



STATE OF WISCONSIN
Department of Employee Trust Funds
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CORRESPONDENCE MEMORANDUM

DATE: May 24, 2013

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 quarterly 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 have not been identified in the memorandum.

The sole purpose of the memorandum is to inform Board members of litigation in which the Boards and/or ETF are parties, not to provide legal advice concerning the cases listed. If there are any questions about a case listed in a memorandum, I will provide you with the name of the attorney handling the case.

As of May 24, 2013, there are three cases pending in the courts that involve the various retirement boards and ETF.

Wisconsin Circuit Court Cases:

Case No. 1:

Issue – Duty disability overpayment due to earnings received by the member.

Summary – ETF issued a determination that there was an overpayment of benefits paid to the member following receipt of an earnings report from the employer. The administrative law judge and the Wisconsin Retirement Board affirmed the determination. After the Board denied the member's petition for rehearing, the member filed an appeal in circuit court.

Reviewed and approved by Robert J. Marchant, Deputy Secretary

Electronically signed 5/31/13

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JM	6.20.13	4D

Status – The court upheld the Final Decision of the Wisconsin Retirement Board. The member did not file in the Court of Appeals. The case is closed.

Attorney – DOJ attorney.

Case No. 2:

Issue – Which party is entitled under the applicable law to the retirement death benefits and life insurance of the deceased WRS member.

Summary – The wife and sister of the deceased are involved in litigation to determine who is legally entitled to the life insurance and retirement death benefits. ETF was named as a defendant in an effort to prevent the death benefits from being paid. ETF informed the parties and the court that no payments will be made until the case is resolved.

Status – The parties have been unable to reach a settlement. The trial is scheduled for October 15-17, 2013.

Attorney – DOJ attorney.

Case No. 3:

Issues – 1) Whether the ETF Board must adjust the date each petitioner should have been reported as participating employees; 2) whether the seven year statute of limitation was applicable to the petitioners; and 3) whether the ETF Board had the authority to require the employer to pay the employee contribution for the petitioners.

Summary – A group of employees appealed an employer's determination that they were independent contractors and, as such, unable to participate in the WRS. The Administrative Law Judge and ETF Board found that the employees were participating employees in the WRS. However, the Board also determined that the employees must pay their employee contribution for the time period prior to the effective date of Act 10 and that the seven year statute of limitations applied and barred WRS participation before the seven year period prior to the appeals.

Status – A motion to dismiss pending
Final briefs on the motion are due June 28, 2013.

Attorney – DOJ attorney.

I will be available at the June 20, 2013, Board meeting to answer questions.