

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

THOMAS LECHNIR,

Plaintiff,

v.

Case No. 14-CV-1020

RICHARD WELLS, et al.,

Defendants.

**PLAINTIFF'S RULE 60(B) NOTICE OF MOTION AND MOTION TO FROM RELIEF
FROM JUDGMENT**

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, at a date and time to be determined by the Court, the Plaintiff, Thomas Lechnir, by his attorneys, Menn Law Firm, Ltd., by William P. McKinley and Jason G. Wied, will move the Court, the Honorable William C. Griesbach, presiding, in his Courtroom at the Federal District Court, Eastern District of Wisconsin, Green Bay Division, 125 S. Jefferson St., Green Bay, Wisconsin, 54301, for an order reopening the prior judgment rendered in this case dismissing Thomas Lechnir's § 1983 Claims against the Defendants on the basis of claim preclusion.

In support of this motion, Plaintiff's counsel states as follows:

1. On August 20, 2014, Lechnir commenced a civil suit against the individual Defendants claiming that the Defendants had conspired to deprive Lechnir of not only of the renewal of his employment contract with the University of Wisconsin-Oshkosh, but also his civil rights.

2. As stated by this Court: “[t]he complaint alleges that Plaintiff’s non-renewal was an effort to retaliate against him for his effort to blow the whistle on what he described as the ‘misallocation of construction-related gifts.’” (Decision and Order of 1/15/16 | ECF #46).
3. Specifically, at paragraphs 37 – 42 in his Amended Complaint, Lechnir alleged that:
 - Upon information and belief, Defendant Thomas Sonnleitner was aware that funds that were donated and earmarked for the baseball stadium project were being intentionally misallocated to the athletic complex project at the behest of Defendant Wells in order to disguise the fact that the athletic complex project – Wells’ project – was operating at a significant deficit.
 - Sonnleitner acted (or failed to act) with the full knowledge that his actions (or non-actions) would have adverse consequences for Lechnir.
 - Upon information and belief, when some of Lechnir’s donors began questioning whether their donations were being properly allocated, Sonnleitner, in conjunction with Defendant Wells, undertook steps to cover up the fact that funds had been misallocated, and further took steps to manipulate financial records to give the appearance that the baseball stadium project was underfunded so as to distract attention away from the fact that funds had been misallocated in the first case.
 - To be sure, had it been discovered that Sonnleitner was aware of funds being misallocated (intentionally or otherwise) from the baseball stadium project to the athletic complex project, his job as Vice Chancellor of Administrative Services would have been put in peril.
 - It was therefore in Sonnleitner’s best interest to allow Lechnir to take the fall for the financial shortcomings and accounting irregularities that had come to the fore.
 - It is for these reasons, and more, that the Defendants, individually and collectively, began a personal crusade to have Lechnir framed for financial mismanagement in order to have a justification to deprive him of his post.

(See Amend. Compl. | ECF # 12).

4. The Defendants ultimately sought dismissal of Lechnir's First Amendment retaliation claim on the basis of claim preclusion.
5. In opposition, Lechnir argued that during the underlying administrative proceedings presided over by Richard Wells, he would not have had a full and fair opportunity to litigate his First Amendment claims because Wells was involved in a conspiracy to set Lechnir up to take the fall for various financial shortcomings associated with the construction of UW-Oshkosh's athletic complex. (*See, e.g.*, Pl.'s Brf. in Opp. p. 8 | ECF # 43).
6. This Court ultimately concluded that Lechnir was afforded a full and fair opportunity to litigate his claim(s) in the underlying state proceedings. (*See* Decision at p. 5 | ECF #46).
7. Final judgment was entered by the Clerk on January 20, 2016. (ECF #47).
8. On January 18, 2017, the Board of Regents of the University of Wisconsin System, through the Wisconsin Attorney General's office, commenced a lawsuit against former UW-Oshkosh Chancellor, Richard Wells, and a fellow administrator, Thomas Sonnleitner. A copy of the Complaint is attached hereto as **Exhibit "A"**.
9. The Complaint alleges, *inter alia*, that during the period between 2010 – 2014, Wells and Sonnleitner made illegal financial transfers from UWO to the UWO Foundation related to various real estate projects, including the Oshkosh Sports Complex. *See Complaint* ¶ 33.
10. The Sports Complex – and its mismanaged finances – was the very same project for which Lechnir claimed he was being used as a scapegoat by Wells (an Sonnleitner) in this lawsuit.

11. In fact, many of the allegations asserted by Lechnir originally share similarities with those allegations now being levied by the Board of Regents against Wells and Sonnleitner.
12. According to a statement issued by the University of Wisconsin System: “This is both unacceptable and appalling. Dr. Wells and Mr. Sonnleitner were top personnel who were far afield from the rules and statutes that govern university operations. They had no right to make these promises or sign these documents. They created a mess, which we are acting swiftly and decisively to clean up and show our citizens this will not be tolerated.” A copy of the University’s press release is attached hereto as **Exhibit “B.”**
13. Fed. R. Civ. P. 60(b) states that this Court “may relieve a party or legal representative from a final judgment” based on:
 - (2) “Newly-discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); or for
 - (3) “Any other reasons that justifies the relief.”
14. The commencement of a lawsuit against Wells and Sonnleitner by the Board of Regents, and the allegations contained in said lawsuit, constitute newly-discovered evidence that fully supports Lechnir’s argument that he was being blamed for financial improprieties that were *caused by Wells and Sonnleitner*, not by Lechnir, and was being retaliated against when Lechnir raised these concerns.
15. Furthermore, the commencement of the lawsuit against Wells and Sonnleitner by the Board of Regents, and the allegations contained in said lawsuit, demonstrate that Lechnir was deprived due process and a “full an fair opportunity” to litigate his claims, as the

ultimate arbiter – Wells – was motivated to use Lechnir as a scapegoat for Wells’ (and others’) financial improprieties.

16. Because Lechnir did not have a full and fair opportunity to litigate his claims, the defense of claim preclusion does not apply. *See Licari v. City of Chicago*, 298 F.3d 664, 666-67 (7th Cir. 2002).

17. In light of these new revelations, basic notions of justice and fairness dictate that Mr. Lechnir should be given an opportunity to prove his case in Court.

Based on the above, Lechnir respectfully asks that this Court set this matter for a status conference to address a potential briefing schedule and/or oral argument on the matter.

DATED at Appleton, Wisconsin this 19th day of January, 2017.

Thomas Lechnir, Plaintiff

By: /s/ William P. McKinley
Jason G. Wied SBN# 1031433
William P. McKinley SBN# 1072959
Menn Law Firm, Ltd.
2501 E. Enterprise Ave.
Appleton, WI 54912-0785
p. 920-731-6631
f. 920-560-4757
Jason-Wied@mennlaw.com
William-Mckinley@mennlaw.com
Counsel for the Plaintiff