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Department of Employee Trust Funds  
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## CORRESPONDENCE MEMORANDUM

**DATE:** November 6, 2014

**TO:** Employee Trust Funds Board  
Teachers Retirement Board  
Wisconsin Retirement Board

**FROM:** David H. Nispel, General Counsel  
Dan Hayes, Attorney

**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 Wisconsin Retirement System (WRS) member confidentiality, the names of the parties and case numbers are not identified in this 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, we will provide you with the name of the attorney handling it.

As of November 6, 2014, there is one case that was recently concluded in circuit court and one in the Court of Appeals that involve the various retirement boards and ETF.

### Case No. 1:

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

Reviewed and approved by Robert J. Conlin, Secretary

Electronically signed 11/12/14

Board	Mtg Date	Item #
JM	12.11.14	6D

## Status of Legal Pending Cases

November 6, 2014

Page 2

Status – On October 8, 2014, the judge issued a final judgment. It orders the establishment of two trusts to be funded with life insurance proceeds: 1) \$110,000 educational trust for the wife, and 2) \$100,000 educational and medical trust for the daughter of the sister. All remaining life insurance proceeds and the deceased's entire WRS retirement account were awarded to the sister as a survivor. The deadline to appeal the judgment is November 22, 2014.

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 2011 Wisconsin 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 – The case was dismissed by the Circuit Court on February 21, 2014 on procedural grounds and is now in the Wisconsin Court of Appeals. The issue of whether the case was properly dismissed will be decided based on briefs, without oral argument. The parties are currently awaiting a decision by the court.

Attorney – DOJ attorney.

Staff will be available at the December 11, 2014, Board meeting to answer questions.