, he immediately inventoried it and made a list of the missing items. He states he sent the list to Warden Clemments on 2/6/13 and that the Warden replied several days later that he had received the list and would respond through the inmate complaint system. On 2/18/13 the claimant's inmate complaint was denied because he had not provided sufficient evidence by failing to provide a list of the missing items. The clamant appealed the decision and his appeal was denied. The claimant notes that if he had not filed his complaint by 1/18/13, it would have been denied as being past the 14-day time limit. The claimant states that he submitted a list of the missing items and that Warden Clemments and the ICE staff ignored his submission and wrongly denied his complaint. The claimant alleges that there is an "epidemic" of property going missing at FLCI from inmates who are sent to seg and that 9 of 10 inmates sent to seg at FLCI lose property. The claimant further states that DOC's allegation that the doctrine of Sovereign Immunity protects DOC from liability in the matter is false. The claimant points to DOC 309(3) Wis. Admin. Code, which provides that DOC is responsible for repair or replacement of lost or damaged property caused by institution staff.

DOC recommends denial of this claim. DOC states that the claimant failed to provide a list of missing items when he filed his inmate complaint and that the complaint was denied for that reason. DOC believes the claimant has failed to provide any evidence that DOC staff is responsible for the missing property and that it is more likely that the claimant himself lost, traded, or had stolen the property over the years. DOC believes the doctrine of Sovereign Immunity protects the state from any legal liability regarding this claim. DOC further believes there is no equitable basis for payment 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 with the state should assume and pay based on equitable principles. The Board continues to be perplexed as to why DOC continues to press a sovereign immunity defense in its responses to claims brought to this Board. Sovereign immunity is simply not a defense to claims brought to this Board. DOC would be better served dedicating more of its response addressing the facts presented as opposed to a legal defense that is inapposite. DOC's 1 ½ pages of boiler plate language on sovereign immunity does nothing aid the Board in making its decision.

***The Board concludes:***

That the following identified claimants are denied:

Stanley Johnson
Robert F. Munson
Amanda Faessler
Catherine Nelsen
Maria Dominguez
Anthony J. Machicote
Oscar Garner
Jermaine McFarland

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

Cheryl Neupert $10,000.00 § 20.505 (1)(d), Wis. Stats.

Dated at Madison, Wisconsin this 17th day of October, 2014.

*COREY FINKELMEYER*
Chair, Representative of the Attorney General
*GREGORY D. MURRAY*
Secretary, Representative of the Secretary of Administration
*BRIAN HAGEDORN*
Representative of the Governor
*PATRICIA STRACHOTA*
Assembly Finance Committee