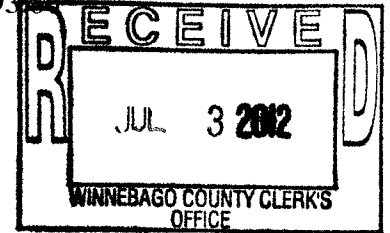


**NOTICE OF CIRCUMSTANCES
AND CLAIM PURSUANT TO WIS. STATS. § 893.80**

TO:

Susan T. Ertmer
Winnebago County Clerk
415 Jackson Street
Oshkosh, WI 54903

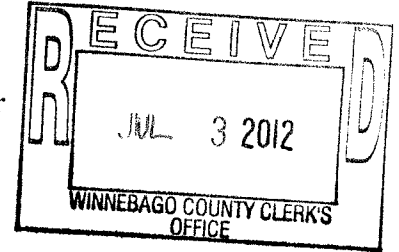


Winnebago County Highway Department Employees:

Mark R. Dorschner
Henry T. Mitchell

CLAIMANTS:

Ralph W. Schwister and Cynthia A. Schwister
P.O. Box 358
Winneconne, WI 54986



Notice of Circumstances of Claim

1. This claim arises from an incident on May 10, 2012, at approximately 12:49 p.m. in the City of Winneconne, County of Winnebago, Wisconsin. At that time and place, the following Winnebago County Highway Department workers were making welding repairs on the Main Street/HY 116 Bridge in Winneconne, which spans the Wolf River:

- a. **Mark R. Dorschner, 515 Congress Avenue, Oshkosh, WI 54901**
- b. **Henry T. Mitchell, 8893 Royer Road, Larsen, WI 54947**
- c. **Unknown supervisor for Mr. Dorschner and Mr. Mitchell**

2. At about 12:00 p.m. on May 10, 2012, Ralph Schwister was at a boat landing north of the bridge to pick up his pontoon boat which was being delivered to him from storage. Upon delivery of his boat, Mr. Schwister travelled south on the Wolf River to dock his boat at his residence which is just south of the bridge. At about 12:47 p.m. Mr. Schwister's boat began travelling under the bridge. As Mr. Schwister's boat cleared the bridge, he noticed intense heat coming from behind him near the back of the boat. Mr. Schwister turned and saw that the pontoon cover stored in the rear of the boat was in flames. He tried to extinguish the flames, but

they grew too rapidly. He suffered burns to his legs, back, and neck. Mr. Schwister was forced to abandon his boat as it was engulfed in flames and totally destroyed.

3. Witnesses to the fire confirmed that the Winnebago County Highway Department workers named above began welding repairs just before Mr. Schwister's boat began travelling under the bridge. The fire was caused by hot slag and/or sparks from the welding dropping on Mr. Schwister's boat as he travelled under the bridge.

4. **NOTICE IS HEREBY GIVEN that any photographs and records of any kind in the control and/or possession of Mr. Dorschner, Mr. Mitchell, or Winnebago County agents or employees, including but not limited to cell phone photographs and cell phone memory cards in the possession of Mr. Dorschner or Mr. Mitchell must be preserved for evidentiary purposes. Any loss or destruction of this evidence could result in sanctions or judgments against those parties.**

NOTICE OF CLAIM

1. Claimants refer to and incorporate paragraphs 1-4 above of the Notice of Circumstances of the Claim as if fully set forth.

2. Claimants, Ralph Schwister and Cynthia Schwister, by their attorneys, Habush Habush & Rottier S.C.[®], hereby present a claim against Winnebago County, Wisconsin, for injuries caused by negligence and violations of safety codes and standards applicable to the welding industry including, but not limited to:

- a. Failure to provide warnings of the welding operation to those travelling within the zone of danger as they approached the bridge.
- b. Failing to provide a person to direct traffic away from the dangers associated with falling slag and sparks and to act as a fire spotter.
- c. Failing to refrain from active welding as the occasional boat travelled under the bridge, so as to avoid fire hazards.

- d. Failing to provide a fire resistant material beneath the welding area to prevent fires.
- e. Failing to exercise reasonable care for the presence of boats approaching and travelling under the bridge while they were welding.

3. As a result of the negligence of the Winnebago County employees, the claimants suffered the following injury and related damages:

- a. Burns on Mr. Schwister's left lower leg, his back, and his neck.
- b. Smoke inhalation and damage to his lung and smoke damage to his eyes.
- c. Aggravation of Mr. Schwister's service related post-traumatic stress disorder.
- d. Pain, suffering, and disability to Mr. Schwister's past and likely to suffer in the future in an amount that is far in excess of Fifty Thousand Dollars (\$50,000.00).
- e. The need for medical care and expenses including: ambulance transport by Oshkosh Ambulance; Emergency Room treatment at Aurora Medical Center; follow-up treatment at V.A. Medical Center in Appleton, WI; the need for chest x-rays and medications, and the need for future medical care which exceeds Ten Thousand Dollars (\$10,000.00).
- f. The total destruction of his Thirty Thousand Dollars (\$30,000.00) pontoon boat.
- g. Mrs. Schwister has a claim for loss of society and companionship which is in excess of Ten Thousand Dollars (\$10,000.00).

4. DEMAND FOR SETTLEMENT OF CLAIM

- a. Claimant, Ralph Schwister, demands payment of the statutory limits of liability of Fifty Thousand Dollars (**\$50,000.00**) for a full and final settlement of his personal injury claim against Winnebago County and its employees arising from the fire described above.
- b. Claimant, Cynthia Schwister, demands payment of Ten Thousand Dollars (**\$10,000.00**) for her claim arising from the injuries to her husband as a result of the fire described above.

- c. Claimant, Ralph Schwister, demands payment of Thirty Thousand Dollars (\$30,000.00) for damages arising from the destruction of his boat as described above.

Dated at Appleton, Wisconsin, this 28 day of June 2012.

HABUSH HABUSH & ROTTIER S.C.[®]

By: 

Joseph M. Troy

State Bar # 1005544

Attorney for Ralph and Cynthia Schwister

PLEASE SERVE NOTICE WITH
REGARD TO THIS NOTICE ON:

HABUSH HABUSH & ROTTIER S.C.[®]
4100 Boardwalk Court
Appleton, WI 54914-7531

OUTAGAMIE COUNTY, WISCONSIN