



101 E. Wilson Street  
2nd Floor  
PO Box 8943  
Madison, WI 53708-8943

608 266-1370 INFORMATION  
608 266-0034 LOANS  
608 267-2787 FAX  
bcpl.wisconsin.gov

Thomas P. German, *Executive Secretary*

## AGENDA

February 2<sup>nd</sup>, 2021  
2:00 P.M.

Board of Commissioners of Public Lands  
101 E. Wilson Street, 2<sup>nd</sup> Floor  
Madison, Wisconsin

### Routine Business:

1. Call to Order
2. Approve Minutes – January 5, 2021 (Attachment)
3. Approve Loans (Attachment)

### Old Business:

4. Updates to Goals and Priorities

### New Business:

5. Discussion about Unclaimed Property lawsuit
6. 4<sup>th</sup> Quarter Investment Report

### Routine Business:

7. Chief Investment Officer's Report
8. Executive Secretary's Report
9. Board Chair's Report
10. Future Agenda Items
11. Adjourn

### AUDIO ACCESS INFORMATION

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Conference Line Number: **(608) 571-2209**  
Conference ID Code: **790 694 843#**

Board Meeting  
Minutes  
January 5<sup>th</sup>, 2020

Present were:

- |   |  |
|---|--|
| Sarah Godlewski, Board Chair              | State Treasurer                        |
| Josh Kaul, Commissioner                   | Attorney General                       |
| Doug LaFollette, Commissioner             | Secretary of State                     |
| Tom German, Executive Secretary           | Board of Commissioners of Public Lands |
| Jim DiUlio, Deputy Secretary              | Board of Commissioners of Public Lands |
| Richard Sneider, Chief Investment Officer | Board of Commissioners of Public Lands |
| Mike Krueger, IT Manager                  | Board of Commissioners of Public Lands |
| Denise Nechvatal, Senior Accountant       | Board of Commissioners of Public Lands |
| Thuy Nguyen, Office Manager               | Board of Commissioners of Public Lands |
| Julie Benkoske, Chief of Staff            | State Treasurer                        |

**ITEM 1. CALL TO ORDER**

Board Chair Godlewski called the meeting to order at 2:01 p.m.

**ITEM 2. APPROVE MINUTES** – December 15, 2020.

**MOTION:** Commissioner LaFollette moved to approve the minutes; Commissioner Kaul seconded the motion.

**DISCUSSION:** None

**VOTE:** The motion passed 3-0.

**ITEM 3. APPROVE LOANS**

**MOTION:** Commissioner LaFollette moved to approve the loans; Commissioner Kaul seconded the motion.

**DISCUSSION:** Mr. Sneider commented on the loan #2 to Town of Wellington in Monroe County for flood repairs and road work. He shared that loan #3 for the Village of West Milwaukee is for refinancing their prior service pension liability. He pointed out that loans #5 and #7 are both for voting machines.

Executive Secretary German commented about loan #3 and how it is saving local taxpayers a significant amount of interest compared to their current obligation.

Mr. Sneider commented about the reluctance of some municipalities to take out loans like the Village of West Milwaukee’s.

Board Chair Godlewski asked how many loans like that have been done this past year.

Executive Secretary German explained that there were very few.

Board Chair Godlewski asked about loan #2 and the loan term of 10 years.

Mr. Sneider responded that he believes it is risk aversion just in case reimbursement funds do not come through in a timely manner.

**VOTE:** The motion passed 3-0.

The Board of Commissioners of Public Lands (BCPL) unanimously approved **\$2,594,803.32** in State Trust Fund Loans to support **7** community projects in Wisconsin.

1. Town of Lafayette / Chippewa County / Finance vehicle purchases / \$320,000.00
2. Town of Wellington / Monroe County / Finance flood repairs and roadwork / \$150,000.00
3. Village of West Milwaukee / Milwaukee County / Finance WRS prior service pension liability / \$1,000,000.00
4. Village of Ontario / Vernon County / Finance purchase of plow/sander truck / \$81,303.32
5. Town of Willard / Rusk County / Finance purchase of voting machine / \$7,500.00
6. Village of Greendale / Milwaukee County / Finance purchase of capital equipment and roadwork / \$986,000.00
7. Town of Northfield / Jackson County / Finance roadwork and voting machine / \$50,000.00

#### **ITEM 4. OLD BUSINESS - Status update on request for special counsel**

Executive Secretary German shared that he and Thuy are working on a request for professional services, a/k/a Request for Purchasing Authority, and that Thuy's request for permission to apply for the purchasing authority through the RPA website was not granted. Instead, the agency is being guided by an individual in procurement with support from the Governor's counsel and DOA. He hopes to have the process completed by the end of January.

Board Chair Godlewski asked if Executive Secretary German could share in more detail the guidance he received from the Governor's Office.

Executive Secretary German shared that the Governor's Office explained that BCPL's situation did not meet the criteria for approval of special counsel under the statute but that there is a way to request specific acquisition authority for professional services outside the normal procurement channels. He commented on the challenges of applying for this authorization and shared that DOA is serving as a liaison with process.

Board Chair Godlewski commented on the progress made on the request.

Commissioner LaFollette asked about who it was that denied Thuy authority.

Executive Secretary German replied that it was someone at DOA. He also shared that Amber at DOA is the person BCPL is working with to facilitate this request.

Commissioner Kaul asked about the pros and cons of hiring outside counsel versus asking SWIB for assistance.

Executive Secretary German responded that SWIB would not act as trust fund managers, but they would instead hire outside fund managers and the cost for doing that is very high – roughly 50 basis points or more per year.

Commissioner Kaul asked about cost comparisons.

Executive Secretary German explained that the cost of hiring this 'special counsel' will be less than \$50,000. The 50 basis points annual cost for outside fund management of \$1.2 billion adds up to \$6+ million. Comparing annual outside

fund management costs of \$6+ million versus BCPL's current operating appropriation of \$1.7 million leaves a difference of \$4.3 million a year or more.

Commissioner Kaul replied that that is helpful.

Executive Secretary German commented that that was a good question.

Board Chair Godlewski commented on the special study session done the winter of 2018 and 2019. She shared that it is a helpful doc that addresses this issue.

Commissioner Kaul thanked Board Chair Godlewski for the information.

## **ITEM 5. NEW BUSINESS**

Board Chair Godlewski commented that she is excited about sharing and discussing the accomplishments of the agency. She thanked Executive Secretary German and the staff for putting the document together.

Executive Secretary German commented that he would like to thank the staff at BCPL for their assistance on putting the report together. He shared aspects of the loans and some of the difficulties the staff and municipal officials encountered due to COVID. He commented about the agency's investments and changes in the timber market during this challenging time. He expressed his appreciation to the staff for their hard work and creativity.

Board Chair Godlewski reiterated her appreciation of the staff on behalf of the Board. She commented about the investment policy: 1) diversification of assets and focusing when possible on investments in the State; 2) consideration of ESG factors (environmental, social and governance factors); and 3) addition of a Commissioner on the investment committee.

Commissioner LaFollette asked about staff that spent 92 hours helping health services with GIS (geographic information systems).

Executive Secretary German explained that DHS and DOA requested that agencies provide some of their staff to help in different ways with the State's COVID response. Kevin Burns, BCPL's Senior Forester, is an expert in geographic information systems. He explained that GIS can be used for many things, such as tracking the movement of illnesses. Kevin provided some great services to DHS to keep an eye on where the virus was spreading to help with the State's response.

Commissioner LaFollette responded that that is very interesting and thanked Executive Secretary German for the explanation.

Commissioner Kaul commented that he would like to thank the BCPL team for their work this year. Thank you everybody for your work under unprecedented circumstances.

Board Chair Godlewski commented about the goals and priorities and asked if the Commissioners had any thoughts about things they would like to see in 2021 or questions for the staff.

Commissioner Kaul asked to include the BCPL staff about things that should be added or considered.

Board Chair Godlewski shared that she would like the Commissioners to get more information about the investments from the Investment Committee and Chief Investment Officer. She commented about Wisconsin investments, ESG factors and expanding the Investment Committee.

Commissioner LaFollette asked about the Federal flood money disbursement that was mentioned in the report.

Executive Secretary German explained that each year a check from the federal government arrives that represents flood control money for specific counties. He explained the origin of the flood monies and that generally disbursement of these funds does not take much time, but this year DOA asked BCPL staff a number of detailed questions. Secretary German explained that it was not easy to answer these questions as the federal government provided little documentation about these funds when they send it to BCPL, so BCPL staff had to spend a fair amount of extra time researching the relevant statutes and program in order to respond effectively to DOA's questions.

Commissioner LaFollette commented that he did not know about the flood money until now and thanked Executive Secretary German for the information.

Board Chair Godlewski asked for clarification that these funds come in annually.

Executive Secretary German replied, yes, and BCPL disburses it all in less than a week.

Commissioner LaFollette asked if the counties applied for the flood money.

Executive Secretary German explained that there were no applications. He further clarified how the amounts are calculated. The federal government leases out certain federal lands. Pursuant to the federal statutes, the federal government is required to provide 75% of the leasing revenue that the feds receive on such lands to the local county where the land was located.

Commissioner LaFollette asked about the leases.

Executive Secretary German responded that he did not have specific information about the land leases.

Commissioner LaFollette stated that the counties are just happy to get their funds.

Executive Secretary German replied yes, and some counties inquire as to when they will get their funds.

Commissioner LaFollette thanked Executive Secretary German for the information.

Board Chair Godlewski asked Executive Secretary German to talk about reporting on the agency's investment performance.

Executive Secretary German shared the challenge of creating comprehensive reports due to the diversification of the portfolio, the limitations of Schwab's Portfolio Center and the amount of staff time it requires to put together the data for these reports. He commented that BCPL has been looking at ways to automate some of the reports. There are some options, but the costs are very high and some of these companies do not provide exactly what we need. He commented on what a reasonable reporting schedule would be. He shared that the soonest the Board could expect a report would be the first meeting of the second month following the end of a quarter. These reports would be tentative because some private funds do not provide performance information for a full 60 to 90 days after the quarter. He added that the BCPL continues to work toward automating more of the reporting process.

Mr. Sneider shared that he is looking forward to the automation of the process.

Board Chair Godlewski agreed. She commented that she is looking forward to the end of the quarter reports and progress on the goals and priorities. She understands the difficulties of the reporting process and thanks everybody for their work.

Commissioner Kaul thanked everyone for their work.

Board Chair Godlewski commented that schools, students and teachers continue to struggle with COVID. She asked how we can be supportive and wishes to engage in conversations about that moving forward.

Board Chair Godlewski stated that the goals and priorities document should be updated so it better reflects where we are moving into 2021 and 2022. She commented about the role of Executive Secretary in the agency and the position description. She asked Executive Secretary German to provide feedback about his experience over the past year.

Executive Secretary German shared that the job description that was drafted sums up the position well. He spoke about the goals and priorities and the challenges of making progress on some of them during this time. He commented that the agency had contracted with a consultant to develop the School Trust Fund Investment Performance Scorecard. He commented on establishing the due diligence protocol, his struggles with the Wisconsin Impact Advisor group, expanding the Investment Committee, the challenges of improving agency outreach during a pandemic, creating demand for BCPL's unproductive lands and taking a more targeted approach to creating a financial analysis on BCPL landholding.

Commissioner LaFollette commented about the unproductive lands going to the DNR.

Executive Secretary German agreed with Commissioner LaFollette statement.

Board Chair Godlewski commented that there will be some updates made to the document as it is a 'living' document.

Commissioner LaFollette shared that things have become more complex than they were many years ago, but it is probably a good thing. He thanked Executive Secretary German, Board Chair Godlewski and Mr. Sneider.

Board Chair Godlewski commented that things also get much more complicated with COVID. She shared that today's meeting is good as she recognizes all that goes on behind the scenes. That completes discussion of the 2020 review. She thanked everyone for putting the report of 2020 together.

## **ITEM 6. CHIEF INVESTMENT OFFICER'S REPORT**

Mr. Sneider commented that he will provide a review of where the portfolio is today versus where it was a year ago at the next meeting in February.

## **ITEM 7. EXECUTIVE SECRETARY'S REPORT**

Executive Secretary German again thanked the BCPL staff for their help in putting together the year-end report. Their assistance was invaluable.

Executive Secretary German commented about the bill that was passed last summer that would allow BCPL to lend money to municipal utilities, on terms and conditions agreeable to both parties. As there was a moratorium on cutting off ratepayers who fell behind on their payments, municipal utilities were worried about obtaining loans to keep operating while waiting for those user fees to be paid. But BCPL raised concerns that that bill would not necessarily allow BCPL to intercept shared revenue if the municipal utility borrower defaulted on the loan. It is his understanding that a new bill addressing COVID-19 issues is being introduced. But it is also his understanding that this bill will contain a provision allowing BCPL to make revenue loans to municipalities for the purpose of providing funding for municipal utilities. The loans would be made directly to the municipality. If the language is structured this way, then this direct relationship between BCPL and municipal borrowers described in Chapter 24 remains intact. BCPL would then be able to intercept state shared revenue in the event of a default by the municipality, which hopefully will never happen and will keep you

apprised about this development as we get more information.

Executive Secretary German shared that BCPL is anticipating the first request from a drainage district for a trust fund loan. The law was changed a decade ago to allow drainage districts to access the State Trust Fund Loan Program, but we had not received a serious request for an application until recently. The borrowing authority for a drainage district is different, and it's generally governed by Chapter 88 of the statutes and it requires an opinion from the Attorney General of the evidence of indebtedness before they can proceed. As a result, Commissioner Kaul may anticipate hearing from the Dane County Drainage Board with respect to a future loan application.

#### **ITEM 8. BOARD CHAIR'S REPORT**

Board Chair Godlewski commented that all things considered, 2020 was a success. She thanked BCPL and the Commissioners for their work. Despite these unprecedented times a lot of good things and bright spots were achieved throughout this year. Great job everybody, thanks for taking the time. It was a good meeting, and she looks forward to 2021.

#### **ITEM 9. FUTURE AGENDA ITEMS**

NONE

#### **ITEM 10. ADJOURN**

Commissioner LaFollette moved to adjourn the meeting; Commissioner Kaul seconded the motion. The motion passed 3-0; the meeting adjourned at 3:07 p.m.



Thomas P. German, Executive Secretary

Link to audio recording:

<https://bcpl.wisconsin.gov/Shared Documents/Board Meeting Docs/2021/2021-01-05-BoardMtgRecording.mp3>

**BOARD MEETING  
FEBRUARY 2, 2021**

**AGENDA ITEM 3  
APPROVE LOANS**

Municipality	Municipal Type	Loan Type	Loan Amount
1. Lilly Lake Rehabilitation Dist Kenosha County Application #: 02021090 Purpose: Finance outlet structure	Lake District Rate: 2.50% Term: 5 years	General Obligation	\$45,000.00
2. Bristol Dane County Application #: 02021091 Purpose: Finance roadwork	Town Rate: 2.50% Term: 3 years	General Obligation	\$300,000.00
	<b>TOTAL</b>		<hr/> <b>\$345,000.00</b>



State of Wisconsin - Office of the State Treasurer

Office of the State Treasurer  
Madison, WI  
Email: [treasurer@wi.gov](mailto:treasurer@wi.gov)  
Phone: 608-266-1714

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Sarah Godlewski  
State Treasurer

**MEMORANDUM**

**DATE:** October 31, 2019

**TO:** Attorney General Josh Kaul and Secretary of State Doug La Follette

**FROM:** Treasurer Sarah Godlewski, Chair of the Board of Commissioners of Public Lands

**CC:** Jonathan Barry, Executive Secretary of the Board of Commissioners of Public Lands

**SUBJECT:** DRAFT 2020-2022 Goals and Priorities

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**Goals & Priorities**

**1. Investments**

Build a comprehensive investment program that ensures strong returns for our beneficiaries while embracing the agency's history of investing in Wisconsin.

**Priorities:**

- A. Create a School Trust Fund Investment Performance Scorecard & Annual Report**
- B. Establish a Due Diligence Protocol For Investments**
- C. Establish a Wisconsin Impact Advisor Group**
- D. Expand the Membership of the Investment Committee**
- E. Execute the Asset Allocation and Develop Clear Timeline**

**2. Operations**

Update BCPL's operations to meet its evolving role and to best serve beneficiaries and stakeholders

**Priorities:**

- A. Develop a BCPL Strategic Plan and Supporting Metrics**
- B. Update BCPL Budget & Personnel Staffing Plan**
- C. Improve the Agency's Outreach, Communication, and Branding**
- D. Create a Government Relations Approach**

**3. Lands**

Develop and implement a land strategy the upholds the BCPL's work to land stewardship agency.

**Priorities:**

- A. Create an approach that reduces unproductive lands**
- B. Complete a financial analysis on BCPL land holdings**

1-27-21

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

Margaret Elizabeth Doyle Siebers and Victor Vargo )

Plaintiff(s)

v.

Peter W. Barca, Wisconsin Secretary of Revenue, in his official capacity, and the State of Wisconsin Department of Revenue )

Defendant(s)

Civil Action No. 20-CV-1109

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Peter W. Barca, Wisconsin Secretary of Revenue 2135 Rimrock Road Madison, WI 53708-8906

RECEIPT OF COPY OF THE WITHIN ACKNOWLEDGED THE 6th DAY OF January, 20 21

WISCONSIN DEPARTMENT OF REVENUE

BY Emily Peggam

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Attorney Dennis M. Grzezinski Law Office of Dennis M. Grzezinski 1845 N. Farwell Avenue, Suite 202 Milwaukee, WI 53202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RECEIVED

CLERK OF COURT

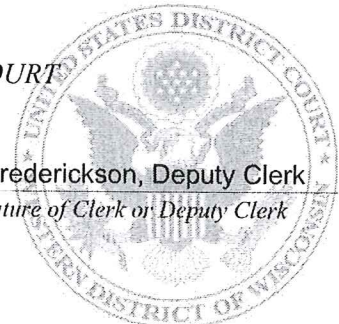
Date: 12/22/2020

JAN - 6 2021

s/ K. Frederickson, Deputy Clerk

Signature of Clerk or Deputy Clerk

WI Dept. of Revenue OSC-Collections



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

Margaret Elizabeth Doyle Siebers and	)	
Victor Vargo, individually and on behalf of	)	
a class of all others similarly situated,	)	
	)	
Plaintiffs,	)	
v.	)	No. 20-CV-1109
	)	
Peter W. Barca, Wisconsin Secretary of Revenue,	)	
in his official capacity,	)	
and the State of Wisconsin Department of Revenue,	)	
	)	
Defendants.	)	

**CLASS ACTION COMPLAINT**

Plaintiffs, Margaret Elizabeth Doyle Siebers and Victor Vargo, individually and on behalf of the Class defined below, for their Class Action Complaint (“Complaint”) against Defendants Peter W. Barca, in his official capacity, and the State of Wisconsin Department of Revenue (“DOR” or “Department”), state as follows:

**INTRODUCTION**

1. This action is under 42 U.S.C. § 1983 and the United States Constitution for declaratory, injunctive, and all other relief permitted, whether or not specifically demanded, pursuant to Fed. R. Civ. P. 54(c). It challenges the constitutionality under the Fifth and Fourteenth Amendments to the United States Constitution of certain provisions of the Wisconsin Uniform Unclaimed Property Act, *et seq.* (“UPA” or “Act”), Wis. Stats. § 177.01, *et seq.*, as well Defendants’ actions in conformity therewith. A state law claim based upon Wis. Constitution Article I, Section 13 is also pleaded. Unless otherwise indicated herein, all claims and all forms or types of relief are, as appropriate, pleaded or requested in the alternative.

2. The statutory provisions at issue authorize Defendants to take for public use without just compensation private property belonging to Plaintiffs and others similarly situated that the state classifies as “presumed abandoned,” including earnings or interest on such property, and Defendants fail, in conformity with such statutes, to pay or do any of the following: (a) return such earnings or interest—which are the property of Plaintiffs; (b) pay just compensation for earnings or interest attributable to unclaimed property, or (c) pay for Defendants’ use of Plaintiffs’ unclaimed property.

3. The UPA applies to personal property held by a third party such as a bank, insurance company, or utility (the “holder”, Wis. Stats. § 177.01(8)). Unclaimed property can include, for example:

- Checking accounts
- Uncashed dividends
- Stocks and mutual funds
- Customer deposits or overpayments
- Credit balances
- Matured life insurance policies

See <https://www.revenue.wi.gov/Pages/FAQS/ucp-unclaimed-property.aspx> (last visited 9/18/2020).

4. Under the UPA, unclaimed property, also referred to as “presumed abandoned,” is any financial asset that has not had owner activity for a period of one year or more. Owner activity generally refers to “[a]ction taken on property by the owner including making a deposit or withdrawal, negotiating a check, or a documented communication by the owner to the holder.” <https://www.revenue.wi.gov/Pages/FAQS/ucp-terms.aspx#terms3> (Last visited 9/18/2020).

5. Property that is “presumed abandoned,” although it continues to be owned by, and be the property of, its owner, is required to be delivered by holders to Defendant[s]’ custody. Thereafter earnings on and/or proceeds from the sale of the unclaimed property are used to fund state programs or operations. Thus, although unclaimed property continues to belong to the owner, it and any earnings on it are used to fund state programs or operations.

6. Title to and ownership of presumed abandoned property is, as noted, not actually conveyed or transferred to the State and the State does not become its owner:

DOR serves as a custodian for abandoned funds and holds these funds indefinitely. There is no time limit for you to claim your money from DOR. If at any time you can prove ownership or legal rights to the unclaimed funds, we will approve payment to you or your heirs without charge.

See <https://www.revenue.wi.gov/Pages/FAQS/ucp-unclaimed-property.aspx#ucp6> (Last visited 9/18/2020).

7. Owners are permitted to reclaim the principal amount of their unclaimed property at any time; however, the UPA provides that except for property that was interest bearing to the owner on the date of surrender by the holder, an owner is entitled *only* to the property delivered to the state by the holder (or the proceeds from the sale of that property) and *not* to any interest, earnings or other increments that accrue on the property after delivery to the State or to compensation for these fruits of the property or the State’s use of that property to fund state obligations while it is in the state’s custody.<sup>1</sup>

Thus, Wis. Stats. § 177.24(3)(a) provides:

if a claim [for return of unclaimed property] is allowed, the administrator shall deliver the property to the claimant or pay the claimant the amount the administrator actually received or the net proceeds of the sale of the property, together with any additional

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<sup>1</sup> Note: “[w]henever property other than money is paid or delivered to the administrator under this chapter, the owner is entitled to receive from the administrator any dividends, interest or other increments realized or accruing on the *property at or before liquidation or conversion of the property into money.*” (Emphasis added.)

amount required under s. 177.21. If the property claimed was interest bearing to the owner on the date of surrender by the holder, the administrator shall pay interest at a rate of 6 percent per year or any lesser rate the property earned while in the possession of the holder.

8. Plaintiffs seek a declaration that the Wisconsin UPA, to the extent it provides for the State's confiscation of interest and other earnings on unclaimed property without just compensation, and/or for its beneficial use of the property, without just compensation to the owners, and Defendants' actions in failing to return the earnings or interest on Plaintiffs' unclaimed property, failure to compensate for such non-return and failure to compensate Plaintiffs' for their use of Plaintiffs' unclaimed property, is and/or results in an unconstitutional uncompensated taking for which Plaintiffs and the Class they represent are entitled to just compensation. Plaintiffs also seek an injunction to implement that declaration and require compensation and recover just compensation.

### **PARTIES**

9. Plaintiff Margaret Elizabeth Doyle Siebers is and has been at all relevant times a citizen and resident of Wisconsin. Plaintiff is an "owner" of property, as defined in the UPA, that was not interest bearing to the owner and is currently held in custody by the Defendants.

10. Plaintiff Victor Vargo is and has been at all relevant times a citizen and resident of Wisconsin. Plaintiff is an "owner" of property, as defined in the UPA, that was not interest bearing to the owner and is currently held in custody by the Defendants.

11. Defendant Peter W. Barca is the Wisconsin Secretary of Revenue. In that position, pursuant to the UPA, Defendant Barca, or any predecessor or successor in that position, is and has been in charge of supervising and administering the Act. Plaintiffs sue Defendant Barca in his official capacity. In that capacity, he resides in this District and is subject to suit in this District.

12. Defendant State of Wisconsin Department of Revenue is the state agency which administers the UPA. The Department's headquarters are located at 2135 Rimrock Road, Madison, Wisconsin, within this District, and the Department is subject to suit in this District. It has waived or does not enjoy sovereign, 11<sup>th</sup> Amendment or any other immunity.

### **JURISDICTION AND VENUE**

13. The claims in this Complaint arise under the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. §1367. In addition, this Complaint involves a claim for a Declaratory Judgment under 28 U.S.C. § 2201, *et seq.*

14. Venue is proper because Defendants reside and are subject to suit in this District, and because a substantial portion of the events that underlie the Complaint occurred in this District.

### **STATEMENT OF FACTS**

#### **The UPA and Its Operation**

15. The Wisconsin UPA, like Unclaimed Property Acts in other states, is based on the Uniform Unclaimed Property Act promulgated by the Uniform Law Commission. Generally speaking, the UPA provides that private property is "presumed abandoned" if its owner or apparent owner has not engaged in what is deemed a sufficient amount of recent activity in regard to the property.

16. When a holder – such as, for example, an insurance company – determines property in its possession is "presumed abandoned" the holder must attempt to notify the owner, Wis. Stats. 177.17 (4) (a) 5., and, if the property is not claimed by the owner, deliver the property to the Department using an electronic Unclaimed Property Holder Report. Wis. Stat. 177.17 (4) (a) 2. The unclaimed property and proceeds from the sale of such unclaimed property are thereafter held in custody for the owner, who is

permitted under the Act to reclaim the principal amount of such property and proceeds from its sale from the State at any time.

17. The Act directs the deposit of unclaimed property and funds received from the sale of such, as well as any earnings or interest, into the school fund, except that an amount may be retained by the State as “liquidity” to enable prompt payment of claims filed by owners of unclaimed property as well as State administrative expenses. Wis. Stats., 177.23.

18. Pursuant to Wis. Stats. 24.76-24.78, monies held in the school fund are to be held in perpetuity for the support of public schools and libraries, with the income distributed and used for that purpose.

19. On information and belief, Defendants currently hold approximately \$1 billion pursuant to the Act.<sup>2</sup> Between early 2013 and 2017, Defendants returned more than \$119 million to owners of unclaimed property. See <https://patch.com/wisconsin/greenfield/does-wisconsin-have-your-money-search-unclaimed-fund-database> (last visited 8/4/2020)

20. Property remitted to Defendants pursuant to the Act earns interest, dividends or other accruals, and/or is held in interest-bearing accounts or instruments, and such interest, dividends and other accruals belonging to owners such as Plaintiffs are used by the State as described above and are not remitted to owners, nor are owners compensated.

21. While the Act recognizes that unclaimed property remains the private property of the owner and provides that unclaimed property owners may reclaim their property by filing a claim, it also provides that apart from the exceptions noted above, no interest or earnings realized

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<sup>2</sup> Maryland, with approximately the same population as Wisconsin, holds approximately \$1 billion in unclaimed property. See <http://unclaimed-funds.org/maryland/> (last visited 8/4/2020). Arizona, with a slightly larger population, holds “over \$1 billion”. See <https://azdor.gov/unclaimed-property/resource-center/about-unclaimed-property> (last visited 8/4/2020).



by the Defendants are paid or returned to owners, nor is any compensation for same paid, nor is any compensation paid to the owner for the time the property has been held by the State and used by the State.

**Plaintiffs' Property**

22. After taking Plaintiffs' property into custody, and while Defendants held it in custody, including any earnings or interest on same, the Defendants used the property for public purposes, including by investing the property and earning interest, and otherwise using it to fund State operations and programs.

23. Under Wis. Stats., 177.24, of the Act, upon Plaintiffs' claiming their property, Defendants will return the property, but will not return the earnings or interest nor pay just compensation for the interest or earnings or for the use of that property during the period of custody.

### CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action on their own behalf and as a class action under Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure seeking declaratory and prospective injunctive relief on behalf of the following class (the “Class”):

All persons or entities (including their heirs, assignees, legal representatives, guardians, administrators, and successors in interest) whose property is being held, or has been held, in the custody of the Defendants under the Wisconsin Uniform Unclaimed Property Act, except for (1) other states and governmental units or subdivisions of states, (2) persons whose only property so held by the Defendants was interest bearing to the owner on the date of surrender by the holder and who were accordingly paid interest, and (3) persons whose only property so held was non-monetary and returned before liquidation.

25. The members of the Class are so numerous that joinder of all members is impracticable. There are thousands of persons or entities who own property presumed abandoned and held in custody by Defendants under the Act or whose property has been returned to them without interest, earnings or other compensation. For example, the State of Wisconsin holds appx. 250 unclaimed property amounts just for people surnamed Johnson. [https://tap.revenue.wi.gov/UCPSearch/\\_/#1](https://tap.revenue.wi.gov/UCPSearch/_/#1) (last visited 9/18/2020). The average amount of each claim is too small to warrant an individual action, making joinder of all class members impracticable. Many unclaimed property amounts held are under \$100. See [https://tap.revenue.wi.gov/UCPSearch/\\_/#3](https://tap.revenue.wi.gov/UCPSearch/_/#3) (last visited 8/4/2020)

26. Plaintiffs’ claims are typical of the claims of the members of the Class. Plaintiffs’ property is being or has been held in custody under the Act by Defendants and, while in state custody, their property is or was subject to the same provisions of the Act that, as alleged, prohibit the Defendants from compensating owners of unclaimed property for lost interest or earnings on that property or for its use.

27. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel competent and experienced in similar, successful, constitutional and class action litigations.

28. There are questions of law and fact common to the Class, including:

- a. whether the Defendants' retention of interest, dividends and other earnings or accruals on unclaimed property is a taking for which just compensation is due;
- b. whether the Defendants' use of unclaimed property in their custody for public purposes is a taking for which just compensation is due;
- c. the proper measure of compensation for the Class;
- d. the amount of interest, earnings and benefit realized by the Defendants from the use of the Class' unclaimed property; and
- e. the appropriate injunctive and declaratory relief for the Class.

29. Plaintiffs' claims arise out of the same common course of conduct by Defendants giving rise to the claims of the other members of the proposed Class. Defendants have acted and refused to act on grounds that apply generally to the Class so that injunctive and declaratory and other relief are appropriate. Questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

### **COUNT I**

#### **VIOLATION OF THE JUST COMPENSATION CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES' CONSTITUTION**

30. Plaintiffs bring this lawsuit individually and on behalf of the Class described above.

31. The Fifth Amendment to the United States Constitution protects the principal of unclaimed property in the custody of the state and in addition the “fruits” of the property (i.e., the interest, accruals or other benefit of the property’s earnings that follows the property or is associated with its ownership, including the “option” or time-value of money applicable to the use of the property). Accordingly, no later than upon return of unclaimed property, Plaintiffs and the Class are entitled to just compensation for their loss occasioned by the state’s use and taking of their property and/or the fruits of their property.

32. The measure of just compensation should be based on the property taken and not returned, the value of the property taken, and take into account the time value of money and the value to the Defendants of the benefit conferred on them from the use of the property.

33. Defendants’ unlawful course of conduct will continue without a declaration that their conduct violates the rights of the Plaintiffs and members of the Class and an injunction requiring a cessation of the course of conduct described and return of their property and/or the fruits of the property and payment of compensation.

34. Plaintiffs and the Class are entitled to a judgment in their favor and against Defendants declaring their rights with respect to the conduct alleged herein. Judgment should be entered under 28 U.S.C. § 2201, *et seq.*

## COUNT II

### **“PENDENT” STATE LAW CLAIM FOR VIOLATION OF WISCONSIN CONSTITUTION SECTION I, ARTICLE 13, JUST COMPENSATION CLAUSE**

35. Plaintiffs repeat and reallege paragraphs 1 through 29 above.

36. Article I, Section 13 of the Wisconsin Constitution provides: “The property of no person shall be taken for public use without just compensation therefore.”

37. As alleged herein, Defendants have taken property without paying just compensation as required by the Wisconsin Constitution and Plaintiffs are entitled to declaratory, injunctive and compensatory relief. Thus, for example, subsumed within the concept of just compensation is the principle that interest or other just compensation must be awarded on the value of property from the date of the taking, so under Wisconsin law, a governmental unit which has taken property even temporarily must provide just compensation for the period of the taking.

38. Article I, Section 13 is self-executing, and since there is no statute providing for recovery of just compensation, the injured property owner may proceed directly under that provision of the Constitution, and neither sovereign immunity, nor notice of claim requirements are applicable to an action.

**WHEREFORE**, Plaintiffs pray for judgment in their favor and against Defendants as follows:

a. Finding and declaring that this action is properly a class action under Rule 23 of the Fed. R. Civ. P. on behalf of the Class defined above, and that Plaintiffs are proper Class representatives and designating undersigned counsel as Class Counsel;

b. Declaring that Defendants' uncompensated retention and/or confiscation of the Plaintiffs' property or its use value, interest, dividends, earnings, or other fruits of the property delivered to the Defendants is a taking under the Fifth Amendment to the U.S. Constitution for which the Defendants must pay just compensation, and a taking under Article I, Section 13 of the Wisconsin Constitution for which the Defendants must pay just compensation;

c. Declaring the proper measure of just compensation, taking into account the time value of money and value to the Defendants of the use of the property;

d. Declaring that Defendants must pay just compensation, and enjoining the Defendants to comply with that declaration and awarding just compensation;

e. Awarding attorneys' fees and costs and expenses, pursuant to 42 U.S.C. § 1988, and applicable principles of equity, including without limitation common fund principles; and

f. Awarding all other and further relief the Court deems necessary and proper, including without limitation all relief available under or mandated by Rule 54(c), Fed. R. Civ. P., *e.g.*, all "relief to which each party is entitled, even if the party has not demanded that relief in its pleadings".

Margaret Elizabeth Doyle Siebers and Victor Vargo, individually and on behalf of a Class of others similarly situated,

December 15, 2020

/s/ Dennis M. Grzezinski

Dennis M. Grzezinski  
One of the Attorneys for Plaintiffs

Dennis M. Grzezinski  
Law Office of Dennis M Grzezinski  
1845 N. Farwell Avenue, Suite 202  
Milwaukee, WI 53202  
Tel: 414 530-9200  
Email: [dennisglaw@gmail.com](mailto:dennisglaw@gmail.com)

Charles R. Watkins [pro hac vice pending]  
Guin, Stokes & Evans, LLC  
321 South Plymouth Court, Suite 1250  
Chicago, IL 60604  
Tel: 312-878-8391  
Email: [charlesw@gseattorneys.com](mailto:charlesw@gseattorneys.com)

Garrett Blanchfield [pro hac vice pending]  
Roberta A. Yard [pro hac vice pending]

Reinhardt, Wendorf & Blanchfield  
332 N. Minnesota Street, #W1050  
St. Paul, MN 55101  
Tel: (651) 287-2100  
Email: [g.blanchfield@rwblawfirm.com.com](mailto:g.blanchfield@rwblawfirm.com.com)  
[r.yard@rwblawfirm.com](mailto:r.yard@rwblawfirm.com)

**Common School Fund  
Portfolio Report  
December 31, 2020**

Asset Class	Current Market Value	Cost	Unrealized Gain/Loss	% Gain/Loss	Yield at Cost	Projected Annual Income
<b>Fixed Income</b>						
Public Debt						
State/State Agency/Municipal Bonds	189,327,758	177,822,602	11,505,156	6.5%	4.1%	7,313,179
U.S. Treasury/Agency Bonds	-	-	-			-
U.S. Treasury Inflation Protected Securities	-	-	-			-
Corporate Bonds	123,233,692	117,568,385	5,665,307	4.8%	5.0%	5,884,194
Private Debt						
BCPL State Trust Fund Loans <sup>1</sup>	388,688,303	388,688,303	-	0.0%	3.7%	14,256,850
Other Private Debt <sup>2</sup>	39,562,245	37,572,602	1,989,643	5.3%	6.9%	2,606,656
Total Fixed Income	740,811,999	721,651,893	19,160,106	2.7%	4.2%	30,060,879
<b>Equities and Alternatives</b>						
Public Equities						
Domestic Equities <sup>3</sup>	167,492,071	142,018,911	25,473,160	17.9%	3.7%	5,248,145
Global Equities	116,081,639	96,946,545	19,135,094	19.7%	2.7%	2,620,382
Alternatives						
Private Real Estate	57,734,916	56,501,666	1,233,250	2.2%	5.0%	2,803,811
Real Assets/Infrastructure	-	-	-			-
Private Equity/Venture Capital <sup>4</sup>	14,238,497	14,597,713	(359,216)	-2.5%	0.0%	-
Total Equities and Alternatives	355,547,123	310,064,835	45,482,288	14.7%	3.4%	10,672,338
<b>Cash</b>						
ADM	100,000,000	100,000,000			0.4%	371,269
State Investment Fund <sup>5</sup>	70,961,200	70,961,200			0.1%	77,603
Total Cash	170,961,200	170,961,200			0.3%	448,872
<b>TOTAL PORTFOLIO</b>	<b>1,267,320,322</b>	<b>1,202,677,928</b>	<b>64,642,394</b>	<b>5.4%</b>	<b>3.4%</b>	<b>41,182,089</b>

**Notes:**

<sup>1</sup> The total market value of STFL assets is likely greater than cost. However, these assets are held at cost because no independent appraisal has been conducted and STFL assets have always been held to maturity. Annual income is at STFL interest payments due 3/15/21, and is subject to change.

<sup>2</sup> Annual income for Brookfield Infrastructure Debt Fund II is projected at 7% in this table (based on fund prospectus). Current returns calculated by our portfolio management software are much higher, but would be misleading because of a non-recurring item.

<sup>3</sup> Domestic equities currently includes \$52.3 million (at market value) in preferred stock ETFs. Categorizing this hybrid asset class as a domestic equity creates the appearance of overweighting domestic equities relative to other asset classes and relative to the market risk incurred. The inclusion of preferreds (5.3% yield at cost) within domestic equities (2.8% yield at cost) also has the effect of increasing the yield on the full asset class from 2.8% to 3.7%.

<sup>4</sup> Private equity/venture capital is valued at market value per sponsor as of the end of the prior quarter plus the cost of new investments made during the current quarter. Historical valuations are updated as new valuations are received 60-90 days following the end of each quarter.

<sup>5</sup> State Investment Fund rate is from December 2020 SIF Pool Earnings Workbook.



## Common School Fund Asset Allocation Report

December 31, 2020

Asset Class	Current Market Value	Current Allocation	Unfunded Commitments	Market Value + Commitments	Potential Allocation	Target Allocation	Target Range
<b>Fixed Income</b>							
Public Debt							
State/State Agency/Municipal Bonds	189,327,758	14.9%		189,327,758	14.9%	5.0%	0% to 30%
U.S. Treasury/Agency Bonds	-	0.0%		-	0.0%	0.0%	0% to 30%
U.S. Treasury Inflation Protected Securities		0.0%		-		0.0%	0% to 10%
Corporate Bonds	123,233,692	9.7%		123,233,692	9.7%	10.0%	0% to 30%
Private Debt							
BCPL State Trust Fund Loans	388,688,303	30.7%		388,688,303	30.7%	30.0%	20% to 50%
Other Private Debt <sup>1</sup>	39,562,245	3.1%	34,683,836	74,246,081	5.9%	10.0%	0% to 20%
Total Fixed Income	740,811,999	58.5%	34,683,836	775,495,834	61.2%	55.0%	
<b>Equities and Alternatives</b>							
Public Equities							
Domestic Equities	167,492,071	13.2%		167,492,071	13.2%	7.5%	5% to 20%
Global Equities	116,081,639	9.2%		116,081,639	9.2%	7.5%	5% to 20%
Alternatives							
Private Real Estate <sup>2</sup>	57,734,916	4.6%	114,981,735	172,716,651	13.6%	20.0%	5% to 25%
Real Assets/Infrastructure		0.0%		-	0.0%	5.0%	0% to 10%
Private Equity/Venture Capital <sup>3</sup>	14,238,497	1.1%	21,681,494	35,919,991	2.8%	5.0%	0% to 10%
Total Equities and Alternatives	355,547,123	28.1%	136,663,229	492,210,352	38.8%	45.0%	
<b>Cash</b>							
ADM	100,000,000	7.9%					
State Investment Fund	70,961,200	5.6%					
Total Cash	170,961,200	13.5%			0.0%	0.0%	
<b>TOTAL PORTFOLIO</b>	<b>1,267,320,322</b>		<b>171,347,064</b>	<b>1,267,706,186</b>	<b>100.0%</b>	<b>100.0%</b>	

<sup>1</sup> Private Debt unfunded commitments include \$7.8MM to Blackstone/GSO Secured Lending Fund and \$26.9MM to Brookfield Infrastructure Debt Fund II.

<sup>2</sup> Private Real Estate unfunded commitments include \$25MM to Blackstone Strategic Partners Real Estate VII, \$40MM to Invesco US Real Estate Income Fund, \$30MM to Brookfield Preferred Real Estate Partners, and \$20MM to Blackrock Core Property Fund.

<sup>3</sup> Private Equity/Venture Capital unfunded commitments include \$7.6MM to 4490 Ventures II, \$9.2MM to Venture Investors Health Fund 6, and \$4.9MM to Baird Venture Partners 5. A recent \$10MM commitment to NVNG Fund I has not been included because it is subject to Investment Committee approval following review of a 3rd party due diligence report.

See Notes provided on the attached Portfolio Report for additional information

## Common School Fund Allocation Progress Report

December 31, 2020

Asset Class	Market Value 12/31/2020	Market Value 9/30/2020	Change from Prior Quarter		Market Value 12/31/2019	Change from Prior Year	
			Market Value	%		Market Value	%
<b>Fixed Income</b>							
Public Debt							
State/State Agency/Municipal Bonds	189,327,758	189,130,274	197,484	0.1%	200,837,749	(11,509,991)	-5.7%
U.S. Treasury/Agency Bonds	-	10,017,940	(10,017,940)	-100.0%	15,127,705	(15,127,705)	-100.0%
U.S. Treasury Inflation Protected Securities	-	-	-	0.0%	-	-	0.0%
Corporate Bonds	123,233,692	119,985,773	3,247,919	2.7%	29,953,238	93,280,454	311.4%
Private Debt							
BCPL State Trust Fund Loans	388,688,303	362,126,892	26,561,411	7.3%	468,680,865	(79,992,562)	-17.1%
Other Private Debt	39,562,245	35,907,338	3,654,907	10.2%	26,664,494	12,897,752	48.4%
Total Fixed Income	740,811,998	717,168,217	23,643,781	3.3%	741,264,051	(452,052)	-0.1%
<b>Equities and Alternatives</b>							
Public Equities							
Domestic Equities	167,492,071	143,507,858	23,984,213	16.7%	46,657,438	120,834,633	259.0%
Global Equities	116,081,639	91,455,754	24,625,885	26.9%	46,942,515	69,139,124	147.3%
Alternatives							
Private Real Estate	57,734,916	41,781,378	15,953,538	38.2%	-	57,734,916	n/a
Real Assets/Infrastructure	-	-	-	0.0%	-	-	0.0%
Private Equity/Venture Capital	14,238,497	13,923,497	315,000	2.3%	10,465,376	3,773,121	36.1%
Total Equities and Alternatives	355,547,123	290,668,487	64,878,636	22.3%	104,065,329	251,481,794	241.7%
<b>Cash</b>							
ADM	100,000,000	100,000,000	-	0.0%	-	100,000,000	n/a
State Investment Fund	70,961,200	118,541,072	(47,579,872)	-40.1%	330,984,794	(260,023,594)	-78.6%
Total Cash	170,961,200	218,541,072	(47,579,872)	-21.8%	330,984,794	(160,023,594)	-48.3%
<b>TOTAL PORTFOLIO</b>	<b>1,267,320,321</b>	<b>1,226,377,776</b>	<b>40,942,545</b>	<b>3.3%</b>	<b>1,176,314,173</b>	<b>91,006,148</b>	<b>7.7%</b>
			<b>CPI</b>	<b>0.3%</b>		<b>CPI</b>	<b>0.7%</b>

Note: BCPL has determined that the most appropriate measure of inflation for the Common School Fund is CPI - Educational Books and Supplies. The CPI calculations shown above are estimates utilizing the latest available data, which is updated by the US Bureau of Labor Statistics approximately 45 days after the end of each month. The above quarterly CPI estimate uses data from September 1 to December 1, while the annual estimate uses data from December 1, 2019 to December 1, 2020. CPI calculations will be updated to the applicable time periods as data becomes available.

See Notes provided on the attached Portfolio Report for additional information