



STATE OF WISCONSIN
Department of Employee Trust Funds
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SECRETARY

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CORRESPONDENCE MEMORANDUM

DATE: August 24, 2011
TO: Employee Trust Funds Board
Teachers Retirement Board
Wisconsin Retirement Board
FROM: David H. Nispel, General Counsel
SUBJECT: Status of Pending Legal Cases

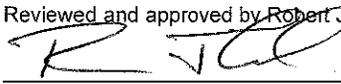
This memo is for informational purposes only. No Board action is required.

This memorandum is presented to inform board members about the status of pending legal cases involving the Department of Employee Trust Funds (ETF) and the various retirement boards. In order to maintain confidentiality regarding our Wisconsin Retirement System members, the names of the parties and case numbers are not identified in this memorandum.

The sole purpose of this memorandum is to inform board members of litigation in which the boards and ETF are parties, not to provide legal advice concerning the cases listed. Each of the cases is being handled by an assistant attorney general from the Department of Justice. If you have any questions about a particular case, I will be able to provide you with the name of the attorney handling the case.

As of August 24, 2011, there is only one case involving any of the retirement boards:

Circuit Court Case (1)
Employee Trust Funds Board is a Party 1

Reviewed and approved by Robert J. Conlin, Deputy Secretary.

Signature _____ Date 8/30/2011

| Board | Mtg Date | Item # |
|-------|----------|--------|
| JI | 9.15.11 | 5E |

CIRCUIT COURT CASE

Case No. 1: ETF Board is a Party

Issue – The ETF Board affirmed ETF’s determination concluding that a \$25,000 payment made to the plaintiff was not earnings and the \$25,000, even if it was earnings, should not be attributed to the 2004-2005 fiscal year.

Summary – Plaintiff asserts that the Board’s final decision:

- Erroneously interpreted a provision of law in finding that the \$25,000 paid to plaintiff did not constitute earnings under Wis. Stats. § 40.02(22); and in finding that the payment was excluded under Wis. Stats. § 40.02(22)(b)8. and Wis. Stats. § 40.02(22)(10).
- Erroneously interpreted a provision of law in concluding that, under Wis. Stats. § 40.02(22)(a), bonus payments are reported as received in the year in which they are awarded.
- Finding that the contractual language in the Amended Contract indicated that the \$25,000 payment to the plaintiff was not a bonus or raise is not supported by substantial evidence in the record and is contrary to the uncontroverted admissible evidence of record.

Status – A briefing schedule was issued. Plaintiff’s brief was filed on July 5, 2011. ETF’s brief was filed on August 16, 2011. Reply brief will be filed in September.

Attorney – DOJ attorney

I will be available at the September 15, 2011, Board meeting to answer questions.