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Correspondence Memorandum

Date: March 1, 2021
To: Employee Trust Funds Board
From: Dan Hayes, Attorney
 Office of Legal Services
Subject: Status of Pending Legal Cases

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

This memorandum is presented quarterly to inform board members about the status of pending or recently concluded legal cases involving the Department of Employee Trust Funds (ETF) and/or the ETF Board.

The purpose of the memorandum is to inform board members of litigation in which the Board and/or ETF are parties, not to provide legal advice concerning the cases listed. An assistant attorney general from the Department of Justice (DOJ) represents ETF and/or the Board in any litigation in court. If there are questions about a case, we will provide you with the name of the attorney handling it.

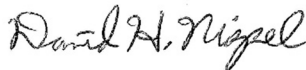
As of March 1, 2021, there are three cases that involve ETF and/or the Board.

Case 1

Issue – Whether a software vendor that ETF hired to design and build a new benefits administration system breached its contract with ETF.

Summary – In April 2018, ETF partially terminated its contract with the vendor. In March 2019, ETF filed a lawsuit in Dane County Circuit Court alleging breach of contract and breach of the duty of good faith and fair dealing against a vendor involved in ETF’s modernization effort and new benefits administration system. The vendor filed a counterclaim in June 2019.

Status – Discovery is ongoing. Each side is limited to 20 depositions, many of which will occur throughout 2021. The DOJ and ETF are reviewing documents provided in response to discovery demands and are also producing documents demanded by the other side. Lists of non-expert witnesses are due in June and expert witness lists are due in November 2021. A jury trial is scheduled for June 6-June 30, 2022.

Reviewed and approved by David Nispel, General Counsel,
 Office of Legal Services

 Electronically Signed 3/12/21

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ETF	3.25.21	6I

Attorney – DOJ attorneys.

Case 2

Issue – Whether a WRS member relied on misinformation from an ETF employee when deciding the timing of his retirement, denying a right to which he was entitled without due process of law.

Summary – In June 2020, a retired WRS member filed a lawsuit in the United States District Court for the Western District of Wisconsin against an ETF employee related to alleged actions taken within the scope of employment. The member alleges that he received misinformation that caused him to choose a retirement date to his detriment.

Status – The case is in the early stages of litigation. The DOJ filed a motion to dismiss the case in October. Briefing on the motion was completed in November, and the parties are awaiting a decision from the court. In addition, a deposition of the employee is tentatively set for May 5, 2021.

Attorney – DOJ attorney.

Case 3

Issue – Whether a Final Decision of the Employee Trust Funds Board in a benefit calculation appeal was correct under the law (Appeal 2019-005-ETF).

Summary – In December 2020, a WRS member filed for Judicial Review of the Board's decision in Dane County Circuit Court, using a writ procedure. The action challenges the ETF Board's Final Decision, which held that ETF properly applied Wis. Stat. § 40.23(2m)(e) to the member's retirement annuity estimate by using a formula factor of 1.6% rather than 1.765%.

The member is an alternative payee. At the time of the divorce decree, the formula factor was 1.6%. Subsequently, the Legislature enacted a law which increased the formula factor to 1.765%. The Act provided that it first applied to the calculation of retirement benefits for individuals who were "participating employees" in the WRS on January 1, 2000. The board found that the member was not a "participating employee" on that date.

Status - The DOJ filed a motion to quash the writ and dismiss the action, alleging that it was not properly commenced. The member countered with a motion to amend the writ. The motions are currently being briefed, and a hearing on them is scheduled for April 14, 2021.

Attorney – DOJ attorneys.

Staff will be available at the Board meeting to answer any questions.