



STATE OF WISCONSIN
Department of Employee Trust Funds
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CORRESPONDENCE MEMORANDUM

DATE: November 8, 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 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 particular case, I will provide you with the name of the attorney handling it.

As of November 8, 2013, there are two cases pending in the courts that involve the various retirement boards and ETF.

Wisconsin Circuit Court Cases:

Case No. 1:

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

Reviewed and approved by Robert J. Marchant, Deputy Secretary

Electronically signed 11/18/13

Board	Mtg Date	Item #
JM	12.5.13	4F

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, which was previously set for mid-October, has been rescheduled for March 31 – April 4, 2013.

Attorney – DOJ attorney.

Case No. 2:

Issues – 1) Whether the ETF Board must adjust the date each petitioner should have been reported as a participating employee; 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 and a motion to enlarge the time to commence the action are pending. Oral arguments on the motions were heard on September 30, 2013. Related briefing is in progress with the final brief on motions due November 8, 2013.

Attorney – DOJ attorney.

I will be available at the December 5, 2013, Board meeting to answer questions.