

STATE OF WISCONSIN

CIRCUIT COURT
Branch 9

DANE COUNTY

THE BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM,

Plaintiff,

v.

Case No. 17-CV-106

Case Code: 30301

THOMAS G. SONNLEITNER

and

RICHARD H. WELLS,

Defendants,

And

THOMAS G. SONNLEITNER,

Defendant and
Third-Party Plaintiff,

v.

THE UNIVERSITY OF WISCONSIN
OSHKOSH FOUNDATION,

Third-Party Defendant.

**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
OF DEFENDANT RICHARD H. WELLS**

Defendant Richard H. Wells, by his attorneys Gimbel, Reilly, Guerin & Brown LLP, responds to the complaint filed by plaintiff Board of Regents of the University of Wisconsin System as follows:

1. This paragraph sets forth a legal conclusion to which no factual response is required. To the extent a response is required, Wells denies the allegations contained in paragraph no. 1 of the Board's complaint.

2. This paragraph sets forth a legal conclusion to which no factual response is required. To the extent a response is required, Wells denies the allegations contained in paragraph no. 2 of the Board's complaint.

3. Wells admits that the Board is the statutorily-created board which governs the University of Wisconsin System (UWS), under the authority of Article X, section 6 of the Wisconsin Constitution, and the state statutes cited in paragraph no. 3 of the Board's complaint, among others. Wells also admits that the chief executive of the UWS is the president, section 36.05(10), *Stats.*, and the chancellor of each campus is the chief executive of that particular institution. Sec. 36.05(5) and 36.09(3), *Stats.*

4. Wells admits the allegations contained in paragraph no. 4 of the Board's complaint.

5. Wells admits the allegations contained in paragraph no. 5 of the Board's complaint.

6. Wells denies the overall implication of the allegations set forth in the Board's complaint that his actions as chancellor were done without actual or apparent authority and were done for any improper or illegal purpose. All of Wells' actions were undertaken while carrying out his duties as an officer and employee of the UWS, and within the scope of his employment. None of the actions alleged in the Board's complaint against Wells were undertaken for personal benefit or as a "frolic of his own." Subject to

that caveat, Wells admits that he worked for the UWS, prior to his retirement in August 2014, as the Chancellor and executive head of the UW-Oshkosh campus, with the powers, responsibilities and duties set forth in section 36.09(3), *Stats*. Wells also admits defendant Thomas Sonnleitner was an employee of the UWS and served as Vice-Chancellor of UW-Oshkosh during Wells' tenure and after same.

7. Wells denies the allegation contained in paragraph no. 7 of the Board's complaint that he began to serve as Chancellor in 2010. Wells served as Chancellor of UW-Oshkosh from October 1, 2000, until August 31, 2014.

8. Wells admits the allegations contained in paragraph no. 8 of the Board's complaint.

9. Wells admits the allegations contained in paragraph no. 9 of the Board's complaint. Subsequent to Wells' retirement in August 2014, Sonnleitner's immediate supervisor was Andrew Leavitt, who replaced Wells at some point as Chancellor of UW-Oshkosh.

10. Wells admits the allegations contained in paragraph no. 10 of the Board's complaint. Upon information and belief, within the UW System there are 26 campuses, organized under two research universities, eleven comprehensive universities, and UW Extension and college campus sites. There are fourteen Chancellors, two for the research universities, eleven for the comprehensive universities (like UW-Oshkosh) and one for UW Extension and the several UW College campuses. The research universities and the eleven comprehensive universities are all believed to have affiliated foundations. See <https://www.wisconsin.edu/campuses/>.

11. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations and information contained in paragraph no. 11 of the Board's complaint and therefore denies same, and puts the Board to its proof.

12. Wells generally admits that when he served as Chancellor of UW-Oshkosh, he interacted with the UW-Oshkosh Foundation while carrying out his duties as an officer and employee of the UWS and acting within the scope of his employment. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations and details regarding limited liability companies that are contained in paragraph no. 12 of the Board's complaint, and therefore denies same and puts plaintiff to its proof.

13. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 13 of the Board's complaint, and therefore denies same and puts the Board to its proof.

14. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 14 of the Board's complaint, and therefore denies same and puts the Board to its proof.

15. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 15 of the Board's complaint, and therefore denies same and puts the Board to its proof.

16. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 16 of the Board's complaint, and therefore denies same and puts the Board to its proof.

17. The Board alleges at paragraph no. 17 of its complaint that there were “multiple transfers of funds” more than six years before the date of the complaint, but that it is making no claim with respect to these alleged transfers. As no claim is being made, Wells objects to this reference of alleged, unspecified transfers as being vague, insufficient, irrelevant and surplusage, and moves to strike paragraph no. 17 of the Board’s complaint in its entirety. If paragraph no. 17 is not stricken, Wells answers that he lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 17 of the Board’s complaint and therefore denies same, and puts the Board to its proof.

Witzel Biodigester

18. Wells denies subparts (j), (k), (l) and (m) of paragraph no. 18 of the Board’s complaint. Wells had retired prior to the dates of the alleged transfers, assuming that subpart (m) is a typographical error and was meant to be 2015 rather than 2013. As to the remainder of the allegations in paragraph no. 18, and subpart (m) if it is not a typo, Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 18 of the Board’s complaint, including subparts (a) through (m), and puts the Board to its proof.

19. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 19 of the Board’s complaint, and therefore denies same and puts the Board to its proof.

20. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 20 of the Board's complaint, and therefore denies same and puts the Board to its proof.

Rosendale Biodigester

21. Wells denies being directly involved in the fund transfers alleged in subparts (g) and (h) of paragraph no. 21 of the Board's complaint, as he had retired prior to the dates of these alleged transfers. As to the remainder of the allegations in paragraph no. 21, Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained therein, including subparts (a) through (f) and puts the Board to its proof. Defendant Wells objects to the vague reference in the complaint of alleged transfers of "University funds," as the complaint does not set out with any particularity what such funds were and why Wells did not have authority to utilize such for purposes benefiting UW-Oshkosh and UWS. The Board's complaint also does not indicate from what sources the funds originated, *e.g.*, general program revenue (GPR) funds, tuition, student fees, overhead and grants, reserve funds, etc. Wells requests that the court require greater specificity from the Board, beyond what has been alleged, so as to enable him to more completely respond to the allegations.

22. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 22 of the Board's complaint, and therefore denies same and puts the Board to its proof.

23. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 23 of the Board's complaint, and

therefore denies same and puts the Board to its proof. Wells also requests that the Board clarify the contract amount alleged, as there may be a typographical error.

24. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 24 of the Board's complaint, and therefore denies same and puts the Board to its proof.

25. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 25 of the Board's complaint, and therefore denies same and puts the Board to its proof. Wells affirmatively asserts that he had retired from UWS by the time of the alleged lease agreement.

26. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 26 of the Board's complaint, and therefore denies same and puts the Board to its proof. The Board's complaint is silent as to the date when the alleged security interest was granted by the UW-Oshkosh Foundation, what form it was in, where it was filed and whether and how it was perfected. Wells further affirmatively asserts that if this alleged grant occurred after August 31, 2014, he had already retired from UWS at that time.

27. This paragraph sets forth a legal conclusion to which no factual response is required. To the extent that a response is required, Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 27 of the Board's complaint, and therefore denies same and puts the Board to its proof. Wells affirmatively asserts that it has long been recognized that the Board is "invested with very great powers under the statutes." *See* Opinions of the Wisconsin

Attorney General cited below. So too are the first line agents of the Board, the UWS president and the chancellors, whose authority and powers are directly derived from their principal, the Board of Regents, to act for and on behalf of the UWS. See section 36.09(1)(L), (2) and (3), *Stats.* See also 1906 Opinions of the Wisconsin Attorney General 589 (Regents have power and authority to borrow money beyond funds appropriated by the Legislature); 20 Opinions of the Wisconsin Attorney General 22 (1931) (Regents have power and authority to enter into agreement with outside entity for jointly-operated forest products laboratory facility, which runs for an indefinite number of years); 38 Opinions of the Wisconsin Attorney General 468 (1949) (Regents have power and authority to enter into contracts with for-profit entity for university sports facility concessions); and 63 Opinions of the Wisconsin Attorney General 374 (1974) (Regents have power and authority, and are not precluded by state constitution, from entering into agreements for the rental or lease of university space “for purposes, objects and uses of the system authorized by law”).

Alumni Welcome and Conference Center (AWCC)

28. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 28 of the Board’s complaint, and therefore denies same and puts the Board to its proof. Wells objects to the vague reference in the paragraph 28 of the complaint of alleged transfers of “University funds,” as the complaint does not set out with any particularity what such funds were and why Wells did not have authority to utilize such for purposes benefiting UW-Oshkosh and UWS. The complaint also does not indicate from what sources the funds originated, *e.g.*, general

program revenue (GPR) funds, tuition, student fees, overhead and grants, reserve funds, etc. Wells requests that the court require greater specificity from the plaintiff, beyond what has been alleged in paragraph no. 28, so as to enable him to more completely respond to the allegations.

29. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 29 of the Board's complaint, and therefore denies same and puts the Board to its proof. Wells objects to the vague and unclear reference in paragraph no. 29 as to which entity repaid funds, and also objects to the lack of any specificity as to what the relationships and agreements between the AWCC, the Foundation and the UW-Oshkosh were, as to operation, ownership and the manner of securing repayment of any funds invested in the AWCC. Wells requests that the court require greater specificity from the Board, beyond the one short sentence constituting paragraph no. 29, so as to enable him to more completely respond to the allegations.

30. The Board alleges at paragraph no. 30 of its complaint that the University contributed \$4,600,000 to the cost of the AWCC "with proper authorization," and makes no claim for this sum. Wells objects to the overall lack of specificity and clarity in paragraph 30, and the foregoing two paragraphs of the Board's complaint relating to the AWCC, which allege that some fund transfers are authorized and some are not, but does not say why. No statement of fact is made as to who had authority to authorize transfers, and what differentiates some fund transfers from others as being "authorized" or not, since the AWCC benefited UW-Oshkosh, its students and the UWS. As no claim is being

made for these funds, there is nothing to which Wells must respond. However, to the extent that a response may be required, Wells answers that he lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 30 of the Board's complaint, denies same and puts the Board to its proof.

The Hotel Project

31. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 31 of the Board's complaint, and therefore denies same and puts the Board to its proof. Wells objects to the vague reference in paragraph 31 of the complaint of alleged transfers of "University funds," as the complaint does not set out with any particularity what such funds were and why Wells did not have authority to utilize such for purposes benefiting UW-Oshkosh and UWS. The Board's complaint also does not indicate from what sources the funds originated from, *e.g.*, general program revenue (GPR) funds, tuition, student fees, overhead and grants, reserve funds, etc. Wells requests that the court require greater specificity from the Board, beyond what has been alleged in paragraph no. 31, so as to enable him to more completely respond to the allegations.

32. The Board alleges at paragraph no. 32 of its complaint that the funds alleged to have been transferred "were subsequently repaid, leaving no balance due." Wells objects to the lack of specificity and clarity in this paragraph as it appears that no claim is being made by the Board, as all funds were repaid. No statement of fact is alleged that such fund transfers and repayment were not for the benefit of UW-Oshkosh, its students and the UWS, or were done without authority. As no claim is apparently being made

for these funds, there is nothing to which Wells must respond. However, to the extent that a response may be required, Wells answers that he lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 32 of the Board's complaint, denies same and puts the Board to its proof.

Oshkosh Sports Complex

33. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 33 of the Board's complaint, and therefore denies same, and puts the Board to its proof. Wells objects to the vague reference in paragraph no. 33 of the complaint of alleged transfers of "University funds," as the complaint does not set out with any particularity what such funds were and why Wells did not have authority to utilize such for purposes benefiting UW-Oshkosh and UWS. The Board's complaint also does not indicate from what sources the funds originated *e.g.*, general program revenue (GPR) funds, tuition, student fees, overhead and grants, reserve funds, etc. Wells requests that the court require greater specificity from the plaintiff, beyond what has been alleged in paragraph no. 33, so as to enable him to more completely respond to the allegations.

34. Wells admits that during his tenure as Chancellor, the Foundation transferred the Oshkosh Sports Complex to UW-Oshkosh. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the remaining allegations contained in paragraph no. 34 of the Board's complaint, and therefore denies same and puts the Board to its proof. Wells objects to the lack of any particularity and information in paragraph no. 34 as to which entity repaid funds, under what agreements, what the

relationships and agreements between UW-Oshkosh and the Foundation regarding the Oshkosh Sports Complex entailed, and the manner of securing repayment of any funds allegedly transferred, all of which were for the benefit of UW-Oshkosh and its students. Wells requests that the court require greater specificity from the Board, so as to enable him to more completely respond to the allegations.

Other Fund Transfers

35. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 35 of the Board's complaint, and therefore denies same and puts the Board to its proof. Wells affirmatively asserts that the fund transfers alleged in paragraph no. 35 of the Board's complaint occurred after August 31, 2014, after Wells had retired as Chancellor of UW-Oshkosh.

University Guarantees of Foundation Debt

36. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 36 of the Board's complaint, and therefore denies same and puts the Board to its proof. Wells objects to the Board's failure to provide any particularity or details in its complaint, and to the lack of any writing, filing or perfected security interest which contains the supposed guarantee. According to the ABA Business Law Section, [a] guarantee (guaranty) is an agreement made by a third party to pay and/or perform the obligations of a debtor for the satisfaction of a debt owed to a creditor, upon the occurrence of an event. A guaranty, like any contract, requires mutual assent, adequate consideration, definiteness, a meeting of the minds and must be in writing. None of these essential details are set out in the Board's vague and conclusory allegation in paragraph no. 36. Wells requests that the court require greater

specificity from the Board, beyond what has been alleged in paragraph no. 36, so as to enable him to more completely respond to the allegations.

37. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 37 of the Board's complaint, and therefore denies same and puts the Board to its proof. As with his answer to paragraph no. 36, Wells objects to the Board's failure to provide any particularity and detail in support of its allegations in paragraph no. 37. The Board's complaint fails to provide any writing, filing or perfected security interest of the supposed guarantees; fails to provide any specificity as to what obligations or loans for what Foundation projects and initiatives are at issue, and provides no indication as to who the parties involved are, mutual assent, adequate consideration, definiteness and a meeting of the minds. None of these essential details are set out in the Board's vague, overbroad and conclusory allegations in paragraph no. 37. Wells requests that the court require greater specificity from the Board, beyond what has been alleged in paragraph no. 37, so as to enable him to more completely respond to the allegations.

38. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 38 of the Board's complaint, and therefore denies same and puts plaintiff to its proof. Wells objects to the Board's failure to provide any particularity and detail in support of its allegations in paragraph no. 38. The Board's complaint does not provide any writing, filing or perfected security interest supporting the supposed guarantees; and provides no indication as to who the parties involved are (other than mentioning the Foundation); and provides no detail as to there

being mutual assent, adequate consideration, definiteness and a meeting of the minds. No facts showing essential requirements are set forth in the Board's vague and conclusory allegations in paragraph no. 38. Wells requests that the court require greater specificity from the Board, beyond what has been alleged in paragraph no. 38, so as to enable him to more completely respond to the allegations.

39. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 39 of the Board's complaint regarding the alleged actions of Sonnleitner, and therefore denies same and puts the Board to its proof.

40. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 40 of the Board's complaint regarding the alleged actions of Sonnleitner, and therefore denies same and puts the Board to its proof.

41. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 41 of the Board's complaint regarding the alleged actions of Sonnleitner, and therefore denies same and puts the Board to its proof.

42. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 42 of the Board's complaint regarding the alleged actions of Sonnleitner, and therefore denies same and puts the Board to its proof.

43. Wells denies being directly involved in the issuance of any guarantee of obligations as alleged in paragraph no. 43 of the Board's complaint. Wells affirmatively asserts that this paragraph alleges conduct occurring after his retirement on August 31, 2014. As to the remainder of the allegations in paragraph no. 43, Wells lacks sufficient information in order to form a belief as to the truth or falsity of the alleged actions of Sonnleitner, and therefore denies same and puts the Board to its proof.

44. Wells denies being directly involved in the issuance of any guarantee of obligations as alleged in paragraph no. 44 of the Board's complaint. Wells affirmatively asserts that this paragraph alleges conduct occurring after his retirement on August 31, 2014. As to the remainder of the allegations in paragraph no. 44, Wells lacks sufficient information in order to form a belief as to the truth or falsity of the alleged actions of Sonnleitner, and therefore denies same and puts the Board to its proof.

45. Wells lacks sufficient information in order to form a belief as to the truth or falsity of the allegations contained in paragraph no. 45 of the Board's complaint, and therefore denies same and puts the Board to its proof. Wells requests that the court require greater specificity from the Board, beyond what has been conclusorily alleged in paragraph no. 45, as to why and how Article VIII, section 3 supposedly prohibited the actions complained of, and what notice Wells had of such alleged prohibition.

46. Wells denies the allegations contained in paragraph no. 46 of the Board's complaint.

47. Wells denies the allegations contained in paragraph no. 47 of the Board's complaint. Wells further requests that the court require greater specificity from the

Board, beyond what has been conclusorily alleged in paragraph no. 47, as to how the Board's right to possess its money and credit has been interfered with by the alleged actions of the Wells, which were undertaken while Wells was carrying out his duties as an officer and employee of the UWS and acting within the scope of his employment.

48. Wells denies the allegations contained in paragraph no. 48 of the Board's complaint.

49. Wells denies the allegations contained in paragraph no. 49 of the Board's complaint.

AFFIRMATIVE DEFENSES

1. The Board's complaint fails to state claims upon which relief may be granted against Wells.

2. The Board's complaint fails to state, with required sufficiency, claims upon which relief may be granted, and should be dismissed. As stated previously in Wells' answer regarding numerous paragraphs of the Board's complaint, the allegations are vague, unclear, not pled in sufficient detail and not supported by reference to or copies of writings, so as to allow for an adequate understanding and notice of the basis of the claims made or to allow for a complete answer to be made. Wells asks the court to order that the Board make its complaint more particular, as requested in Wells' preceding responses.

3. Wells did not violate the Constitution of the State of Wisconsin, the Wisconsin Statutes or the common law.

4. Wells did not convert or conspire to convert or misappropriate any funds of the UW-Oshkosh, the UWS or the State of Wisconsin.

5. As the Chancellor of UW-Oshkosh from 2000 through August 2014, Wells had considerable power and authority under section 36.09, *Stats.*, derived from the statutes, the Board and its broad powers, UW System policies, practices and tradition, to collaborate with the UW-Oshkosh Foundation and other entities on projects and initiatives for the benefit of UW-Oshkosh, its students and its mission. Section 36.09(1), *Stats.*, states in pertinent part:

(e) The board (of regents) shall appoint a president of the system; a chancellor for each institution . . .

(f) The board shall delegate to each chancellor the necessary authority for the administration and operation of the institution within the policies and guidelines established by the board. The board may also delegate or rescind other authority to chancellors, committees of the board, administrative officers, members of the faculty and students or such other groups as it deems appropriate.

Section 36.09(3), *Stats.*, generally sets forth the authority and responsibilities of UWS

chancellors as follows:

(a) The chancellors shall be the executive heads of their respective faculties and institutions and shall be vested with the responsibility of administering board policies under the coordinating direction of the president and be accountable and report to the president and the board on the operation and administration of their institutions. Subject to board policy the chancellors of the institutions in consultation with their faculties shall be responsible for designing curricula and setting degree requirements; determining academic standards and establishing grading systems; defining and administering institutional standards for faculty peer evaluation and screening candidates for appointment, promotion and tenure; recommending individual merit increases; administering associated auxiliary services; and administering all funds, from whatever source, allocated, generated or intended for use of their institutions.

6. Wells' actions as Chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, including collaboration and cooperation with the UW-Oshkosh Foundation, on projects and initiatives that benefited UW-Oshkosh and its students, and on all matters which are the subject of or referenced in the Board's complaint, were acts committed while Wells was carrying out his duties as an officer and employee of UWS, and on all occasions relevant to the instant lawsuit and the Board's claims, Wells was acting within the scope of his employment.

7. Wells' actions as Chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, including collaboration and cooperation with the UW-Oshkosh Foundation, on projects and initiatives that benefited UW-Oshkosh and its students, and on all of the matters which are the subject of or referenced in the Board's complaint, were undertaken with actual authority derived from the Board, the relevant statutes, administrative code provisions, policies, practices and procedures of the UWS system, the doctrine of agency and the common law.

8. Wells Wells' actions as Chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, including collaboration and cooperation with the UW-Oshkosh Foundation, on projects and initiatives that benefited UW-Oshkosh and its students, and on all of the matters which are the subject of or referenced in the Board's complaint, if not undertaken with actual authority, were undertaken with apparent authority derived from the Board, the relevant

statutes, administrative code provisions, policies, practices, procedures and traditions of the UWS system, the doctrine of agency and the common law.

9. Wells' actions as Chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, and the alleged discretionary actions of Wells that the Board complains of, if ultimately are found by a court to have exceeded his and/or the Board's powers, from which a chancellor's power and authority derive, would not impose liability upon the State of Wisconsin, *e.g.*, if the Foundation becomes insolvent or is not able to meet its debt service or if any of the loans or obligations referenced are called due by any entity. *See* 1906 Opinion of the Wisconsin Attorney General 589, 590.

10. Wells' actions as Chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, on the matters which are the subject of or referenced in the Board's complaint, involved the exercise of discretion and judgment by Wells, and were not purely ministerial in nature; thus, Wells should not be held personally liable as a result of such acts performed within the scope of his authority and in the line of his official duty. *See Lister v. Board of Regents*, 72 Wis. 2d 282, 300-301, 240 N.W.2d 610 (1976).

11. Wells' discretionary actions as Chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, on the matters which are the subject of or referenced in the Board's complaint, do not constitute intentional or negligent conversion; and, if such actions are ultimately found by a court to have resulted from error, mistake, negligence or unintentional fault in the performance

of his discretionary functions as chancellor, these acts should not result in personal liability being imposed on Wells, as there is no substantive liability for damages resulting from mistakes in judgment where the officer is specifically empowered to exercise such judgment. *Lister*, 72 Wis. 2d at 301-302.

12. Wells' actions as Chancellor and chief administrative officer of UW-Oshkosh, and his discretionary judgments and decisions as chancellor, which were taken prior to his retirement on August 31, 2014, relative to the matters which are the subject of or referenced in the Board's complaint, were not malicious, willful or done with the intent to violate any Wisconsin state statutes or Constitution, nor were they intended to injure, interfere with or cause a loss to UW-Oshkosh, UWS or the State of Wisconsin. Wells' alleged actions and discretionary decisions relative to the Foundation and collaboration on projects and initiatives, were done for the benefit of UW-Oshkosh, its students and to further the mission and purpose of the University, and in fact did provide significant benefits to UW-Oshkosh, its students, etc.

13. Wells' actions as chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, including collaboration and cooperation with the UW-Oshkosh Foundation, on projects and initiatives that benefited UW-Oshkosh, and on all of the matters which are the subject of or referenced in the Board's complaint, were performed within the scope of his employment and as part of his official duty as chancellor and are thus imputable to his employer (the UWS), under the doctrine of *respondent superior*.

14. Wells' actions as Chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, on the matters which are the subject of or referenced in the Board's complaint, were, from time to time, presented to and were known by members of the Board, the UWS Vice-President for Finance, who also served on the Foundation board, and were thus collectively known by and imputable to the Board.

15. Wells' actions as chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, on the matters which are the subject of or referenced in the Board's complaint, whether undertaken with actual or apparent authority, were ratified and tolerated by the Board, as the principal, and Wells, as the Board's agent, and Wells should not be found personally liable for his actions taken in the course of his employment.

16. Wells' actions as Chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, including collaboration and cooperation with the UW-Oshkosh Foundation, on projects and initiatives that benefited UW-Oshkosh, and on all of the matters which are the subject of or referenced in the Board's complaint, were done in good faith and were performed within the scope of his employment and as part of his official duties as chancellor.

17. Wells' actions as Chancellor and chief administrative officer of UW-Oshkosh, which were taken prior to his retirement on August 31, 2014, including collaboration and cooperation with the UW-Oshkosh Foundation on projects and initiatives that benefited UW-Oshkosh, which are the subject of or referenced in the

Board's complaint, were done on the recommendation of, and in reliance upon, UW-Oshkosh officials Sonnleitner and Art Rathjen, Foundation board members, and in reliance on the advice of the Foundation's legal counsel.

18. During the operative period of the Board's complaint, on information and belief, the UWS did not have in place a clear, concise set of rules, best practices, guidelines and policies for university and affiliated foundation collaboration on projects and initiatives, which were applicable to UW-Oshkosh, nor were such made known to Wells. Development and promulgation of such best practices guidelines is recommended by the Association of Governing Boards of Universities and Colleges.

19. Other public university systems around the country have conducted studies and developed best practices and guidelines for the type of relationships that their institutions and affiliated foundations have. *See, e.g.*, foundation guidelines for the State University of New York (SUNY) at https://www.suny.edu/sunypp/documents.cfm?doc_id=140. Wells was not aware of any UWS best practices, guidelines, cautions or limitations which, if they existed prior to August 2014, were applicable to him, UW-Oshkosh and its affiliated Foundation.

20. While he was Chancellor, Wells was not provided with training on best practices in dealing with affiliated foundations, particularly on joint projects and initiatives such as those alleged in the Board's complaint. In 2015, the Association of Governing Boards of Universities and Colleges (AGB) formed a Task Force on Institution-Foundation Partnerships to identify concerns and develop guiding principles and best practices for institutions and affiliated foundations, and the role they play in supporting

their institution. The AGB issued a statement on institution-foundation relationships in 2016 and it commenced national training regarding such in 2017.

21. It is not known if the AGB recommendations are being considered by the Board to help provide guidance for the UW System and its officers, chancellors, various institutions and their affiliated foundations. Upon information and belief, Wells was not made aware of any specific guidelines by the Board prior to August 31, 2014. The 2015 Legislative Fiscal Bureau report on the UW System does not reference institution-foundation relationships, nor does it provide guidance, cautions and limits on joint projects and initiatives undertaken by chancellors and affiliated foundations. See http://www.mbo.wisc.edu/documents/LFB_INFOMATIONAL_PAPER_32.pdf.

22. The guarantees, comfort letters, and memoranda of understanding alleged, referenced or underlying the allegations in the Board's complaint do not constitute a legally enforceable guarantee (guaranty), and did not and do not create any legally enforceable debt, giving of credit, obligation or assumption of debt, which is binding on the State of Wisconsin.

23. The Board has failed to join the necessary parties in this case, so that the court can make appropriate findings and declaratory determinations as to whether or not plaintiff and/or the State of Wisconsin have been or are subject to valid, legally enforceable demands for payment of debt or assumption of debt based on the actions alleged in its complaint. Several financial institutions are mentioned in the Board's complaint, and along with the Foundation; all of them should be included as parties in this lawsuit, whether as adversary parties, parties with an interest in the outcome, or

potential contributors to settlement, so that their rights and liabilities are determined by the court.

24. Wells is entitled to indemnification by the Board for any and all judgments, damages and amounts which might be awarded against him, or determined to be owed by him, as a result of this litigation, as he was an officer and employee of the UWS at the time of the alleged occurrences, and any actions resulting in liability occurred while he was carrying out his duties as a UWS employee and was acting within the scope of his employment, pursuant to section 895.46(1)(a), *Stats*.

25. Regardless of the results of this litigation, if the Board, UWS or the State of Wisconsin do not provide legal counsel to Wells in this lawsuit (which they have not), they shall pay or indemnify Wells for the reasonable attorneys' fees and costs necessary to defend himself in this action, pursuant to section 895.46(1)(a), *Stats*.

26. The Board is estopped from asserting its claims.

27. The Board is not a proper party to this action as it lacks capacity to initiate these proceedings.

28. The Board is not a proper party to this action as it lacks standing.

29. The Board is not empowered to seek its requested relief as it lacks capacity.

30. The Board's claims are barred by the statute of limitations.

31. Wells reserves the right to clarify and raise additional affirmative defenses in the future, after a reasonable opportunity for further investigation and discovery.

COUNTERCLAIMS

A. Parties, Jurisdiction, and Venue

1. The Board has filed a complaint against Wells, which is incorporated by reference herein.

2. Wells has filed the foregoing answer and affirmative defenses which is incorporated by reference herein.

3. To the extent jurisdiction and venue are appropriate for the complaint, then jurisdiction and venue for these counterclaims are appropriate, pursuant to section 802.07, *Stats.*

B. Wells' Employment at UW-Oshkosh

4. From 2000 through August 2014, Wells served as the Chancellor of UW-Oshkosh and was an employee of the UWS.

5. Wells' powers and duties as chancellor and chief executive officer of UW-Oshkosh are set out in section 36.09(3), *Stats.*, and in the position description for said position when he was hired in 2000.

6. While he was Chancellor of UW-Oshkosh, Wells worked with, and relied upon Thomas Sonnleitner, Vice-Chancellor of Administrative Services, and Art Rathjen, Vice-Chancellor for Advancement regarding the projects and initiatives referenced in the Board's complaint.

7. As Chancellor of UW-Oshkosh, Wells oversaw an annual budget in excess of \$250 million, and he relied considerably on his subordinates for day-to-day operations, oversight and documentation.

8. Wells' actions, as described in the Board's complaint, his answer and affirmative defenses, and in these counterclaims, were: (a) within the scope of his duties as Chancellor, (b) authorized, approved and ratified by representatives of the Board and UWS administration, (c) undertaken in good faith, and (d) for the benefit of UW-Oshkosh, its students and the mission of the University.

C. Interaction Between UW-Oshkosh and its Affiliated Foundation

9. All or the vast majority of universities in the UWS have and interact with related, non-profit foundations.

10. The UWS encourages these relationships because they benefit the universities, the students attending and the mission of the university overall.

11. The UWS encourages separate universities within the system to cooperate and collaborate with their affiliated foundations, and to provide use of facilities, personnel and financial support to the foundations, with the expectation that the foundations would provide assistance and a net financial gain to the universities, along with auxiliary support of services and programs for university students. Has

12. While the UWS has provided some guidelines for the UW-Madison Foundation, particularly for the Medical School and research components, there appear to have been no formal, detailed state-wide guidelines for UWS chancellors in the time period when Wells served as chancellor, which would guide him and others in their relationships and collaboration with affiliated foundations on projects, initiatives and joint ventures for the benefit and assistance of the individual university campus, its students and fulfilling the university's mission.

13. The Weblink for UW-Madison Foundation provides some operational guidance, but is specific only to that particular institution's affiliated foundation. *See, e.g.*, the UW Foundation Overview at: <https://kb.wisc.edu/lis/page.php?id=21974>.

14. The UWS Legal Counsel office currently provides some general advice on foundations, encouraging them to be operations independent of the particular institution that the foundation is affiliated with, at its website: <https://www.wisconsin.edu/general-counsel/legal-topics/foundations/>.

15. Foundations affiliated with individual UWS institutions, like UW-Oshkosh, are encouraged to retain their own legal counsel. *Id.* Also, UW institutions and affiliated foundations are encouraged to consult with legal counsel, which “does not necessarily mean calling a UW System attorney”. *Id.*

16. Publicly available records and reports show that universities in the UWS routinely have and continue to provide personnel, facilities and financial support to affiliated foundations, including, on information and belief, the UW-Madison, UW-Milwaukee, UW-Oshkosh and UW-Superior campuses.

17. The UW-Oshkosh Foundation is one of these related, non-profit organizations, which collaborates with and has provided UW-Oshkosh with millions of dollars. *See* Foundation weblinks: <https://www.uwosh.edu/foundation/about> and <https://www.uwosh.edu/foundation/about/collaboration-in-action-leadership-award>.

18. The Foundation exists for the sole purpose of providing financial and other assistance to UW-Oshkosh and its students, and in support of its mission.

19. According to public IRS filings, the Foundation has provided UW-Oshkosh with the following amounts:

a. For the tax year 2010 (running from July 1, 2010 through June 30, 2011), in excess of \$2 million in cash grants and over \$400,000 in expense reimbursements.

b. For the tax year 2011 (running from July 1, 2011 through June 30, 2012), in excess of \$2.8 million in cash grants and almost \$480,000 in expense reimbursements.

c. For the tax year 2012 (running from July 1, 2012 through June 30, 2013), in excess of \$5.6 million in cash grants and almost \$500,000 in expense reimbursements.

d. For the tax year 2013 (running from July 1, 2013 through June 30, 2014), over \$8 million from the transfer of ownership of the Alumni Welcome Center, in excess of \$350,000 in cash grants, and over \$2.8 million in cash and expense reimbursements.

20. According to public IRS filings, UW-Oshkosh has provided financial support to the Foundation – in the form of grants, advances, and loans – primarily related to building projects, which benefit the UW-Oshkosh, its students and its mission.

a. For the tax year 2010, the Foundation publicly disclosed that it received \$450,000 from the University. The Foundation also publicly disclosed that it owed the University a total of \$1.05 million.

b. For the tax year 2011, the Foundation publicly disclosed that the University provided over \$1.5 million for building projects. The Foundation also publicly disclosed that it owed the University a total of \$750,000.

c. For the tax year 2013, the Foundation publicly disclosed that it borrowed \$31,311 from the University. The Foundation also publicly disclosed that it owed the University a total of \$841,709.

21. Upon information and belief, for each of the years at issue in the Board's complaint, the Foundation provided a net positive financial benefit to the UW-Oshkosh, usually involving millions of dollars. In other words, the UW-Oshkosh, its students and UWS financially benefited from the actions described in the Board's complaint.

D. Interaction Between the Board, UWS and the Foundation

22. During relevant times alleged in the Board's complaint, the Vice President of Finance for the UWS served as both an officer for the Board and as an *ex officio* Board Member of the UW-Oshkosh Foundation.

23. During relevant times alleged in the Board's complaint, the Vice-President of Finance and members of the Board regularly interacted with Wells, and on some occasions, members of the Foundation board, and were aware of the various projects and initiatives being collaboratively pursued by UW-Oshkosh and the Foundation, and the cooperative financing of same.

24. Upon information and belief, the Vice-President of Finance for the UWS had contemporaneous knowledge of and access to the financial information set forth in the Board's complaint, and referenced in the answers and affirmative defenses of Sonnleitner and Wells, as well as in their counterclaims and Sonnleitner's third-party complaint.

E. Wells' Presentations to the Board

I. October 8, 2010 Presentation

25. On or about October 8, 2010, Wells and Sonnleitner presented and caused to be presented information to the Board, as set forth in the following paragraph nos. 26 to 32.

26. The Board was told that UW-Oshkosh's master plan was "investing for growth" through a "capital partnership" involving the Foundation.

27. The Board was told that, since 2000, UW-Oshkosh, which is the third largest campus in the UW System, "has been aggressively 'building capacity' to meet growing needs for the future," including with the "academic building," the "anaerobic biodigester," and the "Oshkosh Sports Complex."

28. The Board was told that, with respect to the Anaerobic Biodigester:

a. The project was "a unique collaboration between the UW-Oshkosh Foundation, the University of Wisconsin Oshkosh, and BIOFerm™ Energy Systems."

b. The parties had "entered into a \$3.8 million financing agreement in 2010 to purchase property and fund sustainability project startup."

c. The biodigester would convert waste products into energy.

d. The biodigester would benefit the University's educational mission and move the school "further along the path to energy independence."

29. The Board was told that, with respect to the Oshkosh Sports Complex:

a. The Foundation had "assumed 'ownership' of facility and land in 2004."

b. The University had “committed staff and resources over 6 years to raise funds to make improvements.”

c. “\$1.2 million from student fees” had been raised for the project.

d. Additional funds were to be raised and spent on renovations and upgrades in excess of \$10 million.

e. The Complex “created approx. 400 jobs” and “generates an economic impact to the area in excess of \$25 [million] annually.”

30. The Board was told that University funds were being used for these projects.

31. Also on or about October 8, 2010, the Board President, in broadcasted and published remarks, congratulated Chancellor Wells on the biodigester program and acknowledged the benefit of the program to UW-Oshkosh and the UWS.

32. The Board and UWS President further acknowledged that the biodigester project “is a collaborative effort with the Foundation.”

II. February 7, 2013 Presentation

33. On or about February 7, 2013, Wells and Sonnleitner presented and caused to be presented information to the Board, as set forth in the following paragraphs 34 to 40.

34. The Board was told that the biodigester projects and the hotel development project were “public/private business development partnerships.”

35. The Board was told that the Rosendale biodigester would provide the following benefits to the University:

- a. “become a leader in renewal energy production, research and development”;
- b. “be a[n] educational facility for students in our proposed baccalaureate program in Environmental Engineering Technology”;
- c. “increase the research and testing work done at the [University’s] ERIC lab which will also create additional revenue to support students and education programs”;
- d. “increase the number of scholarships and paid internships available for students”;
- e. “develop new and grow existing programs for students in curricular programs such as pre-Veterinarian, Environmental Studies, Engineering Technology, Microbiology, Chemistry, and Geology”;
- f. “develop related graduate programs”;
- g. “increase scientific, social and environmental research opportunities”;
- h. “develop the new center on rural community development”;
- i. “offer outreach/training programs for K-12, businesses and municipalities.”

36. The Board also was told that, with respect to the Rosendale biodigester, the Viessmann Group—a German owner of the private partner on the development—had committed to providing the following benefits to the University:

- a. “dozens of paid internships for [University] Students at Viessmann”;

- b. “seminars for [University] Students in Germany”;
- c. “lectures by Viessman experts at [the University]”;
- d. “fund 2 full scholarships per year for [University] students”;
- e. “exchange program—bring up to 50 German students (per year) to [the University]”;
- f. “custom middle level management training program for hundreds of Viessmann employees at [the University] provided by the College of Letters and Science and College of Business”;
- g. “custom top-level executive training program for Viessman employees at [the University] provided by the College of Letters and Science and College of Business”; and
- h. “a fully-endowed \$100,000 per year salary for the chair of Sustainable Technology in support of the emerging NEW ERA engineering degree program in environmental, electrical and mechanical technology majors.”

37. The Board also was told that, with respect to the Rosendale biodigester, Milk Source—the owner of the Rosendale Dairy—had committed to providing the following benefits to the University:

- a. “giving [the University] ownership of fiber (post-digested substrate)”;
- b. “developing and investing in research and education center”; and
- c. “allowing [University] faculty and student researchers access to dairy and surrounding land.”

38. The Board also was told that, with respect to the Rosendale biodigester, other partners had committed to providing the University with the following benefits:

- a. “support for research opportunities for faculty and students”;
- b. “providing Post-doctoral positions at [the University]”; and
- c. “involving [University] faculty in cutting-edge research on fiber use.”

39. Also on or about February 7, 2013, Art Rathjen offered to provide the Board with detailed information regarding the formation, construction plans, and financing of the Foundation, including the collaborative benefits of the Foundation’s “partnership” with UW-Oshkosh.

40. The Board declined Rathjen’s offer, citing “time constraints” and suggesting that Rathjen would be invited back at another time. Wells does not know if this ever happened prior to his retirement in August 2014.

F. “Comfort” Letters and Memoranda of Understanding

I. “Comfort” Letters

41. A “comfort” letter or instrument has been explained in case law as follows:

A comfort instrument is normally given by a “third party” to assure a party to a transaction regarding some element of value or credit. The third party intends to provide an incentive for one of the principals to enter into a transaction, while not becoming legally responsible itself. The comfort instrument can be found in numerous fields of business and finance. They are generally viewed as not creating any legally enforceable obligations.

Bluebonnet Savings Bank, F.S.B. v. United States, 43 Fed. Cl. 69, 77 (Fed. Cl. 1999)

(emphasis added), *rev’d on other grounds* 266 F.3d 1348 (Fed. Cir. 2001) (quoting Larry A.

DiMatteo, *The Norms of Contract: The Fairness Inquiry and the "Laws of Satisfaction" – A Nonunified Theory*, 24 Hofstra L.R. 349, 429 (1995)).

42. At all times relevant to the Board's complaint, federal banking Regulation AA, Subpart B, provided that a third-party guarantee of a bank loan must be memorialized by specific bank documents conforming to the "model notice" provided by the Federal Reserve Board. The notice, which is normally in addition to a separately signed obligation (such as the promissory note) must contain explicit warnings on when and how the debt may be collected from the third party. *See also* Federal Reserve Board, *Regulation AA Unfair or Deceptive Acts or Practices: Credit Practice Rule*, Consumer Compliance Handbook (2006).

43. Any "comfort" letters issued or approved by Wells or Sonnleitner were done in good faith, in the course of their duties and employment as chancellor and vice-chancellor of UW-Oshkosh.

44. Upon information and belief, the "comfort" letters at issue in this action were reviewed and approved by the Foundation and its legal counsel, and were understood by Wells and all concerned not to create any legally enforceable obligation.

45. The "comfort" letters at issue in this action did not conform to the above requirements of federal law to create a binding obligation.

46. The "comfort" letters were not guarantees, as alleged in the Board's complaint, nor are they legally enforceable against the State of Wisconsin, and they did not violate the Wisconsin Constitution or other applicable law.

II. Memoranda of Understanding

47. The memoranda of understanding at issue in this action were memorializations that UW-Oshkosh, within its proper legal authority, would support the Foundation in the relevant projects and continue to financially assist as previously described.

48. Any memoranda issued or approved by Wells or Sonnleitner in this action were done in good faith, in the course of their duties and employment as chancellor and vice-chancellor of UW-Oshkosh.

49. The Foundation understood, acknowledged, and agreed that the memoranda of understanding did not obligate the State of Wisconsin to guarantee any debt.

50. The financial institutions involved in the relevant Foundation projects and initiatives understood, acknowledged, and agreed that the memoranda did not obligate the State of Wisconsin to guarantee any debt.

51. The Foundation never reported the memoranda of understanding or comfort letters as legally enforceable debt guarantees in its public IRS filings.

52. At the time the Foundation received the memoranda of understanding, on information and belief, it held net assets of approximately \$20 million.

53. The memoranda of understanding were in the best interest of UW-Oshkosh and did not cause any financial harm to it, the UWS or the State of Wisconsin.

54. The memoranda of understanding were not guarantees, as is conclusorily alleged in the Board's complaint, and did not violate the Wisconsin Constitution or other applicable law.

G. Legal Claims

I. Statutory and Common Law Indemnification Against the Board

55. Wells hereby incorporates by reference as fully stated herein paragraph nos. 1-54 of his counterclaim.

56. If Wells is found liable for any actions arising from the complaint, he is entitled to indemnification from the Board and/or the State of Wisconsin, pursuant to section 895.46, *Stats.*, and Wisconsin common law.

57. The indemnification also includes Wells' reasonable legal fees, costs, and other expenses in defending this action, regardless of the outcome of this lawsuit. Sec. 895.49(1)(a), *Stats.*

II. Unjust Enrichment Against the Board

58. Wells hereby incorporates by reference as fully stated herein paragraph nos. 1-57 of his counterclaim.

59. As a result of the actions described in the pleadings, Wells conferred a benefit upon UW-Oshkosh, its affiliated Foundation, UWS and the Board.

60. The Board and the Foundation had knowledge of, accepted, ratified and expressed appreciation for the benefit.

61. To the extent Wells is found to owe money to the plaintiff or the State of Wisconsin, and is found not to be eligible for indemnification under section 895.46, *Stats.*,

or to have immunity under *Lister* and its progeny, allowing the Board to retain the benefit without paying the value thereof, or offsetting such against any damage judgment against Wells, would be inequitable and unjust.

III. Offset Against the Board

62. Wells hereby incorporates by reference as fully stated herein paragraph nos. 1-61 of his counterclaim.

63. As a result of the actions described in the pleadings, Wells conferred a benefit upon the Board and the Foundation.

64. The Board and the Foundation had knowledge of and appreciation for the benefit.

65. To the extent Wells is found to owe money to the Board, the Foundation, the State of Wisconsin or any other entity, that amount must be offset by the financial benefit obtained and currently possessed by the Board and the Foundation.

IV. Contribution Against the Board

66. Wells hereby incorporates by reference as fully stated herein paragraph nos. 1-65 of his counterclaim.

67. To the extent that Wells is found to owe money to the Board, the Foundation, or any other entity or party, there is common liability among Wells, Sonnleitner, the Board, and the Foundation.

68. The complaint therefore seeks to assign to Wells an unequal proportion of the common burden, which would be inequitable and unjust.

V. Declaratory Judgment Against the Board

69. Wells hereby incorporates by reference as fully stated herein paragraph nos. 1-68 of his counterclaim.

70. Pursuant to section 806.04, *Stats.*, this court should declare that the financial documents at issue in this action do not create a legally enforceable debt against the State of Wisconsin.

71. Pursuant to section 806.04, *Stats.*, this Court should declare that any debt in this action is not the personal responsibility of Wells.

VI. Breach of Duty of Good Faith Against the Board

72. Wells hereby incorporates by reference as fully stated herein paragraph nos. 1-71 of his counterclaim.

73. Any attempt by the Board or the Foundation to hold Wells personally responsible for actions at issue herein is a breach of the obligations of good faith found in: (a) the employment contract between UWS and Wells, and (b) agreements between the UW-Oshkosh and the Foundation.

VII. Wells Reserves Right to Bring Third-Party Claims

74. Wells hereby incorporates by reference as fully stated herein paragraph nos. 1-73 of his counterclaim.

75. Wells reserves the right to bring third-party claims against the Foundation and other persons or entities, following this court's determination and decision on the Foundation's motion to dismiss Sonnleitner's third-party claim, filed on

March 27, 2017, and subject to time limits to be set in future scheduling orders of the court.

76. Wells reserves the right to bring third-party claims against other, yet to be named parties, subject to time limits to be set in future scheduling orders of the court.

77. Wells reserves the right to amend this answer, affirmative defenses and counterclaims.

WHEREFORE, Richard H. Wells respectfully requests that this court enter an order:

1. Dismissing the Board's complaint against Wells, with prejudice;
2. If dismissal is not granted, Wells requests that the court order the Board to make its complaint more particular and detailed as to various claims, as noted and for the reasons previously provided in Wells' answer;
3. Entering judgment, including declaratory judgment, for Wells against the Board;
4. Awarding damages, indemnification, offsets, and contribution to Wells;
5. Awarding Wells all costs and attorney's fees incurred for defending against and litigating the instant lawsuit; and
6. Granting such other relief as the court deems just and equitable.

JURY DEMAND

Richard H. Wells demands a trial by a jury of twelve.

Dated this 5th day of April, 2017.

GIMBEL, REILLY, GUERIN & BROWN LLP

By:

Electronically Signed by Raymond M. Dall'Osto

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