

EMPLOYEES' RETIREMENT SYSTEM OF THE COUNTY OF MILWAUKEE
MINUTES OF THE JUNE 17, 2015 PENSION BOARD MEETING

1. Call to Order

The Chairman called the meeting to order at 8:30 a.m. at the Marcus Center for the Performing Arts, 929 North Water Street, Milwaukee, WI 53202.

2. Roll Call

Members Present

Laurie Braun (Vice Chair)
Dr. Brian Daugherty (Chairman)
Aimee Funck
Norb Gedemer
D.A. Leonard
Gregory Smith
Patricia Van Kampen
Vera Westphal

Members Excused

Others Present

Marian Ninneman, Director-Retirement Plan Services
Mark Grady, Deputy Corporation Counsel
Scott Manske, Comptroller
Jerry Heer, Director, Department of Audit
Vivian Aikin, CRC, ERS Sr. Pension Analyst
Tina Lausier, Fiscal Officer
Floyd Dukes, Artisan Partners
Lisa Sturm, Artisan Partners
Nicholas Bauer, Geneva Capital Management
W. Scott Priebe, Geneva Capital Management
Brett Christenson, Marquette Associates, Inc.
Ray Caprio, Marquette Associates, Inc.
Larry Langer, Buck Consultants
Paul R. Wilkinson, Buck Consultants
Steven Huff, Reinhart Boerner Van Deuren s.c.
Aaron Dekosky, Padway and Padway, Ltd.
Kevin Walker, Appellant
Kenya Walker, Appellant

3. Minutes—May 20, 2015 Pension Board Meetings

The Pension Board reviewed the minutes of the May 20, 2015 Pension Board meeting.

The Pension Board voted 7-0-1, with the Chairman abstaining, to approve the minutes of the May 20, 2015 Pension Board meeting. Motion by Mr. Leonard, seconded by Ms. Funck.

The Chairman stated that he abstained from the vote because he did not attend the May Pension Board meeting.

4. Investments

(a) Artisan Partners

Floyd Dukes and Lisa Sturm of Artisan Partners distributed a booklet containing information on the investment management services provided by Artisan Partners for ERS. Mr. Dukes introduced himself as a partner in Artisan's institutional group from the firm's Atlanta office.

Mr. Dukes first thanked ERS and the Board for its continued partnership with Artisan, noting that Artisan recognizes it is not always easy to maintain discipline during volatile market cycles. The 2014 year was an extremely difficult period for active managers to navigate the volatile equity markets. However, throughout this difficult period, Artisan has remained committed to its high quality investment philosophy and focus on its clients. Artisan Partners did underperform in 2014. However, the markets have steadily improved in the latter half of 2014 through the middle of 2015. A shift in focus on high quality growth stocks is beginning to take hold in the marketplace and Artisan is beginning to get its performance back on track.

Mr. Dukes then provided an organizational overview of the firm. Artisan offered a limited IPO in 2013, floating roughly 17% of the firm on the public markets as a mechanism to broaden the equity ownership within the firm. While Artisan's initial IPO has grown with secondaries over the last two years, there have been no significant changes from an organizational standpoint and all key personnel at Artisan remain in place. The existing employee partners maintain a 70% majority voting control in the firm and retain control of the overall direction of the business. While Artisan remains a Milwaukee-based firm, its global footprint has grown over the last 15 years. Roughly 13% of the firm's assets are currently domiciled outside of the U.S. and in addition to its London office, Artisan now has a formal presence in Australia and Canada. Artisan remains methodical and patient

with its growth as a firm, and ERS should not expect any meaningful changes in terms of how the portfolio is structured and managed going forward.

Total assets under management across all investment teams in the firm are approximately \$110 billion and, of that, the growth team is managing approximately \$26 billion. Artisan added two new investment teams over the last two years. Brian Krug, former manager of the Ivy High Income Fund, joined Artisan two years ago to manage Artisan's High Income Fund in its Kansas City office. Artisan also recently added Lewis Kaufman from Thornburg Asset Management. Mr. Kaufman is a very experienced investor and will manage Artisan's Developing World Fund which will be launched later this year. The Developing World Fund will be a corollary to Artisan's existing emerging markets strategy.

Mr. Dukes continued with an overview of Artisan's mid-cap growth investment team. The current U.S. mid-cap growth investment team is essentially the same team that has managed ERS's portfolio since inception. Matthew Kamm is the portfolio manager for Artisan's U.S. mid-cap growth portfolio. Although each portfolio has a manager, Artisan follows a team-based investment approach and draws upon the resources of a variety of talented investment professionals to deliver positive results. Cindy Mu, who joined Artisan three years ago as a research associate, was recently promoted to an analyst in the consumer space. In May 2015, Artisan added Vickram Mohan, as a research associate in the consumer space. Mr. Mohan came to Artisan from Evercore International Strategy & Investment in London. Together, Mr. Mohan and Ms. Mu will cover the consumer discretionary space. Pratik Patel, who was previously an analyst in the consumer space, has now become a generalist on the team. Mr. Patel also has prior experience in information technology. With his vast experience across a variety of different sectors, Artisan believes that Mr. Patel can add value to the team as a generalist in terms of special projects and unique stocks. Outside of the promotions and additions, there have been no departures or structural changes to the investment team.

Mr. Dukes next discussed the team's investment philosophy and process. Artisan's investment philosophy has remained unchanged since its inception with ERS over a decade ago. Artisan's approach to investing is simple but not necessarily easy to implement. Artisan's seeks to compound client assets at a high risk-adjusted rate of return by exposing the portfolio to growth, while mitigating and avoiding permanent capital losses. Artisan's investment process should deliver the additional benefits of positive compounding over time. However, in rapidly rising markets such as the

2014 market, this particular investment style will not typically outperform because Artisan takes little risk with its capital. However, Artisan's investment style does effectively offer downside protection in protracted periods when the markets are down 5% to 15%. Artisan adheres to a general philosophy of upside participation and downside protection over bull market cycles. The 2014 year was a difficult year for active managers as it marked the seventh year of an extended bull market cycle. However, in terms of compounding assets over time, Artisan has historically had consistent success while maintaining its investment process and focus on quality growth stocks.

Mr. Dukes then discussed performance as of May 31, 2015. The portfolio's one-year return is up at 13% net-of-fees versus the benchmark of 14.7%. The portfolio's one-year return reflects some of the 2014 underperformance. However, the portfolio's 13% upside participation or roughly 85% capture is very consistent with past performance. Artisan does not believe there is anything fundamentally wrong with its investment process and does not believe that they need to make any changes to their current process. When viewed over the last 12 month period, Artisan is very comfortable with the upside capture the portfolio has delivered. As the high-quality trend begins to return to the market, the portfolio is up at approximately 5% net-of-fees during the first quarter of 2015, versus the index of 5.8%. This positive trend in performance continues as the portfolio recently outperformed the benchmark in the early half of June 2015.

Mr. Dukes next discussed attribution analysis. Over the last three to four years, most of the secular growth has occurred in the areas of health care, information technology, consumer discretionary and industrials. Consequently, these are the sectors where the majority of capital remains allocated in the portfolio. Since October 2014, the portfolio's consumer discretionary sector has performed very well. Until the last few quarters, the majority of the portfolio's exposure to consumer discretionary was focused on high-end retailers such as Kate Spade, Michael Kors, Ralph Lauren and Coach. These high-end companies have historically grown their earnings overseas. As the non-U.S. markets have slowed, it has negatively impacted the revenues and earnings of these companies and negatively impacted returns in the portfolio over the last year. To compensate, Artisan has added some midmarket retailers to the portfolio, such as Chipotle and Ulta Salon. Such additions have helped balance Artisan's position in the consumer discretionary sector.

Mr. Dukes continued with a discussion of the health care sector. The sequencing of the human genome over a decade ago drove many new

therapies for diseases such as cancer and diabetes. As a result, the health care sector has been one of the most interesting areas of the portfolio. The top holding in the portfolio is Regeneron Pharmaceuticals, a leading eye care provider for treatment of wet macular degeneration. Although the health care sector has performed well in general, it did lose some ground in the first quarter of 2015 due to Artisan's focus on quality. One of the biggest frustrations for Artisan during the first quarter of 2015 has been the quick rise of small cap biotech stocks. Over the last year, there have been over 80 IPO's in small cap biotech stocks, which has dramatically affected both small and midcap stocks. The fact that Artisan did not own many of these small cap biotech stocks also negatively impacted performance in the first quarter of 2015. However, the run in small cap biotech stocks now appears to be normalizing, and the fact that Artisan still does not own these stocks is now proving beneficial to performance in the second quarter of 2015. When the high quality stocks Artisan favors recently declined in price, Artisan added to those positions.

Mr. Dukes concluded with a discussion of the information technology sector. There has been some weakness in the information technology sector in the second quarter of 2015, which is primarily related to Internet-related holdings in companies such as Twitter, Pandora and LinkedIn. These companies have all seen their subscriber adoption rates begin to slow for a variety of reasons. Artisan is in the midst of deep investigations into these companies, but still favors the way earnings are trending on many of the information technology stocks in the portfolio. Despite some of these temporary setbacks, Artisan continues to be pleased with the overall construction of the portfolio. The portfolio maintains a good balance between secular and cyclical growth and is currently well-positioned for the emergence of a high quality trend in the market. In terms of performance, Artisan realizes it has some ground to gain as a result of the 2014 underperformance. However, Artisan has been in this position before and knows from prior experience that the key to achieving positive long-term performance is maintaining discipline through volatile market cycles.

In response to a question from Ms. Van Kampen regarding the number of stocks eliminated in the portfolio over the last year, Mr. Dukes stated that Artisan eliminated twelve stocks from the portfolio last year. The majority of those stocks were in consumer discretionary, industrials and information technology.

Ms. Braun then commented that she is very pleased to hear that the portfolio's performance is beginning to rebound just as Artisan had predicted last October.

Mr. Smith echoed Ms. Braun's comments and also noted that while he greatly appreciates Mr. Dukes' vast expertise, because Artisan's mid-cap growth investment team is based in Milwaukee, he would like to hear from some of the Milwaukee personnel at Artisan's next presentation to the Pension Board. Mr. Dukes assured Mr. Smith that he will make that happen. Mr. Dukes also invited the Board members to attend one the Milwaukee team's daily office lunch meetings to experience Artisan's research process first-hand.

In response to a question from the Chairman regarding the currency risk in the portfolio, Mr. Dukes stated that the strong U.S. dollar has been a headwind for the portfolio. Despite that headwind, it has still been a fairly good earnings season for the majority of the companies in the portfolio. Artisan generally expects 75% to 80% of its companies to meet or beat earnings expectations in any given quarter and over the last quarter that figure rose to 85%. Foreign currency has without fail been the biggest headwind for consumer, technical and industrial sector companies. This has been a challenge for many underlying businesses in the portfolio, costing these companies anywhere from 5% to 8% in terms of top line.

(b) Geneva Capital

Nicholas Bauer and Scott Priebe of Geneva Capital Management distributed a booklet containing information on the investments managed by Geneva for ERS. Mr. Bauer introduced himself as Geneva's Head of Client Services and Consultant Relations and introduced Mr. Priebe as a Portfolio Manager.

Mr. Bauer first provided an update on Geneva's October 1, 2014 acquisition by London-based Henderson Global Investors. Geneva's primary reason for the acquisition resulted from a period of rapidly accelerating growth in the firm. The firm's rapid growth resulted in certain complexities to some of the non-core investment related areas of the firm in information technology, legal compliance and human resources. In late 2013, Geneva eventually determined that in order to adequately support the firm's rapid growth, they would have to make substantial investments to their business platform. After carefully studying the matter with their advisor, Geneva felt that their time would be better spent focusing on client relationships and portfolio management, as opposed to the business-side of managing the firm. As Geneva approaches the one-year anniversary of its acquisition, the integration in Human Resources has been fully and successfully implemented. The integration in information technology is expected to be completed within the next two months. Geneva has also added some additional legal compliance resources to the firm. Since the initial announcement of the acquisition in June 2014, no personnel have left the

firm. Geneva also added a client portfolio manager, Matt Pistorio to its investment team. Prior to the acquisition, the firm's peak total assets under management ("AUM") were approximately \$6.8 billion. Post-acquisition, the firm's total AUM has stabilized to \$4.8 billion as of March 31, 2015. Of that \$4.8 billion, \$4 billion is in Geneva's mid-cap growth strategy and the remaining amount is invested in Geneva's small-cap strategy.

Mr. Bauer continued by stating that beginning in the fourth quarter of 2015, Geneva will enter into a co-branding phase with Henderson Global and will brand itself as "Henderson Geneva Capital." The firm's co-branded name and logo will be carried throughout 2016, after which time, the Geneva name will be dropped and the firm will be branded as "Henderson Global Investors." The branding change is something that Geneva has known of since they entered into the acquisition agreement with Henderson in 2014. Although the firm's name and logo will change, Geneva's investment team and processes will remain unchanged. The investment team will remain based and managed in its current Milwaukee office.

Mr. Bauer concluded his remarks by expressing his gratitude to the Board for their continued support of Geneva during its acquisition phase, as well as maintaining support through the challenging market environment which has been in place since Geneva's July 2012 inception with ERS. Since 2012, Geneva has experienced a difficult period of relative underperformance, culminating with a change in control of the firm. The portfolio's performance has materially improved over the last year, coinciding with signs of a return to quality in the marketplace. As of today, Geneva's mid-cap growth strategy is in the 16th percentile relative to its peer group.

In response to a question from Ms. Van Kampen regarding post-acquisition marketing responsibilities at the firm, Mr. Bauer stated that Henderson Global will now take the responsibility of marketing from ERS's portfolio management team. ERS's portfolio team will remain unchanged and with its additional resources, Henderson will take over the firm's business development and marketing duties.

Mr. Priebe next discussed Geneva's investment philosophy in relation to performance. Geneva seeks to invest in high-quality companies with superior management teams. Geneva believes that investing in such high-quality companies leads to superior returns with below average risk over the market cycle. Geneva looks for quality by targeting companies with healthy historical and projected revenue/earnings growth. Geneva also seeks to invest in companies with characteristically strong financials and low leverage. Unfortunately, coinciding with ERS's 2012 inception with Geneva, a significant low-quality rally began to take hold in the market. As

a result of the extended low quality rally, Geneva underperformed the last half of 2012 through May 2013. When the Federal Reserve introduced the idea of tapering its quantitative easing program in May 2013, Geneva outperformed in May 2013 through October 2013 by 500 basis points. However, when tapering did not materialize, the low-quality aspects of the market continued to outperform throughout 2014. In general, 2012-2014 have been defined as low-quality years, as nonearning companies, with high leverage in the low rate environment significantly outperformed. Although there are still pockets of speculation, there has been a distinct shift in quality in the marketplace beginning in the middle of 2014. Investors are now targeting fundamentals and Geneva is beginning to outperform in the higher-quality market environment as Geneva previously articulated. If any significant turmoil should arise in the markets from issues surrounding the Greek economy or the Federal Reserve raising interest rates, Geneva tends to preserve capital well in down markets.

Mr. Priebe then discussed the portfolio's performance. Throughout the last twelve months, Geneva's performance has improved significantly from the last two years. As of June 16, 2015, the portfolio was up approximately 18.9% net-of-fees for the one-year period, versus 14.6% for the benchmark. Year-to-date, the portfolio is up 8.4% net-of-fees, versus the benchmark of 5.8%. Driven by strong fundamentals and earnings growth, the portfolio has outperformed eight of the last twelve months. A significant portion of the companies in the portfolio beat their earnings expectations and outperformed more than 90% of the year. Despite the positive returns, there has been a relatively significant headwind to performance in the healthcare sector, notably due to the rally in biotechnology stocks. Because Geneva requires its companies to have profits, they do not typically own these types of companies and, therefore, it has resulted in a headwind of approximately 140 basis points.

Mr. Priebe continued with a discussion of sector performance. As quality growth managers, Geneva finds attractive value in the consumer discretionary, healthcare, technology and producer durables sectors. Consequently, these four sectors in the portfolio have a high concentration of client assets. As of May 31, 2015, the number one contributor to the portfolio's performance is Manhattan Associates, Inc. Although Manhattan Associates is a technology company, its performance is mainly driven by consumer behavior and utilization of the Internet. Manhattan Associates provides omni-channel marketing solutions that allow smaller retailers to compete against market giants such as Amazon. Omni-channel marketing allows consumers to engage with a company via a brick-and-mortar store, online website, mobile application, social media or catalog. Other top

contributors that have been in the portfolio for over a decade include Cognizant Technology, O'Reilly Automotive and Fiserv Inc.

Detractors to performance include Chipotle Mexican Grill, Inc. which has been in the portfolio since 2010. Although Chipotle is a great company, their stock is down 19% due to a decline in same-store growth sales. Chipotle also recently experienced issues with some of their pork suppliers being non-compliant with its anti-biotic free meat policy. With disappointing sales, Tiffany & Co. was also a detractor to performance. However, Geneva likes having a higher-end brand in the portfolio because in the slowing world economy, the higher-end consumer has not suffered as much as the lower-end consumer. Tiffany has recently made some business adjustments by hiring a new design director and reducing its price points to appeal to a broader consumer base. While Tiffany's stock underwent a correction, Geneva increased their position. Tiffany has rebounded nicely and after earnings, Tiffany was up 15% in the first quarter of 2015.

Mr. Priebe concluded with a discussion of the rally in biotech stocks. Geneva has maintained its discipline through similar tech bubbles in the past and knows that something will inevitably trigger a collapse in the biotech market. There are recent signs that the biotech bubble is fragile and pricing could eventually lead to its collapse. The New York Attorney General is questioning some of the costs of the therapies offered by these biotech companies in a very limited market. Regardless of the tipping point, these bubbles do eventually collapse and Geneva will maintain its discipline by focusing on high quality companies. Once the biotech bubble is over, it will certainly have a tailwind effect on the portfolio's performance, as opposed to the headwind effect experienced today.

In response to a question from Mr. Christenson regarding a chart Geneva prepared on financial engineering in the bull market, Mr. Priebe stated that financial engineering is a boarder term that encompasses share repurchases. Financial engineering has been a key driver in the 2009-2015 bull market. With the rising influence of activist investors, companies are taking on significant amounts of debt to buy back stock. Virtually all of the low-quality gains in the market have been driven by debt-fueled financial engineering in the form of share repurchases, and mergers and acquisitions. Geneva believes that the trend and effectiveness of share repurchases will begin to abate with a market shift to higher quality stocks. As a result, the magnitude of share repurchases should start to reverse.

In response to a question from Mr. Smith regarding Geneva's recent acquisition and the resulting terms of employment contracts, Mr. Priebe stated that employment contracts are in place for five years with a two year

non-compete clause. Mr. Priebe added that he owns no individual company stock, but has invested the vast majority of the after-tax proceeds from the acquisition into the fund. All senior partners at Geneva will remain with the company for at least five years and Mr. Priebe indicated that he anticipates being with the company throughout the remainder of his career.

In response to a question from Ms. Braun regarding any concerns about Geneva's rebranding, Mr. Priebe stated that Geneva did not take the decision lightly and was very careful to ensure that the timing was appropriate in terms of client comfort levels, as well as performance improvement. The co-branding phase was originally slotted to begin in the first quarter of 2016. However, the timing has now been moved up to the fourth quarter of 2015 due to improving client perception and the stabilization of assets.

In response to a follow-up question from Mr. Smith, Mr. Priebe confirmed that the two-step rebranding process is a fairly standard practice but the decision was also largely based on client feedback. After the acquisition was announced, one of Geneva's large public fund clients specifically requested there be no changes from a branding perspective for at least one year and Geneva wanted to respect that request.

In response to a question from Ms. Van Kampen regarding Henderson's future growth plans, Mr. Priebe stated that Henderson would like to continue to grow its U.S. presence over the next three to ten years. Henderson has a tremendous amount of scale, but in order to get to the next phase of company growth, they will have to further increase its U.S. presence. However, that does not mean that the Geneva team is going to be the platform for that growth.

(c) Marquette Associates Report

Brett Christenson and Ray Caprio of Marquette Associates distributed and discussed the May 2015 monthly report.

Mr. Christenson first discussed the May 2015 flash report. Geneva Capital and Artisan Partners remain on alert status although both managers have recently exhibited improvement in performance. As of May 31, 2015 the Fund's total market value was just under \$1.8 billion. In terms of policy differentials, the fixed income composite is currently underweight at 18.8% versus the policy target of 22%. Marquette is in the midst of performing a full asset allocation study to assess the portfolio's various policy target percentages. A potential reduction to the Fund's fixed income target allocation, as well as some other changes, will be reviewed and discussed with the full asset allocation study results at future meetings. A recent

review of the real estate managers resulted in the Board approving a slight reallocation of assets between the three current managers. The Board also recently replaced K2 with Parametric under the hedged equity composite. In the near future, Marquette will likely address with the Board the possibility of committing additional funds to a new private equity offering with Siguler Guff.

Mr. Christenson continued with a discussion of performance. As of May 31, 2015, the total Fund composite year-to-date return is at 3.3% net-of-fees. The fixed income composite has a strong year-to-date return of 1.4% net-of-fees, versus the index of 1%. J.P. Morgan, the Fund's active fixed income manager, had a very strong year-to-date return of 1.5% net-of-fees. Mellon Capital, the Fund's fixed income index manager, has a year-to-date return of 1% net-of-fees. The U.S. equity composite was up 3.8% year-to-date, net-of-fees, versus the benchmark of 3.5%. Both Fiduciary and Silvercrest are exhibiting very strong year-to-date and one-year returns. For the one-year period, both Fiduciary and Silvercrest are up over 10% net-of-fees, versus the benchmark of 5.1%. Under the international equity composite, OFI in emerging markets had a good one-month return and is up -1.8% net-of-fees, versus the benchmark of -4.0%. Although Vontobel has been struggling recently, their one-year return is still positive at 0.9% net-of-fees, versus the benchmark of -0.5%. Year-to-date, the international equity composite is underperforming at 6.2% net-of-fees, versus the benchmark at 7%. However, Marquette believes that the strategy of maintaining a good allocation to small cap and emerging markets will bode well for international equity going forward. The hedged equity composite is performing well year-to-date at 5.9% net-of-fees. The real estate composite also has a nice first quarter return of 3.2% net-of-fees, and Marquette expects those healthy returns to continue in the second quarter. The infrastructure composite is experiencing a slightly negative impact from currencies, with a year-to-date return of -1.1% net-of-fees versus the benchmark at 2.4%. The total portfolio remains strong and Marquette has no rebalancing recommendations at this time.

In response to a question from Mr. Smith regarding J.P. Morgan's recent fixed income returns, Mr. Christenson confirmed that the recent strong returns are likely the result of J.P. Morgan intentionally positioning the portfolio over a year ago to shorten its duration in preparation of the rate increase. However, because interest rates increased much later than originally anticipated, the repositioning had a slightly negative effect on performance last year. J.P. Morgan is a very core conservative bond manager and they are trying to beat the benchmark without taking a great deal of risk in security selection.

In response to a question from Mr. Smith regarding the reason the benchmark for infrastructure is the Consumer Price Index + 4%, versus some other number, Mr. Christenson stated that it is difficult to have a very accurate benchmark that relates to securities. While there is a listed infrastructure benchmark, Marquette believes that benchmark is not accurate because those securities trade too much in line with the public markets. Because most of the assets in infrastructure are relatively tied to the Consumer Price Index, Marquette believes that it is a good benchmark to utilize. The +4% is a relatively arbitrary number that Marquette has chosen based upon internal discussions. Marquette believes that it is not beneficial to have a healthy allocation in infrastructure unless the CPI is exceeded by at least 4%.

Mr. Christenson noted that it may be beneficial to further review the Fund's infrastructure benchmark in terms of how it compares to real estate, because those two asset classes are fairly similar.

In response to a follow-up question from Mr. Smith, Mr. Christenson agreed that when compared to the real estate returns, infrastructure is underperforming more dramatically. However, that relative underperformance is mainly the result a currency headwind related to the heavy non-U.S. exposure in the infrastructure assets. It is important to factor in the currency headwind and view returns in these two assets classes over the longer-term. Both infrastructure managers are generally yielding close to 6%, but Marquette expects net returns to be closer to 8%. If those higher returns are not realized, changes to the Fund's infrastructure allocation should be addressed in the future. Marquette remains very confident with these two asset classes because the majority of the assets are performing very strongly relative to the index.

Mr. Smith recommended that regardless of the currency headwind, the Investment Committee should closely monitor and review the status of the Fund's infrastructure and real estate allocations for the shorter-term.

5. Investment Committee Report

Ms. Van Kampen reported on the June 1, 2015 Investment Committee meeting. The Investment Committee first entered into closed session to analyze the performance of the Fund's international equity managers, focusing on OFI and Vontobel Asset Management.

Ms. Van Kampen then summarized the results of the Investment Committee's analysis to the Pension Board. Three of the four international equity managers have been in the Fund two years or less. Although

Vontobel struggled with performance in the first quarters of 2013 and 2015, they have very favorable long-term returns. The Investment Committee noted that Vontobel does not closely follow the benchmark in terms of country allocation and is largely underweight to Japan. Because Japan has performed very well recently, Vontobel's underweight to Japan has accounted for 103 of the 146 basis point shortfall during the first quarter of 2015. OFI's performance since inception has also been disappointing and the emerging markets sector has been very volatile. The active management style typically works well in the emerging markets sector, but it does not currently appear to be working for OFI. However, similar to Vontobel, OFI also has very good long-term performance and Marquette has expressed confidence in OFI. The Investment Committee determined that it would be prudent to closely monitor the performance of Vontobel and OFI, and make any further decisions in the context of a longer-term analysis of performance. GMO underwent similar struggles and is now performing relatively strong.

In response to a question from the Chairman regarding Vontobel's country allocation, Ms. Van Kampen stated that Vontobel is substantially underweight in Japan, with a current weighting of 1.24% versus the index of 15.5%. Vontobel is overweight in the Netherlands, Denmark, France and India. India is the largest of those overweights, at 12.5% versus the index of 1.6%.

The Investment Committee next discussed Marquette's asset allocation study. Marquette reviewed and discussed the results of their full asset allocation study with the Committee. When compared to its public fund peer group, ERS is underweight in fixed income and U.S. stocks, and overweight in international equity. In terms of overall equities, ERS is approximately 5% underweight compared to its peer group. The Investment Committee's basic recommendation is to reduce the Fund's target allocation on fixed income and increase the policy target in real estate. Additional increases to the Fund's infrastructure allocation will also be addressed with any changes to real estate. The Investment Committee will continue to discuss and develop its final recommendations from the results of the study over the next several months.

The Investment Committee concluded with a discussion of liquidity in the Fund. The Investment Committee discussed the maximum level of bonds that should ideally be in the portfolio as liquid assets for purposes of covering the annual 8% net outflows needed for benefit payments. The Investment Committee will further review and discuss the Fund's risk/return

ratio in terms of optimal bond exposure with Marquette at upcoming Investment Committee and Pension Board meetings.

6. Buck Consultants - Preliminary Valuation Results

Larry Langer and Paul Wilkinson of Buck Consultants attended the meeting and Mr. Langer provided an update on ERS's 2015 preliminary valuation results.

Mr. Langer first stated that Buck had originally planned on completing its valuation for presentation to the Board at its May 2015 meeting. However, when Buck was finalizing its valuation results, the costs came in much higher than the estimates Buck had originally presented at the March and April 2015 Board meetings. Buck went back to review and analyze the data to determine why the costs were now increasing from the original estimates. Mr. Langer indicated that the reason for the increase was not census driven, and the data has been getting cleaner with each passing year. Ms. Ninneman and the Retirement Office staff have done a very good job of providing Buck with consistent and clean data.

Mr. Langer then stated that after further analysis of the data, Buck has determined that Buck calculated ERS's costs for 2013 and 2014 lower than anticipated because Buck missed calculating a portion of the Fund's cost of living adjustment ("COLA") liability for those two years. As a result, ERS's liabilities should have been calculated higher in 2013 and 2014. Therefore, the estimated contribution amounts Buck presented to the Board in March and April of 2015 were understated, because they were based on the understated 2013 and 2014 liability amounts. Over the last month, Buck has been working to confirm the data and determine how to best get ERS's funding back on track and implement the recently approved changes to ERS's funding policy.

Mr. Langer then discussed next steps. The revised liabilities should now be reflected in ERS's 2015 valuation along with the recently approved changes to the funding policy. The recent changes to the funding policy included reducing the Fund's amortization period from 30 to 20 years, while simultaneously reducing the payroll growth assumption from 3.5% to an expected revenue growth of 1.75%. Administrative expenses will no longer be amortized over a ten-year period but reflected in the year immediately following the expense. The actuarial cost method was updated to reflect a change in the entry age normal cost method from the aggregate entry age to individual entry age method. Mr. Langer then stated that with costs now higher than expected, additional consideration may be given to transitioning costs by systematically phasing in a higher contribution or by immediately

recognizing ERS's unrecognized asset gains from 2013. Immediately reflecting the amounts from ERS's 2013 unrecognized gain would help keep contribution levels lower. However, reflecting the Fund's 2013 unrealized asset gain now would remove the buffer Buck was hoping to maintain over the next ten years to help offset future returns if the Fund would not achieve the 8% rate of return. Mr. Langer stated that Buck would like to attend the July 2015 Board meeting to present more definitive figures and further discuss options for transitioning the funding policy changes. Mr. Langer stated that Buck is cognizant of the fact that the revised costs do create various issues in terms of ERS's budgetary process and in understanding the contributions over the last two years.

In response to a question from Mr. Smith regarding the estimated amount of the increase, Mr. Langer stated that in terms of contributions, amounts would increase by approximately \$10 million.

In response to follow-up questions from Mr. Grady, Mr. Langer stated that the \$10 million increase is only the amount associated with the re-inclusion of the COLA liabilities that were missing over the last two years. The increases related to the funding policy changes would result in an additional \$3 to \$4 million, bringing the total estimated increase to somewhere around \$13 million. If the unrecognized asset gain is used to offset some of the increase in liability, it could reduce the \$10 million to around \$5 million and a rough estimate of the total amount of the increase could be somewhere around \$8 million.

Mr. Smith then asked Mr. Langer to prepare a detailed reconciliation of the contribution amounts from 2014 to 2015 for the upcoming July Board meeting so the Board can better understand the full impact of the error on the contribution. The Board also needs to understand the future impact of utilizing the unrealized gains now to minimize the impact on contributions.

Mr. Smith next asked Mr. Langer what Buck is doing to improve its model of governance as a result of the error to prevent future errors from occurring.

Mr. Langer answered that whenever something like this occurs, Buck reviews its process and specifically reviews its individual test cases. Buck reviewed an individual test case in 2013 and it did have the COLA, however, it was not all encompassing and didn't test all the cases that would indicate the COLA was missing. The 2014 results came in consistent with 2013 and individual test cases were not reviewed because it appeared that everything had lined up well. Buck reviewed a different set of test cases in 2015 and caught the error. Buck is now reviewing its process in terms of

how it chooses their individual test cases to ensure it encompasses all of the various types of calculations.

In response to a follow-up question from Mr. Smith regarding the existence of any formal model validation process at Buck, Mr. Langer stated that Buck's formal process is referred to as a peer review process. Certain individuals on the core team provide test cases and prepare results, and the actuaries involved are responsible for the overall review of the model. The process aspect of the model is passed on to a national peer review. The national peer review confirms that individual test cases are being done, and ensures that the results conveyed are readable and comply with standards of practice. The national peer review process provides an aspect of external review by someone who is removed from the process.

Mr. Smith then expressed a concern that Buck does not have an independent auditor to review the models and ensure that they are all-encompassing and working effectively. Mr. Smith noted that a COLA is a very fundamental calculation that should not be missed.

Mr. Langer added that periodically, an internal peer review group at Buck does perform a deep audit of several plans. The internal group audits all data in the plan beginning with the original asset statements from the client. The internal auditors collect plan provisions and replicate the valuation to analyze the numbers for any possible disconnect. The review does not happen for every plan but is performed at least every five years on a select group of clients.

Mr. Smith then suggested to Mr. Langer that the time period between Buck's internal audits is too long and a benchmark of once every 24 months would be more appropriate. Any unrealized error will continue to snowball with the passing of time. Mr. Langer stated that he will relay Mr. Smith's recommendation to management at Buck.

In response to a question from Ms. Van Kampen, Mr. Langer stated that the error was exclusive to ERS and did not impact other clients at Buck. Although Buck utilizes standardized software for all of its clients, the software is specifically parameterized to the inputs of each individual plan.

Ms. Braun then expressed her concerns, stating that the error is very distressing and leads to a lack of confidence in Buck's abilities. Ms. Braun also indicated that the Board has been advised of a lack of responsiveness on Buck's part to various inquiries and asked Mr. Langer to explain.

Mr. Langer indicated that the lack of responsiveness on Buck's part was due to the fact that they did not have any answers yet and were not ready to present their findings. It did take some period of time for Buck to review its results and determine why the data was moving as it was. Buck also wanted to take some time to reassess the various funding alternatives available.

In response to a follow up question from Ms. Braun regarding a further explanation as to how the portion of the COLA liability went missing from the valuation between 2012 and 2013, Mr. Langer stated the model from 2012 to 2013 was relying on a code that gets placed in the data and that code was not there. Buck analyzed and developed the 2013 data with the COLA, but the code was not placed in the model. Therefore, the 2013 results did not reflect the COLA.

In response to a follow-up question from Ms. Braun, Mr. Langer confirmed that the input data gets recreated each year. Buck takes the data it receives from ERS staff and manually enters that data into its program. Mr. Langer confirmed that all of the necessary data is now correctly entered.

In response to a question from Ms. Van Kampen, Mr. Langer confirmed that the process of compiling the input data is a manual process. Buck has now made certain changes to its process and removed the necessity of entering the specific code.

Mr. Leonard then expressed his concerns and stated that the missing COLA is mind-boggling and Buck appears to be very cavalier with its explanation of the error.

In response to a question from Mr. Leonard regarding the reason why Buck did not catch the error in 2014, Mr. Langer stated that the census data moved around a great deal because of various assumption and benefit provision changes implemented in 2013. Buck also implemented resetting the actual value of assets with the benefit provision changes and census changes. Buck was originally anticipating that the 2013 contribution would come in around \$35 million. However, the 2013 contribution amount actually came in lower by approximately \$5 million. Buck attributed that \$5 million difference to the amount of movement in the census data that year. If Buck had missed the COLA portion at a time when there were not so many other changes impacting the data, it would have been easier to isolate and identify the missing COLA. Mr. Langer stated that Buck does place a great deal of care and effort into its processes and although it would have been better to catch the error immediately, he is pleased that Buck did discover the missing portion of liability when they did. In hindsight, the \$5 million reduction to

the 2013 contribution amount should have been a \$5 million increase for additional liabilities.

In response to a question from Ms. Funck regarding what impact the error will have on the 2016 employee contributions, Mr. Langer stated that Buck will have to work through more details before it can fully develop the data. The development of the contribution is split between ERS members and the County. However, much of the increase is going to fall towards the County contribution and should not impact the member contribution as much.

In response to a question from Ms. Braun regarding the possibility of Buck picking up a portion of the costs related to their error, Mr. Langer stated that he does not have an answer to that question because he has not previously encountered such circumstances. The \$10 million in contributions were initially understated and should have been contributed in 2013 and 2014, but will now be added back in.

In response to a follow-up question from Ms. Braun regarding any additional conversations Buck may need to have with the County Board or County Executive, Mr. Langer stated that he would be happy to further explain the situation if needed.

In response to a question from Ms. Funck regarding the total scope of the increase, Mr. Langer stated that there are two separate increases involved. The changes to ERS's funding policy will result in a \$3.5 million annual increase in contributions. At the March and April 2015 Board meetings, Buck estimated ERS's 2015 budget contribution amount would increase to approximately \$43.5 million as a result of implementing the funding policy changes. The annual \$3.5 million increase related to the funding policy changes will now increase by an additional \$10 million with the re-inclusion of the missing COLA liability.

In response to a question from Ms. Van Kampen, Mr. Langer confirmed that the \$10 million increase related to the COLA liability will also be an annual increase. The full scope of the increase is around 7% of liabilities, or approximately \$160 million.

Ms. Van Kampen then expressed concern, noting that a \$160 million increase in liability related to the COLA error, in addition to the increases related to the funding policy changes, is very substantial and will create additional funding issues.

Ms. Braun agreed with Ms. Van Kampen and stated that it is extremely important that the Board understand the full scope of the error and any related increase in liabilities which may impact ERS's funding status.

Mr. Leonard then noted his concern, stating that such a large increase to the Fund's liability will have a major impact on the County and also affect future values of the Fund. The Fund must be made solvent in a manner that does not impugn the credit rating of the County, while protecting benefits for active employees and retirees in the Fund.

Mr. Manske then addressed the Board.

Mr. Manske reported that Mr. Langer notified him the prior week of the cost increases related to the exclusion of a portion of the COLA. Between 2012 and 2013 a portion of the COLA was excluded for a certain group of employees. Because those amounts were excluded, the liability of the Fund was lower than it should have been in 2013. Between 2012 and 2013, the County's contribution should have actually increased by \$5 million to \$6 million, but it remained relatively flat because of the missing COLA. Mr. Manske stated that he asked Mr. Langer to illustrate where the amount for the COLA liability dropped out, and where it was factored back in, because those two amounts should theoretically offset one another. It appears that the amount of benefit the County received from the 2013-2014 COLA exclusion was in the approximate range of \$112 million to \$120 million. However, as Mr. Langer has indicated, there were other liabilities baked in to the valuation over the last two years and the full impact of the liability is now approximately \$160 million. In essence, the County received a benefit during the last two years when the COLA was excluded. Now that the COLA has been reincorporated, the impact of the decrease over the last two years is being realized.

Mr. Manske then discussed future impacts. Going forward, the contribution amounts will be higher than previously anticipated. Based on Mr. Langer's presentation earlier this year, it was estimated that contributions would increase from approximately \$38 million to approximately \$43 million, with the recent changes to the funding policy incorporated. However, with the added liability of the COLA, the \$43 million should now increase the 2015 contribution to within a range of \$48 million to \$50 million. The recent changes to the funding policy should also be factored in because they are good practices that will provide savings to the County over the longer-term of 20 years. However, the impact of those long-term savings will mean that County and member contributions would increase over the short-term. Approximately 30% of the increase in the liability of the annual contribution will fall back to the employees. Employee contributions are currently in the

range of 5.3% and that amount could be expected to increase up into the 6% range. The County has continued to have increases to its expenditures outweigh the increases to its revenues, and the funding from the State has also decreased or remained relatively flat. ERS must now work with the budget office to see how much of an increase the budget office can afford. The Pension Board approved a transition period with the recent changes to the funding policy to allow for a gradual implementation of the changes if needed. Buck should come back to the Pension Board with revised numbers in terms of what the impact will be on both the County and employee contributions over the next 20 to 25 years. Additional discussions can be held with the budget office after the revised numbers are presented. Based upon the assumption that the Plan will earn value, these changes will save the County and employees money in the long-term because there will be fewer contributions to the Plan. Although the error with the COLA is unfortunate, there is an offset to the effect that the County received a benefit in 2013 and 2014 when the annual contribution decreased and it is now going back up.

In response to a question from Mr. Grady regarding next steps, Mr. Langer stated that the recognition of the additional increase in liability will be included in the 2015 valuation. Recognizing the 2013 unrealized gain over one year instead of ten years would also be a good idea to soften the impact of the increase in liability. Once those changes are reflected, the transitioning of the funding policy changes can be reviewed in terms of what is affordable. To move towards fully funding the obligations of the Plan, there has to be a careful balance of transitioning the changes in an affordable manner.

In response to follow-up questions from Mr. Grady regarding the transitioning of costs, Mr. Langer confirmed that if needed, some portion of the entire annual contribution would be transitioned, not just one element of the contribution amount. Transitioning costs would effectively mean that the County would be paying 8% interest on the portion of transitioned unfunded liability because it cannot afford to pay for it now.

In response to a question from Ms. Braun regarding the impact of the increase in liability on ERS's funding status, Mr. Langer stated that the funding status will go from 87% to around 80%.

Mr. Smith again requested that Buck specifically provide an additional report to the Board at its July 2015 meeting that will clearly illustrate the magnitude of the COLA error, independent of the different strategies. It is very important that the Board understands the catch-up component of the error in relation to the larger funding liability that must also be addressed.

The Chairman also requested that Buck's report specifically isolate the magnitude of the error and also asked that the report include potential alternative strategies to minimize the effect of the error in the short-term. The Chairman then asked that Buck provide the additional report to the Board in advance of its July meeting to allow members time to review and absorb the material prior to the meeting.

Mr. Smith then advised Ms. Ninneman that he could be available for a special meeting to discuss the actuarial results prior to the regular July Pension Board meeting to avoid any further timing delays from the County perspective.

Mr. Manske noted that the budget office is currently in the midst of reviewing department budget recommendations. Mr. Manske stated that although the Board will still have to make its formal contribution recommendation to the County, he will advise the budget director that ERS's 2015 contribution will be in the range of \$45 million to \$50 million. Mr. Manske also advised the Board that he cannot complete the footnotes to the County's financial report until he receives ERS's valuation report.

In response to a question from Ms. Braun, Mr. Manske stated that with the current schedule of events in motion, he should be able to complete the County's financial report on time.

Ms. Van Kampen then echoed Ms. Braun's previous request for a detailed breakdown and asked that Buck come back to the Board or Ms. Ninneman with some type of response as to what Buck is going to do to compensate ERS for its error.

Mr. Grady commented that if the Board were instead discussing an increase in contributions because the Board lowered the Fund's rate of return to 7%, and the recommended contribution request resulted in a shortfall from the County, that shortfall would be added to the Fund's five year smoothing period. Mr. Grady suggested that mathematically, the current issue related to the COLA increase is a similar scenario in terms of the end result.

Mr. Langer noted that while the two scenarios are mathematically similar, the shortfall would become a contribution variance and would be paid off over a five-year period.

Mr. Smith expressed disagreement with Mr. Grady's comments, stating that there is a significant difference between the two scenarios because the current increase in liability is related to an actuarial error.

Mr. Leonard stated that Board members representing employees have a vested interest to reduce the duration of transitioning any costs. Employee contributions will continue to increase the longer costs are delayed.

In response to a question from Ms. Van Kampen, Mr. Langer confirmed that with the recent changes to ERS's funding policy, employee contributions are anticipated to increase over the short-term but decrease over the long-term.

In response to a question from Mr. Gedemer, Mr. Langer stated the increase in costs related to the COLA error will have a proportionately greater impact on the County's contribution. The cost increases related to the funding policy changes are split relatively evenly between the County and employee contributions.

In response to a question from Ms. Ninneman regarding Buck's timeline to complete its valuation, Mr. Langer stated that he could be prepared to present at a special Board meeting by the end of the month.

Mr. Manske noted that he could work with a draft valuation, but he must meet a State of Wisconsin July 31, 2015 deadline for his final report.

Ms. Ninneman indicated that she will send out an e-mail to Board members regarding availability to attend a special Pension Board meeting sometime during the last week of June or early July.

Ms. Braun concluded by stating that the Pension Board is clearly the last to know of the issues related to Buck's error and Buck's unresponsiveness up to this point has been unacceptable.

7. Audit Committee Report

Ms. Westphal reported on the June 4, 2015 Audit Committee meeting. The Audit Committee discussed the status of the Baker Tilly audit for the duration of the meeting. Ms. Lausier updated the Audit Committee on the issues regarding the reconciliation of ERS's 2014 financial statements. Ms. Lausier stated that Baker Tilly is assisting the Fiscal Office with balancing the financial data, as well as helping ERS prepare the Governmental Accounting Standards Board ("GASB") 67 footnotes.

Ms. Lausier then provided an explanation and update of the audit issues to the Pension Board. Ms. Lausier reported that she was able to identify the bookkeeping errors and balance the financial statements as of July 8, 2015. Ms. Lausier also reported that she was able to provide full financial statements to Baker Tilly on July 9th. Ms. Lausier noted there is only one

outstanding item she needs to provide for Baker Tilly to complete its audit and that should be available by tomorrow.

In response to a question from the Chairman regarding the accrual timing differences indicated on the reconciliation, Ms. Lausier stated that the main issue with the reconciliation involved the unrealized gains and losses and what portion of those were reported in 2014. Ms. Lausier stated that although she had all of the total figures for the unrealized gains and losses, she didn't know what portion of those amounts were claimed in prior years because there was no scheduled maintained on the ERS system. Ms. Lausier stated that after advisement from Baker Tilly, she searched the records back to January 1, instead of December 31, and was able to find those numbers. Ms. Lausier stated that she could then balance the financial statements and update all of the schedules that Baker Tilly needed for its audit. Ms. Lausier also reported that she created a new schedule so this will not be an issue for next year's audit.

In response to a question from Ms. Westphal regarding any additional services that ERS may need from Baker Tilly to complete the audit, Ms. Lausier stated that she will still need Baker Tilly to assist with completing the GASB 67 footnotes.

In response to a follow-up question from Ms. Westphal, Ms. Lausier stated there were no budgetary impacts because of the reconciliation issues and no prior financial statements will have to be restated.

In response to a question from Mr. Smith regarding the reason for the bookkeeping errors, Ms. Lausier stated that she did not fully understand the reporting methodologies of the prior fiscal officer.

Mr. Heer added that error was not related to bad financial statements but a matter of very bad transition documents to the incumbent Fiscal Officer.

Ms. Lausier concluded her comments by stating that the financial statements have now been reconciled, and the audit trail and documentation are complete.

The Chairman and Mr. Smith thanked Ms. Lausier for successfully working through the bookkeeping issues and completing the financial statements.

Ms. Westphal concluded by stating that the Audit Committee would like to review the completed financial statements before they are issued to the full Pension Board.

Ms. Braun then noted that she attended the June Audit Committee meeting and the minutes to the June Audit Committee meeting do not sufficiently document the very detailed discussions of the meeting. Ms. Braun requested more detailed Audit Committee meeting minutes in the future.

8. Appeals - Yvonne Ware - Benefit Payment Error

In open session, Attorney Aaron Dekosky addressed the Board and introduced himself as the legal representative of Kenya Walker and Kevin Walker. Mr. Dekosky introduced Kenya Walker as the daughter of deceased ERS pensioner, Yvonne Ware.

Mr. Dekosky then summarized his understanding of the history of events surrounding the appeal of Ms. Ware's benefit payment. Ms. Ware was hired as a Milwaukee County employee in 1977 and continued to work for the County for a total of 25 years and five months. In 1977, Ms. Ware initially designated her daughter, Kenya Ware (n/k/a Kenya Walker), as her sole beneficiary upon death. On July 25, 2001, Ms. Ware received a letter from the County advising her of the pension benefit options available to her, and the various beneficiary designation options available upon her death. Mr. Dekosky suggested that as a result of reviewing the information in the July 2001 letter, Ms. Ware amended her initial beneficiary designation in November 2001 to name her four grandchildren as her beneficiaries. The four grandchildren as designated by Ms. Ware are Kevin Walker, Kendall Walker, Kameron Walker and Kristopher Walker (collectively, the "Grandchildren"). The Grandchildren are the children of Kenya and Kevin Walker who are present today. In 2003, Ms. Ware passed away while still employed by the County. Mr. Dekosky stated that after Ms. Ware's death, the Walkers were advised by Retirement Office personnel employed at that time, that Ms. Ware's pension would be calculated under an optional form of benefit, and the Grandchildren would receive a portion of Ms. Ware's pension benefit for life. The resulting pension benefit would be divided among the Grandchildren from oldest to youngest in various proportions. The Grandchildren were paid the resulting benefit until 2012. In 2012, the County was performing a review of its backDROP payments and determined that the Grandchildren were in fact ineligible to receive backDROP payments. Consequently, the resulting backDROP payments were deemed erroneous. Mr. Dekosky stated that he believes the Grandchildren were considered ineligible to receive the backDROP payments because they were not the pensioner, but the beneficiary of a pensioner. In 2012, the Walker's appealed the decision regarding the erroneous backDROP payments to the Pension Board. Mr. Dekosky stated that during the Walkers' 2012 appeal, the Grandchildren's eligibility to receive the pension benefit and backDROP

payments was reviewed. After further review, the Pension Board found that the Grandchildren were ineligible to receive backDROP payments. The Pension Board also determined in 2012 that each Grandchild's monthly benefit payment would be reduced by 50% until the erroneous backDROP payments were paid back in full.

Mr. Dekosky continued by stating that in February 2015, the Walker's received a follow-up letter from ERS which stated that in addition to the erroneous backDROP payments, it was also determined that the Grandchildren were entirely ineligible to receive a benefit from ERS. Mr. Dekosky suggested that ERS's new finding was based on the assumed fact that Ms. Ware did not complete a protective survivorship option ("PSO") designation form. Mr. Dekosky stated that Ms. Ware designated the Grandchildren as her beneficiaries in 2001 with the assistance of the Retirement Office staff employed at that time. Mr. Dekosky suggested that it was the clear intent of Ms. Ware to gain the benefits that were described in the July 25, 2001 letter from ERS, because Ms. Ware amended her beneficiary designation shortly after receiving that letter. After Ms. Ware passed away in 2003, her beneficiaries were provided with the benefits. However, now twelve years later, ERS is challenging the Grandchildren's eligibility to receive benefits, despite the fact that ERS cannot identify who approved the benefits and why, or who completed the benefit calculations. Mr. Dekosky stated that not knowing who at ERS approved and calculated the benefits is very problematic because the Walker's do not have the benefit of that individual's testimony. Mr. Dekosky suggested that because ERS is unable to provide any specific information from the time of the benefit approval, it is very difficult for ERS to prove that the Grandchildren are not entitled to a benefit. Mr. Dekosky further suggested that the Grandchildren's eligibility to receive any type of benefit was obviously reviewed by multiple people at ERS at the time of the initial award in 2003, and again with the review of the backDROP issue in 2012.

Mr. Dekosky then called for questions from the Board members.

In response to a question from Ms. Westphal regarding ERS's 2012 review of the Grandchildren's backDROP payment, Ms. Ninneman clarified that while the Retirement Office was reviewing the Grandchildren's backDROP eligibility in 2012, it also determined that the Grandchildren's eligibility to receive any benefit from ERS should be further investigated. From 2012 until the time the Retirement Office concluded its investigation in early 2015, the Grandchildren's eligibility to receive any benefit from ERS was flagged by ERS as an open issue.

In response to a question from the Chairman, Ms. Ninneman confirmed that the Grandchildren's benefit payments were reduced in 2012 to offset the erroneous backDROP payments.

In response to a question from Ms. Braun regarding the investigative steps taken by the ERS between 2012 and 2015, Ms. Ninneman stated that ERS attempted to identify and locate staff employed in the Retirement Office at the relevant time in order to obtain background information and statements from those individuals.

In response to a question from Ms. Funck regarding what specific information the Walkers are basing Ms. Ware's beneficiary change on, Mr. Dekosky stated that Ms. Ware amended her original designation and listed the Grandchildren as her beneficiaries on a form entitled application for retirement dated November 15, 2001 (labeled as Exhibit 4).

Mr. Dekosky then referred to ERS's letter dated July 25, 2001 (labeled as Exhibit 3), suggesting the letter is relevant because it explains the options that Ms. Ware believed she had for her beneficiaries. Mr. Dekosky also referred to Ms. Ware's ERS enrollment form (labeled as Exhibit 1) and notes that it specifically states "I hereby designate the following beneficiary(ies) to receive any lump sum which may become payable after my death under Section 201.24 of the County Ordinances." Mr. Dekosky stated that after Ms. Ware received the July 25, 2001 letter, she changed her beneficiaries on her application for retirement form.

Ms. Ninneman then stated that the July 25, 2001 letter (Exhibit 3) is a standard benefit estimate that ERS issues when a member inquires as to what their benefit might be once they are eligible to retire.

Ms. Van Kampen noted that the July 25, 2001 letter states that Ms. Ware's estimated retirement data included in the letter is based on a retirement effective date of January 1, 2002.

Ms. Ninneman confirmed that Ms. Ware did not retire on January 1, 2002, and Mr. Dekosky noted that Ms. Ware continued to work for the County until February 17, 2003.

In response to a question from Mr. Smith regarding the eventual effect of a denial of the appeal, Ms. Ninneman stated that if the Board were to deny the Walker's appeal without a PSO in place, there is no beneficiary and the standard payment would be the \$2,000 death benefit.

In response to a question from Ms. Braun regarding any other similar situations with multiple beneficiaries involved, Ms. Ninneman stated that the issues surrounding the Walker's appeal are isolated and there are no other cases in which ERS is making payments to multiple beneficiaries under a PSO election.

In response to a question from Mr. Dekosky regarding any success ERS has had in contacting the individuals employed at the Retirement Office during the relevant period, Ms. Ninneman stated that she believes there is documentation included in today's exhibits that state ERS was unable to contact any such individuals.

In response to a question from Ms. Funck regarding a copy of the PSO form, Ms. Ninneman stated that Ms. Ware never completed a PSO form. A PSO allows ERS members to designate someone other than a spouse as their beneficiary, if they should die while in active service and have attained normal retirement age.

It was noted that a blank version of what a PSO form would have looked like at the time in question is included with today's materials and is labeled as Exhibit 26.

Mr. Dekosky then stated that because Ms. Ware has passed away, and ERS is unable to locate any of its staff directly involved with her change in beneficiary, it is impossible for anyone to know whether or not Ms. Ware actually completed a PSO form. Mr. Dekosky argued that Ms. Ware's benefits would not have been paid in 2003 if a completed PSO form did not exist for Ms. Ware at the time of her death. Mr. Dekosky further argued that as the plan administrator, it was the fiduciary duty of the Retirement Office personnel to provide Ms. Ware with the correct PSO form at the time she indicated a change to her beneficiaries in 2001. Alternatively, if Ms. Ware did in fact accurately complete a PSO form, now that 12 years have passed and ERS staff employed at the time cannot be located, the Walkers have no opportunity to challenge ERS's assertions.

In response to a question from Mr. Huff regarding Mr. Dekosky's previous statement that Ms. Ware's November 15, 2001 application for retirement was filed in response to the July 25, 2001 letter from ERS, Mr. Dekosky stated that he is only assuming that fact because Ms. Ware completed an application for retirement in November 2001. Mr. Dekosky further stated he never spoke to Ms. Ware but assumes that once Ms. Ware received the July 25, 2001 letter, she spoke to ERS personnel and filled out the application for retirement and possibly a PSO form as well. However, because none of the

people actually involved can be reached for comment, no one can be certain of what actually happened.

In response to a follow-up question from Mr. Huff, Mr. Dekosky stated that he believes it is entirely possible that Ms. Ware filled out another form in addition to the November 2001 application for retirement that would have listed the Grandchildren as her designated beneficiaries. Mr. Dekosky suggested that Ms. Ware could have filled out the additional form correctly or someone at the Retirement Office could have completed it for her and it was then lost. Mr. Dekosky also suggested that the Retirement Office personnel may have led Ms. Ware to believe that the designations listed on her November 2001 application for retirement were sufficient to name the Grandchildren as her beneficiaries.

Mr. Leonard wondered what the liability of the County would be for not ensuring that all of the appropriate forms were completed. Mr. Huff suggested those discussions may be more appropriate for the discussion portion of the meeting.

In response to a question from Mr. Smith regarding the Pension Board's decision of Kenya Walkers appeal, dated November 2, 2012 (labeled Exhibit 27), Mr. Dekosky indicated that he and the Walkers' have reviewed that document. Mr. Dekosky further indicated that he missed seeing the specific language in that decision which read "Pending the final decision of the Pension Board..." which would substantiate Ms. Ninneman's earlier statement that the issue remained open in 2012 pending further investigation.

Mr. Grady then stated that the issue being reviewed during the 2012 appeal was the Grandchildren's entitlement to a backDROP benefit, and how much of an offset would be taken to recoup any overpayments. The Board's November 21, 2012 decision and the letter from ERS to Kenya Walker, dated December 10, 2012 (labeled Exhibit 28), specifically reserved the right of the Pension Board to go back and review the Grandchildren's underlying benefit eligibility. The Pension Board is now reviewing the Grandchildren's underlying benefit eligibility.

Mr. Dekosky then indicated that he originally thought the Board's November 21, 2012 decision was only related to the backDROP issue, but that he now understands the full context of the decision.

Ms. Van Kampen then noted that the space for the effective date of retirement is left blank on Ms. Ware's November 15, 2001 application for

retirement form. Ms. Van Kampen questioned the significance of anyone completing an application for retirement form without an effective date.

In response to Ms. Van Kampen, Ms. Ninneman stated that that in her eight years of working at ERS, she has found that members do typically have a definitive retirement date in mind and do list that date when completing their application for retirement.

In response to a question from Mr. Leonard regarding the identity of the witness on Ms. Ware's application for retirement, Mr. Grady stated that the witness is Karol Lee. Mr. Grady further stated that as he recalls from prior investigations, Ms. Lee was a County employee who also knew Ms. Ware as a friend, supervisor or co-employee.

Ms. Funck then commented that even if Ms. Ware's November 15, 2001 application for retirement was treated as a PSO by staff at the time, there would be no way to determine the basic pension option, percentage of survivorship benefit, or how much of a share the Grandchildren would receive because all of those lines are also blank on the form.

In response to questions from Mr. Grady regarding the acceptance of multiple beneficiaries on a PSO form, Ms. Ninneman stated that there is no option a member could select that would allow the designation of multiple beneficiaries on a PSO form. Ms. Ninneman further stated that if she received a PSO form today that was filled out in the fashion of Ms. Ware's November 15, 2001 application for retirement, she would reject it.

The Chairman then called for any additional comments from counsel or the appellants.

Mr. Dekosky then concluded his remarks by stating that he requested historical versions of the County Ordinances and was informed by the County that complete historical versions of the Ordinances do not exist. Mr. Dekosky stated that he was told that an electronic version of the ERS Ordinances is available on the municode website that would show some of the changes dating back to 2010. There is also a paper version of changes that dates back to 1993. However, the Ordinance changes are not categorized and it would require someone to read through all of the supplements to determine when and what changes were made that specifically relate to ERS.

Mr. Dekosky then referred to the recent opinions rendered in the *Stoker* and Wisconsin teacher's cases that generally state while other terms may be changed, any benefits for a pension are vested as of the date of hire.

Mr. Dekosky suggested that reviewing Ms. Ware's 2003 death benefit in the context of applying ERS's current terms is essentially changing a vested benefit.

In response to questions from Mses. Braun and Ninneman regarding who Mr. Dekosky spoke to at the County to request historical versions of the Ordinances, Mr. Dekosky stated that he spoke to Vivian Aikin and George Christensen. Mr. Dekosky also affirmed that he was told he could review any copies of the historical Ordinances. However, Mr. Dekosky was also advised that the task would likely take hours upon hours because he would have to read through all of the supplements to find out what changed and when.

Mr. Grady then stated that the frustrating issues Mr. Dekosky has experienced related to the historical Ordinances have also been experienced by counsel involved in prior appeals. The County has in fact not maintained a superseded or amended Ordinance book, which is fairly common at higher levels of government and is not required at the County level. Mr. Grady stated that the only way to know for certain is to review the County Board's journal of proceedings. A journal of proceedings does exist for every year back to the date Mr. Dekosky is concerned about and there is an index to those proceedings. Mr. Grady also stated that while he would like to confirm the following statement at a later date, he does not believe there have been any Ordinance changes since 2001 that would affect the Walker's appeal.

The Chairman concluded by thanking Mr. Dekosky and the Walkers for appearing before the Board today and Mr. Dekosky thanked the Board in return for considering the Walkers' appeal.

Ms. Braun then moved that the Pension Board adjourn into closed session under the provisions of Wisconsin Statutes section 19.85(1)(f) with regard to item 8 for considering the financial, medical, social or personal histories of the listed persons which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of those persons, and may adjourn into closed session under the provisions of Wisconsin Statutes section 19.85(1)(g) with regard to items 8, 9 and 10 for the purpose of the Board receiving oral or written advice from legal counsel concerning strategy to be adopted with respect to pending or possible litigation. At the conclusion of the closed session, the Board may reconvene in open session to take whatever actions it may deem necessary concerning these matters.

The Pension Board unanimously agreed by roll call vote 8-0 to enter into closed session to discuss agenda items 8 through 10. Motion by Ms. Braun, seconded by Ms. Funck.

Mses. Ninneman, Aikin and Lausier recused themselves, leaving no ERS personnel in the room during closed session discussions.

The Pension Board discussed the matter in closed session.

After returning to open session, the Pension Board voted 6-2, with Messrs. Smith and Leonard dissenting, motion by Mr. Gedemer, seconded by Ms. Van Kampen, to deny the appeals by Kevin Walker, Kendall Walker, Kameron Walker and Kristopher Walker consistent with the discretion assigned to the Pension Board by Ordinance section 201.24(8.17) to interpret the Ordinances and Rules of the Employees' Retirement System of the County of Milwaukee ("ERS"), based on the following facts and rationale and directs that all future benefit payments from ERS to the Grandchildren cease and that Corporation Counsel take any appropriate and necessary actions against the Grandchildren to recover the overpayment, less the \$2,000 death benefit payable under Ordinance section 201.24(6.3), plus interest.

Factual Background.

1. On September 20, 1977, Yvonne Ware submitted an ERS Enrollment Form to the Retirement Office. Kenya Ware (n/k/a Kenya Walker) is identified on the enrollment form as Ms. Ware's daughter and is designated as a 100% beneficiary of any lump sum that may become payable after Yvonne Ware's death.
2. Ms. Ware became eligible to retire with a normal pension under the Rule of 75 pursuant to Ordinance section 201.24(4.1) as of March 1, 2001.
3. On July 25, 2001, ERS provided Ms. Ware with a benefit estimate based on a January 1, 2002 retirement date and advised her that monthly benefits of \$1,340.41 under the maximum option or \$1,310.58 under Option 6 (10-year certain) were available if she were to retire.
4. Ms. Ware submitted an application for retirement (the "Retirement Application"), which was witnessed on November 15, 2001. The Retirement Application designates Ms. Ware's grandchildren, Kevin Walker, Kendall Walker, Kameron Walker, and Kristopher Walker

(individually, a "Grandchild"; collectively, the "Grandchildren") as beneficiaries. However, for unknown reasons, Ms. Ware chose not to retire after submitting the Retirement Application.

5. Ms. Ware died while in active service with ERS on February 17, 2003 at 55 years of age.
6. On May 9, 2003, four "Claim for Beneficiary Monthly Benefits under Option 2 or 3" forms were filed with the Milwaukee County Department of Human Resources; a form was filed for each Grandchild. Each form bears the signature of Kenya Walker.
7. On October 10, 2003, ERS issued four checks payable to Kenya Walker for the benefit of the Grandchildren in the amounts of \$5,183.29; \$5,178.16; \$5,173.65; and \$5,170.14 in connection with a backDROP payment. ERS also issued four checks payable to Kenya Walker for the benefit of the Grandchildren in the amounts of \$2,427.27; \$2,425.52; \$2,424.08; and \$2,422.96 in connection with monthly benefit payments retroactive to March 2003. The Grandchildren continued to receive monthly benefits payments going forward.
8. In 2012, the Retirement Office determined that errors had been made with regard to the payment of the Grandchildren's benefits from ERS. While the Retirement Office investigated the situation further, the Retirement Office immediately determined that the Grandchildren were ineligible to elect or receive the backDROP payments.
9. On September 28, 2012, the Retirement Office sent letters to the Grandchildren informing them that they received erroneous backDROP payments. These letters advised that under the Ordinances and Rules, these payments, plus interest, must be returned to ERS. The letters also stated that unless the beneficiaries appealed, the benefit payments would be suspended beginning November 1, 2012 until the overpayment, plus interest, is recovered.
10. Ms. Walker (on behalf of the Grandchildren) appealed the Retirement Office's decision to offset monthly benefit payments to the Grandchildren against the backDROP overpayment.
11. At its meeting on November 21, 2012, the Pension Board heard Ms. Walker's appeal and determined that "[a]fter full consideration of all facts and circumstances in light of the factors described in ERS Rule

1050 pertaining to offset amount, the Pension Board grants in part and denies in part Kenya Walker's appeal under Rule 1050. Pending the final decision of the Pension Board regarding the benefits payable to Yvonne Ware's beneficiaries, the Retirement Office shall offset 50%, rather than 100%, of monthly pension payments to Ms. Ware's beneficiaries until the entire amount of the backDROP overpayment, plus interest, is recovered. Ms. Walker may appeal the Pension Board's decision regarding the offset under Rule 1016."

12. The Retirement Office sent a letter to Ms. Walker informing her of the Pension Board's decision regarding her Rule 1050 appeal of the offset. This letter informed Ms. Walker of her right to appeal under Rule 1016. Ms. Walker did not request an appeal. The Retirement Office continued to offset the monthly pension payments to the Grandchildren at 50%.
13. In February 2015, the Retirement Office concluded its investigation and determined that the Grandchildren are not entitled to receive any benefit from ERS as survivors of Ms. Ware. Accordingly, the Retirement Office informed the Grandchildren that ERS would cease monthly benefit payments and must recover all benefit payments made since October 2003, plus interest. The Retirement Office also informed the Grandchildren of their right to appeal the Retirement Office's decision.
14. The Grandchildren appealed the Retirement Office's determination they are not entitled to any benefit from ERS. On March 13, 2015, the Grandchildren's attorney sent ERS a letter setting forth the Grandchildren's arguments why the Grandchildren are entitled to benefit payments from ERS. The Pension Board received and reviewed the letter and arguments provided by the Grandchildren's attorney, as well as the information ERS has in its file applicable to the Grandchildren's appeal.

Applicable Ordinances and Rules.

15. Ordinance section 201.24(7.1) provides that a member in active service may, upon meeting the applicable age and service requirements,

elect a protective survivorship option by selecting option 2 or 3 . . . which option shall then become effective at his death with the same force and effect as if such member had retired under such option immediately prior to his death. The election of such option shall be

in writing on a form prescribed by the board and may be revoked at any time prior to retirement.

Ordinance section 201.24(7.1) further provides that

[i]f any member eligible to elect an option shall die in active service, without electing an option, his surviving spouse shall be paid a survivorship pension equal to the amount that would have been payable if such member had retired under option 3 immediately prior to his death except where the member has designated a beneficiary to receive in lieu of the survivorship pension payable under option 3 a lump sum payment of the balance in his membership account plus the death benefit payable under section 6.3.

16. Ordinance section 201.24(7.2) provides, in pertinent part, that the "[t]he board may, in its sole discretion, at the request of a member or contingent pensioner, direct that any benefit provided by the system be paid in some form other than that expressly set forth in the system, provided that payments in such other form shall be the actuarial equivalent of the benefit otherwise payable. The board shall, if it deems it appropriate, require a member or contingent pensioner to submit evidence of good health as a condition to receipt of any such other form of payment particularly any lump sum payment."
17. Ordinance section 201.24(6.3) provides that "[u]pon the receipt of proper proofs of the death of a member, if such member has completed one (1) or more years of creditable service, and no survivors' benefits are payable under sections 6.1, 6.2, 6.4 or 7.1, there shall be paid a lump sum benefit of one-half (1/2) the final average salary of such deceased member, but not to exceed two thousand dollars (\$2,000.00). The member may designate as beneficiary a trustee(s) named or to be named by will."
18. Ordinance section 201.24(5.16) provides that a member may elect a backDROP benefit "[u]pon retirement."
19. Rule 711 provides, in pertinent part, that "[a]ny member whose application to retire is filed and effective on or after January 1, 2001, and who elects a normal pension pursuant to section 4.1 or an early pension pursuant to section 4.2 shall be eligible to elect to receive the retroactive deferred retirement option program, or "back DROP," pension benefit described in section 5.16."

Pension Board Conclusions.

20. The Pension Board affirms its November 12, 2012 finding that Ordinance section 201.24(5.16) and Rule 711 require an active member to apply for a backDROP benefit. Because the Grandchildren are not members of ERS, they were ineligible to request or receive a backDROP benefit. Moreover, Ordinance section 201.24(5.16) and Rule 711 require a member apply for a backDROP benefit in connection with a normal or early retirement. Ms. Ware died while in active service and, thus, did not retire from ERS. Accordingly, the Pension Board finds that the Grandchildren were not entitled to receive a backDROP benefit from ERS.
21. As stated above, prior to her death, Ms. Ware submitted a Retirement Application to ERS, but then did not retire. The Retirement Application does not include a date of retirement or shares of the benefit each Grandchild should receive, nor does it specify a form of benefit. This information is necessary for the Retirement Office to calculate a member's pension benefit.
22. Because the Retirement Application does not provide the information necessary for ERS to process Ms. Ware's retirement, it cannot be considered a valid application for retirement. In addition, for unknown reasons, Ms. Ware chose not to retire after submitting the Retirement Application. Accordingly, the Pension Board finds that the Retirement Application submitted by Ms. Ware in 2001 was not an application for retirement and Ms. Ware was in active service at the time of her death.
23. Ordinance section 201.24(7.1) requires eligible members to elect a protective survivor ship option ("PSO")"in writing on a form prescribed by the board."
24. At the time Ms. Ware submitted the Retirement Application, the Retirement Office had a form in place specifically designated as a PSO form that members must use to elect a PSO. Ms. Ware never completed and submitted a PSO form to the Retirement Office prior to her death. While Ms. Ware submitted an incomplete Retirement Application, the retirement application form is significantly different from the PSO form and the two forms cannot be considered interchangeable.
 - (a) The Grandchildren argue, without providing evidence, that perhaps Ms. Ware completed a PSO form in addition to the

Retirement Application. There is no evidence Ms. Ware completed the designated PSO form in addition to the Retirement Application. Furthermore, the Grandchildren presented no evidence that Ms. Ware did or did not intend to retire soon after submitting the Retirement Application. In fact, Ms. Ware worked for more than a year after submitting the Retirement Application until her death while in active service on February 17, 2003.

25. The Pension Board finds that Ordinance section 201.24(7.1) requires a member to complete and submit the designated PSO form to elect a PSO at the time of the member's death while in active service. Because Ms. Ware failed to complete and submit the designated PSO form prior to her death, the Pension Board finds that no PSO benefit is payable to any of the Grandchildren. Furthermore, the Pension Board notes that no evidence has been presented that Ms. Ware even intended to elect a PSO benefit.
26. Additionally, the language of Ordinance section 201.24(7.1) contemplates a single beneficiary. Had multiple beneficiaries been contemplated, Ordinance section 201.24(7.1) would use the plural "beneficiaries" rather than the singular "beneficiary." The PSO form in use at the time Ms. Ware submitted the Retirement Application is consistent with interpreting Ordinance section 201.24(7.1) to only permit a single beneficiary of a PSO.
27. The Pension Board finds that, pursuant to Ordinance section 201.24(7.1), members who make a PSO election may only designate a single beneficiary to receive the PSO benefit. Accordingly, the Pension Board finds that the Retirement Application was also not, and could not be interpreted as, a valid PSO because it designated multiple beneficiaries.
28. Ordinance section 201.24(7.2) provides the Pension Board "may, in its sole discretion, at the request of a member or contingent beneficiary, direct that" benefits be paid in a different form. Other than with respect to the Grandchildren, there are no records of ERS ever paying a PSO benefit to multiple beneficiaries.
29. However, even if the Pension Board could allow a member to designate multiple beneficiaries with respect to a PSO election under Ordinance section 201.24(7.2), the Pension Board would be required to expressly approve such an election. Because a PSO benefit is paid when a member dies, a member who makes a PSO election and

dies in active service is unable to seek Pension Board approval of any alternative form of benefit under Ordinance section 201.24(7.2). The Pension Board finds that Ordinance section 201.24(7.2) would not allow Ms. Ware to designate multiple beneficiaries as part of a PSO election.

30. The Pension Board, as Plan fiduciary, is required to administer ERS benefits based on the Ordinances and Rules. Accordingly, the Pension Board cannot provide benefits to members based on errors made by the Retirement Office if those errors violate the Ordinances and Rules. Even if the Retirement Office staff provided Ms. Ware with an improper form or incorrectly accepted the Retirement Application as a PSO election, the Pension Board is required to correct these errors if they are contrary to the Ordinances and Rules. The Pension Board finds that the Ordinances and Rules do not allow a member to elect or receive a PSO based on an incomplete retirement application.

Repayment of Overpaid Benefits.

31. Because the Pension Board determined that the Grandchildren were ineligible to receive a backDROP payment and Ms. Ware did not complete a PSO election designating the Grandchildren as beneficiaries, the Grandchildren have received improper benefit payments from ERS since October 2003. The only benefit payable following Ms. Ware's death is the \$2,000 death benefit under Ordinance section 201.24(6.3), including interest.
32. As part of ERS's filing with the IRS under the Voluntary Correction Program, ERS is required to be made whole for the erroneous payments received by the Grandchildren, plus interest. Rule 1050 also requires ERS to request repayment of any overpayment made to a member or beneficiary in error.
33. The Pension Board finds that the Grandchildren are responsible for repaying the overpayments they received from ERS, reduced by the \$2,000 death benefit payable pursuant to Ordinance section 201.24(6.3), with interest.

Grandchildren's Arguments.

34. The Grandchildren argue that amendments to Ordinance section 201.24(7.1) may have altered Ms. Ware's entitlement to a PSO election and, thus, deprived her of a vested benefit. The

Grandchildren provided no evidence that an amendment to Ordinance section 201.24(7.1) reduced Ms. Ware's benefit. A minor amendment was made to Ordinance section 201.24(7.1) in November 2005, after Ms. Ware's death. This amendment broadened the class of members eligible to receive a PSO. This amendment has no effect on the Grandchildren's appeal. At the time of her death, Ms. Ware was eligible to elect a PSO under the Ordinances and Rules. However, she failed to do so prior to her death. Accordingly, no benefit is payable pursuant to a PSO election.

35. The Grandchildren argue that the Retirement Application was accepted by the Retirement Office as a PSO election and she was never notified that the application was technically deficient. Further, the Grandchildren contend that Ms. Ware relied on the "board and plan administrator's representation that her designation was valid." Based on the fact that benefits were paid in the manner that they were paid, it appears the Retirement Office accepted Ms. Ware's incomplete Retirement Application as a PSO election. The Pension Board did not review this issue at the time of her death and did not authorize the payment of the benefits. The Pension Board is not bound by the Retirement Office's errors, and the Pension Board is required by IRS regulations and its fiduciary duty to correct the error.
36. The Grandchildren argue that the Pension Board, at its meeting on November 21, 2012, "confirmed that [the Grandchildren were] eligible to continue to receive benefits as [PSO beneficiaries]." At the November 21, 2012 meeting, the Pension Board only examined the Grandchildren's eligibility for a backDROP payment and amount of offset under Rule 1050. The Pension Board did not consider whether the Grandchildren were eligible to receive any other benefits from ERS. The Pension Board's November 21, 2012 decision explicitly states that its decision was "[p]ending the final decision of the Pension Board regarding the benefits payable to Yvonne Ware's beneficiaries. . . ."
 - (a) Rule 1001 provides that the action of the Pension Board shall be final after one year. This Rule on its face applies to actions of the Pension Board. A decision made by the Pension Board is different from a decision made, or action taken, by the Retirement Office. The Grandchildren have not provided any documentation that their benefits were reviewed

by the Pension Board. Rule 1001 is therefore inapplicable to the Grandchildren's benefits because the Pension Board did not make a decision regarding payment of their benefits.

37. The Grandchildren next argue that ERS cannot cease payments to the Grandchildren under the principles of equitable estoppel. The Grandchildren allege that the Retirement Office and Pension Board misled Ms. Ware by failing to inform her that the Retirement Application was not a proper PSO election. They cite *Gallegos v. Mount Sinai Medical Center*, 210 F.3d 803 (7th Cir. 2000) for the proposition that a plan administrator "cannot deny a claimant benefits when representations of the plan administrator caused the claimant to take an action that would have enabled the claimant to receive benefits under the plan."
- (a) As a threshold matter, the case cited by the Grandchildren, *Gallegos*, examines a provision under the Employee Retirement Income Security Act of 1974 ("ERISA") and, because ERS is not subject to ERISA, the section examined in that case is not applicable to ERS.
 - (b) Additionally, the Grandchildren presented no evidence here that the Retirement Office or the Pension Board made misleading statements to Ms. Ware or the Grandchildren or even that Ms. Ware questioned the Retirement Office regarding how to properly elect a PSO. Accordingly, the Pension Board finds that the Retirement Office did not mislead Ms. Ware by failing to inform her that the Retirement Application was not a proper PSO election form.
38. The Grandchildren also allege that failure to notify Ms. Ware that her PSO application was technically deficient is a breach of fiduciary duty. The Grandchildren cite *Kamler v. H/N Telecomm. Serv., Inc.*, 305 F.3d 672, 681 (7th Cir. 2002) for the proposition that the Retirement Office and Pension Board "had a fiduciary duty to review the application" upon its submission "to ensure that her intent was satisfied and notify Ware if the application contained any technical difficulties."
- (a) In *Kamler*, another ERISA case, the court stated that a fiduciary violates its duty to act solely in the interest of plan participants and beneficiaries when the fiduciary misleads plan participants or misrepresents the terms or administration of the plan. *Id.* at 681. There is no evidence indicating Ms.

Ware did not intend to retire after submitting the Retirement Application or intended to elect a PSO by completing a Retirement Application, nor is there any evidence indicating the Retirement Office or Pension Board misled Ms. Ware into believing she was electing a PSO benefit when she submitted the Retirement Application.

39. The Grandchildren next argue they are not parties to the plan contract and therefore cannot be sued by the Pension Board for the recovery of overpayments. As support for this claim, the Grandchildren cite U.S. Supreme Court cases in which the Court interpreted section 502(a)(3) of ERISA to require a plan to provide for an equitable lien on a benefit before a fiduciary can recover benefits from a beneficiary.
- (a) ERISA section 502(a)(3) authorizes a civil action by a fiduciary to enjoin any act or practice which violates any provision of Title I of ERISA or the terms of the plan, to obtain appropriate equitable relief, or to enforce any provision of Title I or the terms of the plan. Because ERS is not subject to ERISA, section 502(a)(3) does not govern ERS's recovery of wrongful payments. Rather, ERS Rule 1050 authorizes ERS to recover overpayments in any manner. Accordingly, the Pension Board finds that because the Grandchildren received a benefit that is not allowed under the Ordinances and Rules, ERS is required by the Ordinances and Rules and IRS correction principles to seek recovery of the overpayment made to the Grandchildren.
40. The Grandchildren's final argument is that the voluntary payment doctrine bars ERS from recovering the payments to the Grandchildren because the Retirement Office and Pension Board possessed all the information they needed to determine the validity of the benefit yet failed to stop the payments. According to the Grandchildren, the voluntary payment doctrine provides that "as between two parties, money paid voluntarily, with knowledge of all the facts, and without fraud or duress, cannot be recovered merely on account of ignorance or mistake of the law." See *Putnam v. Time Warner Cable of Se Wisc. P'Ship*, 255 Wis. 2d 447, 458 (Wis. 2002).
- (a) The Pension Board is not aware of any court decision applying the voluntary payment doctrine to deny a pension plan's recovery of wrongful benefit payments or overpayments. Because ERS is a tax qualified public pension

plan, it is subject to IRS rules requiring that the plan be made whole for any overpayment paid out by the plan. Rev. Proc 2013-12, Appendix B, § 2.04(a). The Pension Board finds that ERS is entitled and required to seek recovery of the overpayment made to the Grandchildren.

9. Pending Litigation

(a) Tietjen v. ERS

The Pension Board took no action on this item.

(b) Angeles v. ERS

The Pension Board took no action on this item.

(c) Trapp, et al v. ERS

The Pension Board took no action on this item.

(d) Baldwin v. ERS

The Pension Board took no action on this item.

10. Report on Compliance Review

The Pension Board took no action on this item.

11. Reports of ERS Manager & Fiscal Officer

(a) Retirements Granted, May 2015

Ms. Ninneman presented the Retirements Granted Report for May 2015. Sixteen retirements from ERS were approved, with a total monthly payment amount of \$28,218. Of those 16 ERS retirements, 12 were normal retirements and 4 were deferred. Ten members retired under the Rule of 75. Nine retirees chose the maximum option, and 2 retirees chose Option 3. Eight of the retirees were District Council 48 members. Five retirees elected backDROPs in amounts totaling \$1,063,195.

(b) ERS Monthly Activities Report, May 2015

Ms. Ninneman reported that the May 2015 ERS Monthly Activities Report was not ready for presentation because she did not receive a completed Activities Report.

Ms. Ninneman then reported that ERS Manager Peggy Kubricky resigned effective as of last week. Ms. Ninneman indicated that the listing for the ERS Manager position has already been posted and several very good candidates have applied. Three additional postings for a Retirement Specialist, Clerical Specialist and Assistant Fiscal Officer are in various stages of completion and it is anticipated that all vacant positions should be fully staffed by August.

(c) Fiscal Officer

Ms. Lausier first discussed the May 2015 portfolio activity report. Benefits and expenses for May were funded by liquidating \$17.4 million from Mellon Capital large cap in fixed income.

Ms. Lausier continued with a discussion of the May 2015 cash flow report. There was just over \$1 million issued in backDROPs in May 2015 and the backDROP amount for June 2015 is anticipated to be just under \$3 million. The \$51 million previously approved for third quarter funding should be sufficient to cover benefits through the remainder of the third quarter.

In response to a question from Mr. Smith, Ms. Lausier answered that the \$51 million should be sufficient to cover benefits and expenses through September 2015. Ms. Lausier stated that she will request fourth quarter funding amounts at the August Board meeting.

Mr. Smith then reminded Ms. Lausier that unless special circumstances dictate a need, the Board typically does not hold a meeting in August.

Ms. Ninneman stated that after the projections are finalized for the upcoming months, Ms. Lausier will have a better idea of estimated benefit payments and can request fourth quarter funding amounts at the July Board meeting if necessary.

Ms. Lausier concluded by reporting that she recently met with Mr. Caprio to review various funding practices and procedures. Ms. Lausier will have one or two additional meetings with Mr. Caprio to review the calculation of management fees.

12. Administrative Matters

The Pension Board discussed additions and deletions to the Pension Board, Audit Committee and Investment Committee future topic lists and no changes were requested.

Ms. Braun stated that she received an invitation to attend an educational seminar sponsored by the Public Funds Forum on September 8-10, 2015. The seminar would require special approval because it is not being offered by the International Foundation. Ms. Braun noted that the seminar is geared towards public funds and will likely be very informative and wanted to be sure that the Board members were aware of the opportunity to attend.

Mr. Grady noted that the information regarding the Public Funds Forum seminar was not on today's agenda but it can be included on the July Board meeting agenda for review and approval if necessary.

In response to a question from Ms. Van Kampen regarding the new SharePoint site, Ms. Ninneman stated she is continuing to smooth out some of the internal issues with the site but there is no substantive update to provide at this time.

13. Adjournment

The meeting adjourned at 2:00 p.m.

Submitted by Steven D. Huff,
Secretary of the Pension Board