

**WISCONSIN DEPARTMENT OF
ADMINISTRATION****CORRESPONDENCE/MEMORANDUM
OFFICE OF LEGAL COUNSEL**

DATE: November 2, 2007

TO: Patricia Reardon, Paralegal
State Claims Board

FROM: Mark Saunders, Legal Counsel *MS*
Department of Administration

RE: Claim of Georgia Thompson, Claim No. 2007-024-DOA

Department of Administration (DOA) employee Georgia Thompson filed a claim with the State Claims Board on June 13, 2007, seeking reimbursement for out-of-pocket expenses related to her criminal prosecution in federal court. Her claim breaks down into five categories, including legal defense (\$220,592.62), fines (\$4,000), assessments (\$200), and taxes if attorney's fees are reimbursed (\$133,255), and preparation of the claim (\$4,000), for a total of \$359,047.62.

The Department of Administration had no role in the investigation and ultimate filing of the federal criminal charges brought against Ms. Thompson. Nonetheless, her claim was filed with DOA because her actions upon which the charges were based involved the discharge of her duties as a state employee procuring vendors for the Department's travel consolidation program in 2004 and 2005. Also, the claim was brought in equity under section 16.007(5), Wis., Stats., rather than under a theory of negligence on the part of a state agency or state official.

The Department of Administration supports Ms. Thompson's claim for reimbursement of out-of-pocket expenses related to her criminal conviction, and recommends payment of the claim. At no time during the travel consolidation vendor procurement, nor the subsequent criminal investigation, trial, incarceration, or appeal, has the Department alleged that Ms. Thompson acted outside the scope of her employment or abused the discretion afforded her by virtue of her former position with DOA's State Bureau of Procurement.

Section 895.46(1), Stats., allows reimbursement for reasonable attorney's fees and defense costs for a state employee while acting in their official capacity and within their scope of employment in certain situations when the State does not provide legal counsel for the employee. However, as Ms. Thompson addresses in her Claim, this statute provides her no relief because the term "litigation" as used therein refers to civil litigation and not criminal prosecution. See *Bablitch v. Lincoln*.

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County, 82 Wis.2d 574, 582, 263 N.W.2d 218 (1978). There is no statutory provision allowing reimbursement for legal defense costs to a state employee charged with and subsequently acquitted of *criminal* charges based upon actions within their scope of employment and lawful discretion. However, DOA accepts Ms. Thompson's assertion that neither the Claims Board statutes (Chapter 775) nor the *Bablitch* case itself precludes her reimbursement under equitable principles. (See Ms. Thompson's claim, section E).

Ms. Thompson has been, and remains, a hard-working, dedicated, and respected employee of the Department of Administration. She has suffered many tribulations through the criminal investigation and subsequent trial, conviction, and federal imprisonment, for a crime that she did not commit. Ultimately, the United States Seventh Circuit Court of Appeals took the unusual step at her appeal hearing to call for her immediate release from incarceration, precipitously filing a judgment of acquittal, and emphatically noting that the evidence used to convict her was "beyond thin."

In the *Bablitch* case, the Court stated that "it is sound public policy to assist a public officer in the defense of actions brought against him in his official capacity." State employees from all agencies, the legislature, and the court system routinely exercise discretion inherent in their public positions, making good faith decisions affecting the conduct of state business and its citizens. The Department of Administration does not believe these employees, acting in good faith and exercising their best judgment based upon established law and policy, should have to look over their shoulders in fear of facing criminal charges for making the "wrong" decision, and when acquitted, being barred from receiving appropriate restitution.

For the above-stated reasons, the Department recommends that Ms. Thompson's claim be granted.