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TO: Chairman Theodore Lipscomb, Sr.
Supervisor Anthony Staskunas
Committee on Judiciary, Safety and General Services

FROM: Margaret C. Daun, Corporation Counsel

CC: Interested Parties

DATE: May 4, 2018

RE: *Susan L. Baldwin & Leverett F. Baldwin v. Milwaukee County & Employees' Retirement System of the County of Milwaukee*, Circuit Court Case No. 2015CV009354, Court of Appeals Case No. 2016AP2380

This memorandum provides an overview of the current status of the above-referenced litigation, for consideration by the Committee on Judiciary, Safety and General Services, as well as the full County Board.

This case is rooted in the County's purchase of service credit program, otherwise known as the "buy-in/buy-back" program. That pension benefit—which is no longer in effect—allowed some County employees to purchase service credits for past periods of County employment, thus enhancing their pensions upon retirement. Sue Baldwin, who primarily worked for the County from 1984 to 2003, was permitted to purchase credit for a short period of time as a County summer employee in 1969. This purchase, which cost her \$683.37, increased the retirement benefits for which she was eligible when she retired in 2003 by hundreds of thousands of dollars, potentially totaling well more than \$500,000.

In 2007, Ms. Baldwin's purchase of service credit was identified as potentially erroneous. It remained under investigation for many years. February 2015 RPS correspondence to Ms. Baldwin indicated that her purchase of service had, in fact, been improper, and that she had therefore been overpaid by approximately \$225,000.00 (including interest as of that date). Ms. Baldwin's monthly benefit going forward was consequently reduced significantly, reflecting both her corrected benefit (without the increase based on the purchased service credit) and an additional reduction for recoupment of her overpayment. Ms. Baldwin appealed this determination to the Pension Board.

At its March 18, 2015 meeting, the Pension Board heard Ms. Baldwin's arguments and denied her appeal. Ms. Baldwin pursued *certiorari* review of the Pension Board's denial in the Milwaukee County Circuit Court. The circuit court judge decided the matter in favor of Respondents ERS and Milwaukee County on October 24, 2016. The Baldwins timely initiated an appeal to the Wisconsin Court of Appeals, which issued a decision reversing the Circuit Court

on April 19, 2018. The decision concluded that Ms. Baldwin's purchase of service credit had indeed been improper, but that she could no longer be required to repay the amounts that she had received in error or have her benefit reduced to the correct amount. The court primarily focused on a Pension Board Rule that it interpreted to impose a one-year limitations period on recovery of overpayments from members.

The Pension Board, on behalf of ERS, has already authorized filing a petition for review of the appellate decision by the Wisconsin Supreme Court on behalf of ERS. The petition for review is due no later than May 21, 2018. The Office of Corporation Counsel strongly disagrees with the appellate court's decision and has recommended that the County join its co-Respondent, ERS, in pursuing further appeal. Should the Court of Appeals decision stand, it could potentially have significant negative impacts for the pension fund and Milwaukee County that go well beyond Ms. Baldwin's individual pension benefits—which are, themselves, substantial.

The County Board of Supervisors is not scheduled to meet again until after the 30-day statutory appeal period has expired, and prompt action is required to prepare the petition for review. Therefore, pursuant to MCGO § 1.28(2), the Office of Corporation Counsel sought authorization from the County Executive and County Board Chairperson to petition for Wisconsin Supreme Court review, as “time limits do not permit making application to meet this section in cases of imminent emergency.” If the Judiciary Committee recommends approval of the appeal, at the next full Board meeting, the Board will have the opportunity to confirm or reject the County's filing of a petition for review with the Wisconsin Supreme Court in this case.

Outside counsel for the County is working with the Office of Corporation Counsel to prepare the County's Petition for Review.
