



State of Wisconsin  
Department of Employee Trust Funds  
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## Correspondence Memorandum

**Date:** February 24, 2017  
**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 or recently concluded legal cases involving the Department of Employee Trust Funds (ETF) and the three 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 February 24, 2017, there are two cases that involve the retirement boards or ETF.

### Case No. 1:

Issue – Whether an individual WRS member is eligible for duty disability benefits under s. 40.65 of the Wisconsin Statutes.

Summary – ETF denied a WRS member's claim for duty disability benefits because the employer failed to certify that the injury was duty-related. The member appealed the denial, and it was overturned by the Administrative Law Judge (ALJ). The employer appealed that decision to the Labor and Industry Review Commission (LIRC). LIRC

Reviewed and approved by Robert J. Conlin, Secretary

Electronically Signed 3/1/17

Board	Mtg Date	Item #
JM	3.23.17	4K

## Status of Pending Legal Cases

February 24, 2017

Page 2

overturned the ALJ's decision and reinstated the denial. On April 24, 2015, the member filed an action in Waukesha County Circuit Court challenging LIRC's decision. The complaint names the employer, LIRC and ETF as defendants. The Waukesha County Circuit Court ruled in favor of the employer and upheld the denial of duty disability benefits. On February 12, 2016, the member appealed the decision to the Wisconsin Court of Appeals.

Status – The parties have completed the process of filing legal briefs in the Court of Appeals. A decision is pending.

Attorney – DOJ attorney.

### **Case No. 2:**

Issue – Whether ETF erred in its determination that: 1) a member passed away in the same month as her duty disability effective date, so there is no benefit payable to the estate; and 2) in order for a death benefit to be payable to a surviving spouse or domestic partner, the member must have been married to the spouse or in a domestic partnership on her qualifying date, as determined by ETF.

Summary – On August 2, 2016, the surviving spouse of a member filed a Petition for Judicial Review in Dane County Circuit Court to appeal a final decision by the Wisconsin Retirement Board that upheld ETF's denial. Both ETF and the Board are respondents in the case.

Status – On January 30, 2017, the court denied the Petition for Judicial Review and affirmed the final decision of the Wisconsin Retirement Board. The member has until March 16, 2017, to file in the Wisconsin Court of Appeals.

Attorney – DOJ attorney.

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