

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 18, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-0227

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**BANK OF HOMEWOOD FOR THE BENEFIT OF NATIONAL
TIRE SERVICES, INC.,**

PLAINTIFF-RESPONDENT,

v.

STATE OF WISCONSIN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
MARK A. FRANKEL, Judge. *Reversed and cause remanded with directions.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. The State appeals from an order denying its motion to dismiss a lawsuit commenced by the Bank of Homewood.¹ We conclude that

¹ We granted the State's petition for leave to appeal the trial court's nonfinal order.

the bank failed to obtain personal jurisdiction over the State, and we therefore reverse.

¶2 In 1997, the bank filed a claim with the Wisconsin Claims Board, alleging a debt owed to its client, National Tire Services, Inc.² In October 1997, the board issued a report recommending against the claim. The report was forwarded to the Wisconsin Senate for filing and publication and the report was subsequently published in the WISCONSIN STATE JOURNAL. The bank took no further action on its claim, such as having legislation introduced on its behalf, until filing this action several months later. Nor did the legislature take any further action on the claim.

¶3 Section 775.01, STATS., provides that the State waives its sovereign immunity and allows claimants to commence suit “[u]pon the refusal of the legislature to allow a claim.” Section 16.007(1), STATS., provides that “[n]o claim or bill relating to such a claim shall be considered by the legislature until a recommendation thereon has been made by the claims board.”

¶4 Here, the trial court found that after the board communicated its recommendation to the legislature, that body’s failure to act constituted a sufficient refusal of the claim, under § 775.01, STATS., to allow the action to proceed. However, we recently ruled that § 775.01 requires that the claimant have a legislator submit a private bill on its behalf, with immunity waived only after the legislature refuses to pass it. *See Brown v. State*, No. 98-2662, slip op. at 11-12 (Wis. Ct. App. Sept. 2, 1999, ordered published Oct. 25, 1999). That resolves the

² The bank based its claim on a perfected security interest in National Tire’s accounts receivable.

matter and requires reversal of the trial court's order. The State remained immune in this proceeding. Accordingly, we reverse and remand with directions to dismiss the bank's claim.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

