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FOR IMMEDIATE RELEASE

January 18, 2017

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Board of Regents, UW System and Wisconsin Department of Justice Pursue Civil Lawsuit Against Two Former Employees

The Board of Regents and UW System have asked the Wisconsin Department of Justice (DOJ) to pursue civil legal action against former UW-Oshkosh Chancellor Richard Wells and former Vice-Chancellor of Administrative Services and Chief Business Officer (CBO) Thomas Sonnleitner. Wells and Sonnleitner are being sued for improper financial transactions that occurred under the former administration from 2010-2014 related to five real estate projects.

Wells was chancellor from October 2000 to August 2014. Sonnleitner served as Vice Chancellor of Administrative Services from 2000-2016. Sonnleitner stepped down from his Vice Chancellor and CBO roles on March 1, 2016. He retired on May 30, 2016.

From 2010-2014, the UW-Oshkosh (UWO) Foundation participated in the renovation of the downtown Oshkosh Best Western Waterfront Hotel and Oshkosh Sports Complex. The UWO Foundation also constructed two biodigesters and the Alumni Welcome and Conference Center during this time frame. The UWO Foundation is an independent 501(c)(3) non-profit entity.

According to the DOJ complaint, Wells and Sonnleitner made illegal financial transfers from UWO to the UWO Foundation related to these five real-estate projects. Wells was Sonnleitner's supervisor, and neither properly recorded those transfers in the UWO's accounting records. The UWO Foundation was established to provide support to the university, and funding should have only flowed from the foundation to UWO.

In addition, Wells and Sonnleitner executed illegal guarantees pledging UWO's financial support for the Foundation's bank loans related to the projects. The guarantees asserted that UWO would make debt payments for the UWO Foundation if it could not meet its financial obligations. The Wisconsin Constitution and UW System policies do not allow a public entity to support a private organization.

"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," said Board of Regents Audit Committee Chair Michael M. Grebe on behalf of the Board.

"We expect our employees to conduct themselves in an honorable, accountable manner. Regrettably, their actions do not represent the values and integrity of the System, which is why we must take this legal action," said UW System President Ray Cross.

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“We take pride in the strength of our reputation at UW-Oshkosh. While Dr. Wells and Mr. Sonnleitner were long-serving members of our campus community, they broke a sacred trust. I hope our citizens recognize this was isolated behavior and it is not indicative of how we run our institution,” said UW-Oshkosh Chancellor Andrew Leavitt. “We will continue to serve our students with integrity and move forward together.”

Because the actions of Wells and Sonnleitner were unconstitutional, UWO could not legally guarantee the Foundation’s bank loans. UWO and the UW System cannot be held responsible for the Foundation’s project expenses or debt service.

Timeline

In April 2016, UWO Chancellor Andrew Leavitt identified potentially inappropriate transactions between UWO and the Foundation. He promptly drew those irregularities to the attention of UW System President Ray Cross, who immediately directed UW System staff to review the financial standing on all recent UWO Foundation projects. Sonnleitner was put on paid administrative leave on May 11, 2016, during the review and he subsequently retired on May 30, 2016.

During its review, the UW System discovered guarantees related to real-estate projects managed by the UW-Oshkosh Foundation. On June 14, 2016, the Board hired retired Dane County Circuit Court Judge Patrick Fiedler to independently review the real-estate projects identified by Chancellor Leavitt.

On August 10, 2016, Judge Fiedler completed his independent review. The Fiedler report focused primarily on the issuance of the guarantees, but indicated that other financial transactions should be examined. Judge Fiedler’s report prompted the Board of Regents and UW System to request DOJ’s assistance in conducting a more detailed investigation of the financial transactions executed by Wells and Sonnleitner. The DOJ’s investigation verified that improper fund transfers occurred.

“The Board and UW System took immediate investigative and corrective action when these irregularities were identified,” said Regents Audit Committee Chair Grebe. “We will continue to pursue the appropriate administrative and legal remedies to the fullest extent of the law.”

On January 17, 2017, Chancellor Leavitt terminated Art Rathjen’s employment. Rathjen served as Vice Chancellor for University Advancement and UWO Foundation President. The Chancellor also put another UWO employee on administrative leave. These employees were involved in the Foundation’s administration when the unlawful guarantees were issued and the financial transactions occurred.

Key Dates	
April 21, 2016	UWO Foundation President Art Rathjen informs Chancellor Leavitt the Foundation may need assistance with debt payment on the Alumni Welcome and Conference Center (AWCC) in the coming year
April 22, 2016	Chancellor Andrew Leavitt discusses AWCC assistance request with UW System President Cross, who requested the financing documents relating to the AWCC from the Foundation
Late April – May 2016	UW System staff begin reviewing financial documents on all recent UWO Foundation projects; UW System staff inform Chancellor Leavitt that letters signed by Sonnleitner guaranteeing UWO assistance on Foundation debt were unlawful
May 11, 2016	Sonnleitner is placed on paid administrative leave; ongoing UW System review
June 14, 2016	Board of Regents hires retired Dane County Circuit Court Judge Patrick Fiedler to independently review the five UWO Foundation real estate projects in question
June 2016	UW System begins contacting banks that had received guarantee letter
August 1, 2016	UWO and UWS assists Oshkosh Northwestern with article
August 10, 2016	Judge Fiedler completes independent review; Fiedler report prompts request to have the Wisconsin DOJ further investigate relationship between UWO and UWO Foundation
August 2016 - January 2017	DOJ investigates working cooperatively with Regent Audit Committee Chair, UWO and UW System
January 17, 2017	Chancellor Leavitt terminates Art Rathjen’s employment; places a UWO Foundation accountant on administrative leave while determining the employee’s future status
January 18, 2017	DOJ files civil suit in Dane County Circuit Court against Wells and Sonnleitner

Status of Real-estate Projects Outlined in Civil Lawsuit

- **Best Western Premier Waterfront Hotel and Conference Center:** appears to be in good financial standing. All UWO funds appear to have been repaid. The UWO Foundation is a minority investor in this property.
- **Oshkosh Sports Complex:** is in good financial standing and UW-Oshkosh owns this property.
- **Witzel Dry Fermentation Anaerobic Biodigester:** located on Witzel Avenue in Oshkosh. The UWO Foundation owns this facility and is responsible for \$1.7 million in related debt as of June 30, 2016.
- **Rosendale Dairy Biodigester:** located in Rosendale, Wisconsin. The UWO Foundation owns the biodigester, and owes approximately \$6.7 million in related debt as of June 30, 2016.
- **Alumni Welcome and Conference Center:** was constructed to be owned by the UW System and used by UWO and the Foundation. The Foundation owes approximately \$6.1 million for AWCC construction costs.

Ensuring Accountability

In addition to the lawsuit filed by DOJ, the UW System and UW-Oshkosh have taken the following corrective actions:

- UW System financial management staff are reviewing financial transactions between other foundations and universities. They have not discovered any financial irregularities to date.
- President Cross instructed all chancellors to reexamine the existing Memorandums of Understanding (MOUs) established between UW campuses and their supporting private foundations. In addition to adhering to Board of Regents policies, the UW System will require that each foundation MOU include language that:
 - Ensures only foundation board members/employees initiate transactions, contracts and obligations of the Foundation
 - Defines the frequency, content and method of reporting between the university and foundation, including a requirement for an annual independent audit of the foundation be provided to the university
 - Requires books and records be maintained in a professional, controlled and transparent manner and be available to the University as needed for oversight and monitoring
 - Details the foundation's responsibility for asset stewardship, maintenance of tax-exempt status, and adherence to appropriate standards of accounting
- The UW System established a waste, fraud and abuse reporting hotline in May 2015. In addition, UWO Chancellor Leavitt will create a new position which will focus on compliance with UW System rules and State law. This employee will be located on the UWO campus, but will report to UW System. This will provide employees with an additional resource for guidance, accountability, and to report issues or concerns.

Attachments:

- Copy of DOJ complaint filed January 18, 2017
- Copies of bank letters / guaranties signed by Wells and Sonnleitner
- June 2016 letters UW System sent to banks informing of improper guaranties
- June 2016 letter from UW System to the UWO Foundation informing of improper guaranties

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