

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 7

WAUKESHA COUNTY

WILLIAM J. CRAIG, CAROL J. CRAIG,
SHARON RODER, KEITH RODER, and
JEROME WASHICHECK,

Plaintiffs,

v.

FILED
IN CIRCUIT COURT

NOV 16 2015

WAUKESHA CO. WI
CIVIL DIVISION

Case No. 2015-CV-0723

VILLAGE OF BIG BEND,

Defendant.

DECISION AND ORDER

On May 5, 2015, Defendant Village of Big Bend filed a Motion to Dismiss and Request for Sanctions Under Wis. Stat. § 895.044 based upon the following grounds: (1) the above-captioned matter (hereinafter “*Craig II*”) is barred by both claim and issue preclusion due to the 2014 lawsuit entitled *Craig, et al. v. Latzke, et al.*, Waukesha County Case No. 14-CV-0398 (hereinafter “*Craig I*”); (2) Plaintiffs waived any argument related to dissolution or reorganization of the Rural Home Cemetery Association in *Craig I*; (3) the Association no longer has “cemetery grounds” as required by the reorganization statute; (4) Plaintiffs failed to exhaust their administrative remedies; and (5) a six-year statute of limitations bars this action. Defendant also moved for actual attorneys’ fees and costs as sanctions asserting that *Craig II* was filed without any reasonable basis in law or equity and is not supported by a good faith argument for the extension, modification, or reversal of existing law.

The Court concludes that *Craig II* is barred by claim preclusion, is partially barred by issue preclusion, and that Plaintiffs have failed to exhaust their administrative remedies. In addition, most claims are barred by the Statute of Limitations. Accordingly, the Court hereby grants the motion to dismiss. Due to the complexity of the issues, the Court, however, finds that attorneys’ fees and costs are not warranted.

BACKGROUND

To understand this case, some background information is necessary. The present lawsuit, *Craig II*, and the previous lawsuit, *Craig I*, both arise from a common set of undisputed facts. Rural Home Cemetery Association, located in the Town of Vernon in Waukesha County, was created under Bylaws dated June 1, 1872. Under the 1872 Bylaws, annual meetings of the Rural Home Cemetery Association were to be held each January. Meetings were, in fact, not held in January, but were annually held from 1992 to 2013 (with the possible exception of 2005, 2003, 1997 and 1995). To qualify as a cemetery association trustee, the individual, per Wis. Stat. § 157.062(4)(a), must own/hold a cemetery plot. Plaintiffs allege—and for purposes of the motion to dismiss, it is accepted as true—that the three cemetery Trustees of the Rural Home Cemetery Association since 2006 are not plot-holders. Plaintiffs assert that even though there have been elections since 2006, the elections are invalid because no plot-holders were elected.

On April 27, 2013, the Rural Home Cemetery Association held a special meeting during which it approved the transfer of its cemetery grounds and funds to the Village of Big Bend. The Board of Big Bend, by Resolution 2013-11, dated July 11, 2013, accepted the transfer and conveyance.

On September 14, 2013, Fred Latzke, as President of the Rural Home Cemetery Association, wrote to advise the Wisconsin Department of Safety and Professional Services (“DSPS”) that the Trustees of the Association had approved the conveyance of the Rural Home Cemetery, including all cemetery real property and funds, to Big Bend, and that the Village, by Resolution, had accepted the conveyance. Latzke asked DSPS to approve the conveyance per Wis. Stat. § 157.08(2)(b).

On November 15, 2013, Mr. Craig (a plaintiff in both actions) wrote, in protest, to DSPS and asked that the decision on whether to approve the conveyance of Rural Home Cemetery’s real property and funds be placed “on hold.” The conveyance approval request was placed on the Agenda for the State of Wisconsin’s Cemetery Board (a Board under the auspices of DSPS) for its November 19, 2013 meeting. Mr. Craig and two other *Craig I* Petitioners attended the meeting and voiced their opposition. The State Cemetery Board approved the conveyance following a closed door session at that hearing. Mr. Craig was notified, by telephone on November 19, 2013, of the State Cemetery Board’s unanimous approval decision. Written confirmation of the Cemetery Board’s decision was mailed on or about December 6, 2013. No appeal, administrative or otherwise, was ever filed.

In early February, 2014, the Rural Home Cemetery Association transferred title to its real property to Big Bend by warranty deed. The Village announced an intention to establish a cemetery board that would adopt appropriate by-laws.

On February 24, 2014, without prior notice to the Respondents, 34 Petitioners (five of whom are the current Plaintiffs in *Craig II*), all of whom were Waukesha County residents and plot-holders at Rural Home Cemetery, filed a petition in Waukesha County seeking a temporary restraining order in *Craig I*.¹ The Respondents were adult officers or trustees of the Rural Home Cemetery Association or trustees, officers or employees of Big Bend, Wisconsin. The Petitioners, contending that the Rural Home Cemetery Association had never been dissolved, sought a temporary restraining order stopping the transfer of the Rural Home Cemetery real property and funds to the Village of Big Bend. The transfer had already occurred three weeks before the Petition was filed. Without input from the Respondents, the Court² entered a temporary restraining order that same day and set an injunction hearing date.³

Following a letter from Defendants' counsel spelling out the glaring jurisdictional flaw arising from the lack of a summons and complaint, Petitioners (now calling themselves "Petitioners/Plaintiffs") filed a Summons and Complaint in *Craig I* on May 8, 2014, alleging four causes of action: Conversion, Unjust Enrichment, Violation of Wisconsin Open Meetings Law and "Punitive Damages." The first item of relief requested was:

- A. A permanent injunction requiring the defendants/respondents to immediately take all necessary steps to have the Village of Big Bend return ownership of the Rural Home Cemetery Association and all its depository accounts, real estate and any other assets to the Rural Home Cemetery Association;

Following the temporary injunction hearing, the Court sought briefs on whether the Petitioners/Plaintiffs had standing to bring *Craig I*. In their Memorandum of Law on "Standing" filed on June 13, 2014, Plaintiffs argued, in relevant part:

¹The Petition in *Craig I*, was given Case Number 14-CV-0398 despite the lack of an underlying Summons and Complaint. *See Useni v. Boudron*, 2003 WI App 98, ¶ 13, 264 Wis. 2d 783, 662 N.W.2d 672; *Schaefer v. Riegleman*, 2002 WI 18, ¶ 26, 250 Wis. 2d 494, 639 N.W.2d 715.

²The Honorable Lee S. Dreyfus, Jr.

³The restraining order was subsequently revised to allow Big Bend to maintain the cemetery grounds and conduct burials.

Because of all the irregularities, and what petitioners/plaintiffs feel is the fact that there have not been official trustees or officers for more than the last five years, under Wis. Stats. 157.062(6)(a) & (b) the court can find a dissolution of the Cemetery Association has occurred and then order a reorganization upon the request of five or more plot owners. The petitioners/plaintiffs asked that the court do just that in its initial Petition for Temporary Restraining Order/Injunction and/or Petition and Motion for Injunction Hearing, in paragraph 25.⁴ The petitioners/plaintiffs are potentially asking the court to do this now, in the alternative. Because there is a provision that such a dissolution and reorganization can take place, certainly that in itself gives the plot holders standing to bring this action.

(*Id.*, 13).

If the petitioners/plaintiffs as plot holders do not have standing to sue, then who does? Who is there to hold the trustees and officers accountable for the irregularities that have occurred under the statutes and by-laws? If not the plot holders, who could enforce the fiduciary duties of the trustees to the cemetery association and to the plot holders? If the plot holders do not have standing, who would the trustees be accountable to? The only answer is that the petitioners/plaintiffs as plot holders do have standing to sue and litigate this matter for all of the reasons stated above.

(*Id.*, 17) (emphasis in original).

At the *Craig I* motion hearing, on June 20, 2014, the Court found that the Petitioners/Plaintiffs had standing to bring their lawsuit “at that point in time.”

On June 30, 2014, Petitioners/Plaintiffs filed a “Motion Pursuant to Wis. Stats. § 157.062(4)(b) & 157.062(a) & (b) (Reorganization of Rural Home Cemetery

⁴Paragraph 25 of the Petition reads:

25. Because it appears that the by-laws have not been followed as to holding Annual Meetings, Wis. Stats. 157.062(4)(b) indicates that if annual meetings and annual elections are not held within 60 days of the time fixed for them to be held, a judge of the county in which the cemetery is located may order such a meeting by the request of five members. All of the petitioners in this pleading are asking the court to so order. And, at least nine plot holders are willing to serve as Trustees/officers of the Rural Home Cemetery.

Just as relevant is Paragraph 33 that provides:

33. Petitioners state that to their knowledge the Cemetery Association has never been dissolved and petitioners now want their Cemetery back. Petitioners feel that the Cemetery was wrongfully taken from them by the Village and that Frederick Latzke did not have the authority to “give it” to the Village of Big Bend, and also for no apparent consideration, which is mandated by Wis. Stats. 157.061(16).

Association and/or Election)" (hereinafter "Reorganization Motion"). In that motion Petitioners/Plaintiffs were not pursuing their individual rights to the actual land of their burial plots, but were seeking to statutorily reorganize the Rural Home Cemetery Association. The Village of Big Bend was not a party when this motion was filed. That same day, in a response to the Defendant Trustees' motion to dismiss and in support of the restraining order, Petitioners/Plaintiffs further clarified their stated goal in *Craig I*: to have the transfer to Big Bend declared void and to keep the Rural Home Cemetery in the hands of the Rural Home Cemetery Association but under different management. (Pet./Pls. Resp. to Resp./Defs. Motion to Dismiss and Extending the Prelim. Inj., filed June 30, 2015, 2). They further clarified that the original petition only called for an injunction to stop Big Bend from taking possession of property that didn't belong to it and that the restraining order petition did not seek any personal judgments from the Defendants. (*Id.*, 6).

Later, on July 7, 2014, the *Craig I* Petitioners/Plaintiffs again clarified precisely what the Temporary Injunction/Restraining Order was and was not seeking:

It did not contain pleas for personal judgment, but rather a request for a temporary restraining order to enjoin the Village of Big Bend from taking further actions as to Rural Home Cemetery and a permanent order to undo what has been done regarding Rural Home Cemetery.

(Pet./Pls. Response to Resp./Defs. Motion to Compel Pl. to Produce Copies of Affidavits of Service on All Defs., dated July 7, 2014, at 1).

The Court held an evidentiary hearing on July 9-10, 2014, but allowed for further briefs before the oral ruling to be issued on July 24, 2014.

On July 24, 2014, Plaintiffs filed a Second Amended Complaint in *Craig I* adding a new cause of action: "Permanent Injunction or Continuation of the Temporary Injunction/Restraining Order that is Currently in Effect." But, more important, they added the Village of Big Bend as a Defendant. The Amended Complaint sought to void the transfer of the Rural Home Cemetery. This pleading was filed before the conclusion of the hearing on the Injunction and the Court's oral ruling at which time the Court refined the Restraining Order to reflect that it wasn't (then) overturning the transfer of the real property to Big Bend, but that the Village was to continue to maintain the Rural Home Cemetery and to keep its funds in escrow.

Several Defendants, including Big Bend, moved to dismiss *Craig I* in its entirety by Summary Judgment on August 14, 2014. In addition, on September 12, 2014, several Defendants, again including Big Bend, moved the Court to reconsider its prior ruling on standing and jurisdiction. The third argument in that motion was that “the plaintiffs have not established standing to file a derivative proceeding under Wis. Stat. § 181.0741 on behalf of the former Cemetery Association.” (Br. In Support of Motion to Reconsider Defs.’ Motion to Dismiss Based on the Pls.’ Lack of Standing and Failure to Exhaust Administrative Remedies Before Filing Suit, 2). (See also argument on this point set forth on pages 10-12 in that Brief).

On September 22, 2014, the *Craig I* Court⁵ signed the “Order From July 9-10, 2014 Motion Hearing.” In it, the Court ordered that “Plaintiffs’ Motion to reorganize the Rural Home Cemetery and/or hold an election for trustees and officers was denied” at the hearing. (Order, dated September 22, 2014, 2). Further briefing was allowed and new hearing dates were set.

Plaintiffs, on September 30, 2014, argued that—even if they had no personal property rights in the real property cemetery lots—they still had standing for “numerous reasons.” (Pls.’ Br. In Opposition to Defs. Soneberg, Woppert, Fickau, Treichel, Conn, Heinemann, R. Peterson, K. Peterson and the Village of Big Bend’s Notice of Motion and Motion to Reconsider Defs.’ Motion to Dismiss Based on Pls.’ Lack of Standing and Failure to Exhaust Administrative Remedies Before Filing Suit and Supplemental Facts Section, 3). All of those “reasons” flowed from the alleged “illegalities and irregularities” committed by the Rural Home Cemetery Association when it failed to allegedly satisfy the association formalities. (*Id.*, 3-4). Accordingly, Plaintiffs argued that:

Because of these facts, plaintiffs state that the Association officers were illegal and did not have authority to transfer the cemetery to the Village of Big Bend and therefore the court has jurisdiction over this lawsuit and the plaintiffs have standing to sue and protect their interests. Plaintiffs are asking the court to void the transfer to the Village of Big Bend.

(*Id.*, 4).

Then, in a letter brief to the Court on October 10, 2014, *Craig I* Plaintiffs’ counsel made the following statements as to the rights at issue in this case:

⁵The Honorable James R. Kieffer was assigned to *Craig I* as of August 12, 2014 following judicial rotation and a substitution request.

Plaintiffs may actually be owners of the real estate comprising their cemetery plots, but the plaintiffs' Amended complaint is mostly premised on the fact that their rights have been violated as to burial rights, statutory rights, property rights, trust beneficiary rights, contract rights, and other rights provided for in the State of Wisconsin.

(Letter Brief, October 10, 2014, 3).

Plaintiffs also request that since the legal violations are against a cemetery trust, that defendants be required to pay compensation for all damages and monies owed to the Rural Home Cemetery Association as a result of illegal actions of defendants and also breach of fiduciary duty.

(*Id.*, 4).

The *Craig I* Plaintiffs further clarified their rights by noting that "the right of burial also includes the right to a plot owner majority vote and to thereby indirectly control the operation of the cemetery." (Pls.' Br, in Support of Motion for Summary Judgment, filed November 11, 2014, 15). They further noted that, in Judge Dreyfus' June 20, 2014, order finding standing, the Court "cited that the various statutory, by-laws, trust, and other rights plaintiffs had under an association would be extinguished by a municipal conversion." (*Id.*, 16).

Next, in Plaintiffs' Reply to Defendants Frederick Latzke, Richard Riesch and Catherine Alba Brief in Opposition to Plaintiffs' Motion for Summary Judgment, filed December 22, 2014 (at 6), Plaintiffs' counsel summed up what they believed was at stake in *Craig I*:

Plot owners have membership rights to vote regarding the association, its trustees, the officers, the cemetery, the regulations, etc. Essentially, the plot owners have a reasonable amount of power under the statutes and by-laws to control the association and the cemetery. A transfer to a municipality abolishes the association and turns over ultimate control and all assets to Big Bend, as affirmed by Judge Dreyfus (Oral Ruling, June 20, 2014, Pg. 7, Line 7) even if a cemetery is created in the municipality. This is a serious impairment of rights and an injury. Only opposing counsel would argue having an association with a plot owner vote as to trustee elections, regulations, by-laws, etc., is the exact same right as not having a plot owner association and not being able to vote.

Plaintiffs further decried that:

The transfer abolishes the associations' control over the cemetery and removes all voting rights of every plot owner. Essentially it would abolish the association. This injury to plaintiffs not only includes trespass . . . but goes beyond.

(*Id.*, 7).

Then, on January 29, 2015, the *Craig I* Plaintiffs sought leave to file a Second Amended Complaint that contained a new cause of action for Breach of Fiduciary Duty (¶¶ 90-97), seeking the "complete and total recession of the conveyance by the Rural Home Cemetery Association to the Village of Big Bend, who obviously benefitted by the breach of loyalty and upon information and belief were 'in on the secrets' as well." (*Id.* ¶ 97).

The Court, however, granted Defendants' Motion for Reconsideration on January 30, 2015, holding that the *Craig I* Plaintiffs did not now, or had never, owned the real property in their cemetery plots, they did not meet the requirements to bring a derivative proceeding, and they did not pursue their administrative remedies.⁶ To wit, the Court in *Craig I* held:

The court also concludes that the plaintiffs have not established standing to bring a derivative proceeding under Chapter 181.0741 of the Wisconsin Statutes. Again,

⁶The *Craig I* January 30, 2015 hearing transcript (at pages 34-36) details Judge Kieffer's findings regarding administrative remedies

The court also concludes herein that the validity of any cemetery transfer is governed by the State of Wisconsin Cemetery Board -- that's somewhat of a shortened version of its lengthier legal name -- and that board is part of the State of Wisconsin Department of Safety and Professional Services. The involvement of the association to then transfer these burial plots is governed by a state administrative agency and thus complaints about that state agency's actions are specifically governed by the language in Chapter 227 of the Wisconsin statutes.

The administrative appeal process that was not followed in this particular case is set forth in Section 227.42 of the Wisconsin Statutes.

The plaintiffs never made a request under 227.42 of the Wisconsin statutes and thus this court has no jurisdiction because the administrative remedy was never even attempted much less even exhausted.

The *Craig I* "1-30-15 Order," dated February 19, 2015, found that:

3.b. The plaintiffs failed to exhaust administrative remedies as required by Wisconsin Chapter 227 with respect to a decision by the State Cemetery Board.

this is a ground that was not previously dealt with and decided by Judge Dreyfus. The former Rural Home Cemetery Association was a corporation registered with the state of Wisconsin and the court agrees with the position taken by the defendants that this would then be considered a non stock corporation under Chapter 181 of the Wisconsin Statutes.

The plaintiffs in their amended complaint claim to be members of this former corporation or descendants of members of that corporation. Thus, by definition they are attempting to bring a derivative proceeding under Section 181.0740 of the Wisconsin Statutes which is defined as a civil suit brought in the right of the corporation. That is what the plaintiffs are attempting to do herein.

(*Craig I* Transcript, Motion Hearing, January 30, 2015, 33-34. *See also* Order From 1-30-15 Motion Hearing, dated February 19, 2015).

In a motion to reconsider, the *Craig I* Plaintiffs again noted which rights were at issue:

This court has recognized and analyzed the issues separately, including real estate rights and corporate membership rights. Plaintiffs agree with this methodology.

(Pls.' Br. In Support of Pls.' Motion to Reconsider Standing, Grant Permanent Injunction against All Defendants and Declare Rural Home Cemetery Real Estate Transfer Deeds Void, February 13, 2015, 1).

Plaintiffs believe the reason that the case originally got off track and became "contentious" is because Opposing counsel failed from the beginning to realize that this case included Wisconsin corporate law issues.

(*Id.*, 2).

Chapter 157 provides lot owners with an option for obtaining a court determination on whether or not a corporation has been dissolved as an entity. The only requirement is at least 5 members approach the court. . . . It should be noted in this case, it is not alleged that the corporation was acting ultra vires. It is alleged that those acting as trustee were invalid and acting ultra vires in operating the cemetery, and this led to the corporation ceasing to exist.

(*Id.*, 3-4).

Plaintiffs believe this case may actually hinge on a statutory corporate law issue, rather than a property law issue.

(*Id.*, 4).

Plaintiffs' Motion to Reorganize the Association was an attempt to end this case early on. It would have required a determination of dissolution based on corporate procedures, such as trustees, meetings, notice, election, etc.

(*Id.*)

Finally, at a June 3, 2015 hearing in *Craig I* regarding attorneys fees where actual attorneys fees could have been awarded if a derivative action had been filed on behalf of the Rural Home Cemetery Association, Judge Kieffer held:

The issue that is in front of the court is whether the court under Section 181.0746 of the Wisconsin Statutes should award to the defendants their reasonable expenses including attorneys fees. Based on this court's determination herein that this particular lawsuit, Case No. 14-CV-398 was never commenced or maintained as a derivative proceeding, the court denies the requested relief by the named defendants.

The court concludes in this case that per my prior January 30, 2015 ruling that the plaintiffs attempted to file a derivative proceeding under Chapter 181.0740 of the Wisconsin Statutes, but they did not comply with the prerequisites for the filing of that so they merely attempted to but were not successful in commencing or maintaining a derivative proceeding. Since they did not commence or maintain this as a derivative proceeding, the court denies the requested relief.

(*Craig I* Transcript, June 3, 2015 Hearing, 28-29).

All of the Plaintiffs' claims in *Craig I* were dismissed on the merits and with prejudice via a Final Judgment, dated July 20, 2015. Prior to that date, but after Defendants' Motion for Reconsideration was granted, Plaintiffs filed the present lawsuit, *Craig II*, on April 1, 2015.

DISCUSSION

When all is said and done—and in this and the prior case, *much* has already been said⁷—it all comes down to a few simple questions:

⁷Moreover, this Court notes with considerable dismay that the almost complete lack of civility and professionalism that dominated the pleadings filed with the Court in *Craig I* appear to be continued in this case. It is somewhat understandable that emotions are high for the parties. Hyperbole and rhetoric may sound nice, but there is a point and time when the Court would expect counsel to self-correct and edit out those statements. Zealous advocacy does not demand, and in fact may actually be impaired by, such extravagant accusations and turns of phrase. It is to be expected that, for the remainder of this case, such conduct will cease.

- Did the Plaintiffs in *Craig II* assert the cemetery association's rights in *Craig I*, or could they have? If so, the *Craig II* case must be dismissed.
- Does the Rural Home Cemetery Association have "cemetery grounds" as required by statute for reorganization?
- Did Plaintiffs fail to exhaust their administrative remedies?
- Are any claims in *Craig II* barred by the Statute of Limitations?

Each question is addressed below.

I. Do the claims asserted, raised or pursued in *Craig I* preclude the reorganization claims in *Craig II* under claim or issue preclusion?

Truth be told, this case caused extensive deliberation and careful consideration of the legal concepts at hand. Both parties presented arguments that began with a solid, legal foundation but then strayed from black letter law. In the end, the answer was simply this: there is no doubt whatsoever that the *Craig I* Plaintiffs attempted to bring an action on behalf of the Rural Home Cemetery Association, and by virtue of that attempt, it is just as clear that they *could have done so*. It is axiomatic that if someone attempts to do something, they *could* have done it—had their attempts been successful. To rule otherwise would open the door to a parade of litigants filing second lawsuits when their attempts at the first one are unsuccessful. That does not comport with the precepts of claim and issue preclusion.

Therefore, the numerous attempts as articulated above—from the very first pleading (the *Craig I* Petition)—preclude the *Craig II* Plaintiffs from refashioning their claims and bringing this lawsuit seeking, in relevant part, the very same relief sought in *Craig I*.

A. The legal standards.

Formerly known as *res judicata*, the claim preclusion doctrine holds that “[a] final judgment is conclusive in all subsequent actions between the same parties [or their privies] as to all matters which were litigated or which might have been litigated in the former proceedings.” *Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995) (quoting *Lindas v. Cady*, 183 Wis. 2d 547, 558, 515 N.W.2d 458 (1994)). Claim preclusion “is premised upon the maxim that

litigation must come to an end so as to ensure fairness to parties and sound judicial administration.” *A.B.C.G. Enterprises, Inc. v. First Bank Southeast, N.A.*, 184 Wis. 2d 465, 473, 515 N.W.2d 904 (1994). The Court in *A.B.C.G. Enterprises* further explained the finality to be achieved by the concept:

The doctrine is applied with a broad brush so as to achieve these goals. It embraces not only what has been litigated in previous proceedings, but also extends to issues that could have been litigated.

Id.

In order to determine what “claims” have been raised (or could have been raised) in each proceeding, “Wisconsin has adopted a transactional approach to determining whether two suits involve the same cause of action.” *Northern States*, 189 Wis. 2d at 553. This approach, taken from the Restatement (Second) of Judgments § 24, provides:

- (1) When a valid and final judgment rendered in an action extinguishes the plaintiffs’ claim pursuant to the rules of merger or bar . . . , the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.
- (2) What factual grouping constitutes a “transaction”, and what groupings constitute a “series”, are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.

Id., at 553-54.

“The number of substantive theories that may be available to the plaintiff is immaterial if they all arise from the same factual underpinnings: all are barred from future consideration unless brought in the same action.” *State ex rel. Barksdale v. Litscher*, 2004 WI App 130, ¶ 15, 275 Wis. 2d 493, 685 N.W.2d 801.

On the other hand, issue preclusion, formerly known as collateral estopped, forecloses re-litigation in a subsequent action of an issue of law or fact that has actually been litigated and decided in a prior action and reduced to a judgment. *Northern States*, 189 Wis. 2d at 550. Unlike claim preclusion, the parties need not be the same for issue preclusion to apply. *Id.* at 550-551.

In this case, Defendant asserts that both concepts mandate dismissal of *Craig II*.

B. Claim preclusion applies.

In both *Craig I* and *II*, there is an identity of parties. The five *Craig II* plaintiffs were plaintiffs in *Craig I*. Defendant Big Bend was added as a party Defendant when the Amended Complaint was filed on January 29, 2015; this was while the Motion for Reorganization was pending in *Craig I* and before the Motion for Reconsideration was filed. Plaintiffs make much of Judge Kieffer's statements that because Big Bend was not a party (at that time), it was premature to address the Motion for Reorganization. Those statements, however, prompted the *Craig I* plaintiffs to add Big Bend as a party—precisely so their Reorganization Motion could be appropriately considered. To now argue that Big Bend was not a party when reorganization was at play in the Motion for Reconsideration is simply incorrect. Judge Kieffer clearly stated:

As of today, we'll deny the motion [for Reorganization]. I'm satisfied it's premature, but understanding that we may very well be back readdressing that very issue.

(Ex. 6 to Attorney Kelly Aff., filed June 17, 2015, at 15 [containing July 10, 2014 Reorganization Motion Hearing Transcript Excerpts, 130].

And readdressing that very issue was the basis for the Motion for Reconsideration filed after Big Bend was a *Craig I* Defendant. Thus, Big Bend was a party for purposes of claim preclusion. Plaintiffs incorrectly contend that, by virtue of the *Craig I* Plaintiffs' withdrawal of the Motion for Reconsideration, reorganization was never at issue with respect to Big Bend. But, that misstates the time Big Bend was named as a party when compared to the fact that the issue of reorganization was still the subject of the Amended Complaint, the initial Petition, as well as the Plaintiffs' Motion for Reconsideration, not to mention the numerous statements to the Court "clarifying" the Plaintiffs' position.

Moreover, even if Big Bend was *not* a named party when reorganization was at issue, from the filing of the *Craig I* petition, Village of Big Bend officials were sued in their official capacities making them "privies" for Big Bend. *See Northern States*, 189 Wis. 2d at 553. Thus, either due to the addition of Big Bend as a party Defendant, or the fact that Big Bend's privies were in the *Craig I* lawsuit from the very beginning, there is an identity of parties with respect to the demands for reorganization, dissolution and invalidation of the real estate deeds.

The more difficult question is whether the claims were litigated—or could have been litigated—in both cases.

A careful review of the pleadings⁸ in both actions establishes what was at stake in *Craig I* and how that case had evolved to encompass more than a request for a declaration that the Plaintiffs owned their own cemetery plots. They sought recourse and compensation to be paid to the Rural Home Cemetery Association—not to themselves. They sought to reorganize that Association—with at least seven of the Plaintiffs to be named as the new trustees/officers. They sought to void the transfer of the Cemetery real property and assets to Big Bend. That is what is sought in *Craig II*.

In *Craig I* and *II*, the Plaintiffs note the “irregularities” and failures of the current Rural Home Cemetery Association officers to follow the 1872 by-laws. They contend that the Rural Home Cemetery Association is or should be statutorily dissolved as of January 2006 for the failure to abide by Association or statutory requirements. In Paragraph 25 of the Petition, there is a request that the Court “so order” a reorganization meeting and trustee/officer election. That does not impact the “private rights” of the Petitioners/Plaintiffs. It impacts the Association’s right to exist.

The *Craig I* Plaintiffs repeatedly advised that Court of their goal to achieve reorganization through *Craig I* and their desire that the Court void the transfer of the cemetery grounds to Big Bend. That is exactly what these same Plaintiffs are seeking in *Craig II*. The *Craig I* Plaintiffs asked the Court to make the Defendants pay compensation—not to them—but to the Rural Home Cemetery Association. They further noted that the alleged impairment of rights and injury was not only to them as plot-holders but to the Association that was being abolished by the actions

⁸The *Craig II* Plaintiffs’ contend that this Court is bound to only examine the Complaints (or Amended Complaints) in each action in order to determine what claims are at issue. Even if the Court were so bound, the *Craig I* Petition clearly outline (in ¶¶ 25, 33 and the ad damnum clause) the exact same relief sought in *Craig II* and the proposed *Craig I* Second Amended Complaint contains further references to reorganization. But, putting that aside for the moment, if a Court—in determining which claims are at issue—may not look to motions filed in the case, the Court cannot examine the entire proceedings and the efficient exercise of judicial discretion would be severely impaired. For instance, if a movant is successful and achieves a declaration or judgment in their favor, that could conceivably end the case. They would have *obtained* that relief. In this case, if the *Craig I* Motion for Reorganization or Motion for Reconsideration had been granted, there would not have been a *Craig II* lawsuit. That is telling because it shows that *Craig I* could have lead to a complete reorganization of the Rural Home Cemetery Association with at least the *Craig II* Plaintiffs as the new trustees/officers.

of the illegal Trustees. And, in their proposed (but not accepted) Second Amended Complaint, the *Craig I* Plaintiffs more clearly spell out that they were seeking to void the transfer of cemetery grounds and assets. That could not any closer mirror the demands in *Craig II*.

Finally, on February 13, 2015—after Big Bend was a party—the *Craig I* Plaintiffs moved the Court for reconsideration of the denial of their Motion for Reorganization. They asked that all issues be reconsidered, including dissolution of the Rural Home Cemetery Association and invalidation of the real estate deeds. For reasons unknown (and irrelevant to this decision), the *Craig I* Plaintiffs withdrew that Motion for Reconsideration on March 20, 2015, as noted in the subsequent Order of the Court dated April 2, 2015: “[b]ased upon representation of plaintiffs’ counsel, plaintiffs’ pending motion to reconsider the Court’s January 30, 2015, decision is withdrawn and thus denied.” Defendant asserts that this withdrawal and denial was a waiver of the right to further argue for dissolution, reorganization and the invalidation of the real estate deeds. They are incorrect. The reason that the final judgment in *Craig I* is binding upon the *Craig II* Plaintiffs, for purposes of claim preclusion, is that they could have litigated their claims in *Craig I* and that there was a final decision on the merits in *Craig I*. To constitute a final judgment for claim preclusion purposes, the judgment need not specifically tackle the substantive claim at issue but must finally dispose of the action. *Northern States*, 189 Wis. 2d at 555. This is particularly true when it is a claim that *could have been brought* that is under consideration: it is illogical, if not completely impossible, that a claim that wasn’t brought, but could have been, would be expressly covered by the final judgment. To require such a direct reference would be to negate the concept of “claims that could have been brought.”

Accordingly, all elements of claim preclusion are met here.

Additionally, a review under the transactional approach to claim preclusion leads to the same conclusion: both lawsuits indisputably arise from the same factual underpinnings. They both involve claims that were—or could have been—brought by the same Plaintiffs. In both lawsuits, the alleged invalid elections of trustees/officers of the Rural Home Cemetery Association, the alleged statutory dissolution of that Association in 2006 or 2009, and the alleged invalid transfer of the Association’s cemetery grounds and assets to Big Bend in 2013, are not only related in time, space, origin and motivation, they are identical. Both sets of Plaintiffs sought to void the transfer of the cemetery grounds and assets and to return them to the Association. Both sets of Plaintiffs sought to preserve the Rural

Home Cemetery Association as a separate entity. Both sets of Plaintiffs sought recompense to be paid to the Association for the actions of the allegedly invalid Association trustees/officers. The transactions are the same, and as noted above, by virtue of the undisputed attempts to assert claims on behalf of the Rural Home Cemetery Association to effect a statutory dissolution and reorganization, the claims in *Craig II* could have been brought in *Craig I*.

Under either analysis, the inevitable conclusion is the same: claim preclusion bars this new action.

C. Issue preclusion applies only to the decision by the State Cemetery Board.

Focusing upon the State Supreme Court's decision in *In re Michelle T v. Crozier*, 173 Wis. 2d 681, 687, 495 N.W.2d 327 (1993) that applies "a looser, equities-based interpretation of the doctrine" of issue preclusion, Defendant asks the Court to conform to the principles of "fundamental fairness" and determine that the issues are the same in both cases. On the other hand, Plaintiffs cite *Mrozek v. Intra Financial Corporation*, 2005 WI 73, ¶ 17, 281 Wis. 2d 448, 699 N.W.2d 54, for the proposition that "[i]n order for issue preclusion to be a potential limit on subsequent litigation, the question of fact or law that is sought to be precluded actually must have been litigated in a previous action and be necessary to the judgment."

While it is true that in *Craig I* the concepts of reorganization and dissolution were swirling about—and could have been litigated to a final judgment—they were not actually ruled upon. That is not the case with respect to the decision by the State Cemetery Board that approved the transfer of the cemetery real property to Big Bend. That issue was decided by the Court in *Craig I*. Judge Kieffer ruled that, based upon a failure to exhaust administrative remedies, he had no jurisdiction and there could be no challenge to the transfer of the cemetery's real property and assets to Big Bend. Accordingly, solely as to that issue, Defendant is correct that fundamental fairness and issue preclusion in general bar re-litigation of that issue.

* * *

Based upon the determination that the *Craig II* lawsuit is entirely barred by claim preclusion and that the claim to invalidate the transfer of the Rural Home Cemetery Association's real property and assets is barred by issue preclusion, the Court need not delve into the other issues at hand. Given the contentious nature of

this matter, however, and the reality that in all likelihood this decision will be the subject of appeal, the Court will address a few other matters.

II. Does the Rural Home Cemetery Association have “cemetery grounds” as required by statute?

This question had been raised before and contemplated by both Judges in *Craig I*. Both correctly noted that, if the transfer of the cemetery real property was void or voidable, that would not impede any five plot owners from petitioning under Chapter 157 to reorganize the Rural Home Cemetery Association if they were otherwise legally entitled to do so. To contend otherwise would be to allow individuals or entities to profit or benefit from the consequences of a potentially illegal act. That, in addition to be contrary to common sense and good jurisprudence, would be inequitable.

Thus, the fact that the cemetery real property was transferred to Big Bend does not independently bar this action.

III. Were administrative remedies exhausted?

The *Craig I* Court considered the question of administrative remedies and determined that, because there was a failure to timely appeal the decision of the State Cemetery Board, the Court did not have jurisdiction over whether the transfer of the Rural Home Cemetery Association’s real property and assets was valid. That failure was deemed another, independent ground upon which *Craig I* was dismissed and was included in the January 30, 2015 Order. Defendants in *Craig II*, again, raise that defense.

Wisconsin courts are very clear that when a statute—such as the cemetery conveyance approval statute—does not provide a deadline by which an aggrieved party may seek administrative review, “courts have established six months as the ‘default limitation.’” *Krist Oil Co. v. Wis. Dep’t of Transp.*, 2014 WI App 90, ¶ 9, 356 Wis. 2d 329, 855 N.W.2d 493 (quoting *Habermehl Elec., Inc. v. Wis. Dep’t of Transp.*, 2003 WI App 39, ¶ 21, 260 Wis. 2d 466, 659 N.W.2d 463). Many more than six months have passed since December 6, 2013.

Plaintiffs contend that the State Cemetery Board’s approval of the transfer of the Rural Home Cemetery Association cemetery grounds to Big Bend was a meaningless state action and not something that could have been challenged in

either lawsuit. They focus on the two statutory reasons to disapprove the sale that the State Cemetery Board may consider,⁹ but fail to acknowledge that those bases are of relevance to this case and that Chapter 227 afforded them a means by which to challenge the decision. First, the State Cemetery Board is to look to whether the cemetery association will be financially solvent. Next, it must consider whether the rights and interests of cemetery lot and mausoleum space owners would not be adequately protected. Both of these interests are at issue in these two lawsuits. The Plaintiffs assert a potential lack of future financial solvency and they assert that the plot-owners' rights were not protected by the transfer. The State Cemetery Board was tasked by the Legislature to consider these areas of concerns and to object to a transfer if it finds a valid concern exists. Clearly, the interests of the plot-owners in *Craig I* would be impacted if the State Cemetery Board had concerns that there was no valid cemetery association to transfer the real property and assets. That would have been sufficient basis upon which to object to the transfer.

The *Craig I* and *II* Plaintiffs were concerned enough to write to the State Cemetery Board and to attend the Board meeting to argue that the transfer of the Rural Home Cemetery Association's real property and assets should not be approved—most likely upon the grounds that the Association had been statutorily dissolved—but now they ask the Court to believe that the State Cemetery Board's decision was meaningless and that it is irrelevant to whether they can proceed with this lawsuit.

This Court disagrees and holds that Judge Kieffer's conclusion as to lack of jurisdiction due to a failure to exhaust administrative remedies is correct. It is not just that the State Cemetery Board contains the name "cemetery" that makes it relevant to this case. It is the fact that the State Cemetery Board exists to protect the interests of cemetery plot-owners and one of those interests includes the concern

⁹Wis. Stat. § 157.08(2)(b) provides, in relevant part:

Before a cemetery authority sells or encumbers any cemetery land, except for a sale described in par. (a), the cemetery authority shall notify the cemetery board in writing of the proposed sale or encumbrance. If within 60 days after the cemetery board is notified of the proposed sale or encumbrance the cemetery board notifies the cemetery authority in writing that the cemetery board objects to the sale or encumbrance the cemetery authority may not sell or encumber the cemetery land unless the cemetery board subsequently notifies the cemetery authority in writing that the objection is withdrawn. The cemetery board may object to a sale or encumbrance only if it determines that the cemetery authority will not be financially solvent or that the rights and interests of owners of cemetery lots and mausoleum spaces will not be adequately protected if the sale or encumbrance occurs.

that a cemetery association has been statutorily dissolved and, while adrift from the legal requirements, was making decisions that impacted the cemetery plot owners.

Therefore, had this lawsuit not been barred in whole by claim preclusion and in part by issue preclusion, the claims relating to the transfer of the Rural Home Cemetery Association's real property and assets to Big Bend would be barred due to the Plaintiffs' failure to exhaust their statutory administrative remedies.

IV. What Statute of Limitations applies?

The last question to be addressed is whether the Statute of Limitations bars this action in whole or in part. There are two parts to this question: (1) when did each cause of action accrue; and (2) what statute of limitations applies (six years under Wis. Stat. § 893.93(1)(a)¹⁰, or thirty years under Wis. Stat. § 893.33(2)¹¹)?

¹⁰Wis. Stat. § 893.93 Miscellaneous actions.

- (1) The following actions shall be commenced within 6 years after the cause of action accrues or be barred:
 - (a) An action upon a liability created by statute when a different limitation is not prescribed by law.

¹¹Wis. Stat. § 893.33 Action concerning real estate.

- (2) . . . no action affecting the possession or title of any real estate may be commenced, and no defense or counterclaim may be asserted, by any person, the state or a political subdivision or municipal corporation of the state after January 1, 1943, which is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of the action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of the unrecorded instrument or within 30 years after the date of recording of the recorded instrument, or within 30 years after the date of the transaction or event there is recorded in the office of the register of deeds of the county in which the real estate is located, some instrument expressly referring to the existence of the claim or defense, or a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction or event on which the claim or defense is founded, with its date and the volume and page of its recording, if it is recorded, and a statement of the claims made. . . .

A. Accrual of the Claims.

It is well established that “a cause of action accrues where there exists a claim capable of present enforcement, a suable party against whom it may be enforced, and a party who has a present right to enforce it.” *Employers Ins. of Wausau v. Smith*, 154 Wis. 2d 199, 231, 453 N.W.2d 856 (1990) (quoting *Barry v. Minahan*, 127 Wis. 570, 573, 107 N.W. 488 (1906)). Plaintiffs contend that their cause of action accrued upon the transfer of the cemetery real estate deeds to Big Bend on February 3, 2013—thereby asserting that they are timely under either statute of limitations. Defendant contends that the cause of action accrued on January 1, 2004,¹² the date Plaintiffs assert that the Rural Home Cemetery Association was effectively dissolved. Defendant is correct, with respect to the first two causes of action.

In the first paragraph of the *Craig II* Complaint, Plaintiffs assert that they are seeking the following:

- (a) declaration that the Rural Home Cemetery Association was dissolved no later than January 1, 2004; (b) a mandate that the plaintiffs may reorganize a cemetery association to hold and operate the Rural Home Cemetery with all the authority and responsibility described in Wis. Stat. ch. 157, and (c) a declaration that, upon reorganization of the cemetery association, all title to the cemetery grounds, trust funds, and all other property shall be vested in the reorganized cemetery association.

According to the plain language of the *Craig II* Complaint, Plaintiffs have asked the Court for a declaration that the Rural Home Cemetery Association was dissolved “no later than January 1, 2004.” Thus, on that date, Plaintiffs had claims for declarations of dissolution and reorganization of the cemetery association. On that date, the Plaintiffs could have filed suit against the former Rural Home Cemetery Association or its former trustees and officers and sought a declaration from the Court that the Association had been dissolved and that it should be reorganized under these five plot owners. At that point in time, there was no cause of action regarding real property or the transfer or conveyance of real property

¹²In addition, there is another alternate date set forth in the *Craig II* Complaint upon which the cause of action could be asserted to have accrued. In Paragraphs 20-27, Plaintiffs assert that as of 2006, the trustees were not eligible to be trustees and that there were no elections in January of each year from that date forward. Plaintiffs contend that, by statute, “the Association dissolved by operation of law as early as 2009 for failure to hold annual elections for three successive years.” (Compl. ¶ 31). Thus, the cause of action could have accrued as of February 1, 2009. Regardless of this variance in the Complaint, if the six year statute of limitations applies, the Complaint, filed on April 1, 2015, was untimely whether the accrual date is January 1, 2004 or February 1, 2009.

because that had not yet taken place. Therefore, the accrual date for the first two, *Craig II* causes of action is January 1, 2004.

The third cause of action (Declaration re: Vesting of Cemetery Property) is more problematic. The transfer of the cemetery grounds and other assets to Big Bend occurred on February 3, 2013. It would be inequitable, not to mention patently ridiculous, to assert that the statute of limitations for that conduct accrued in 2004 or 2009. However, the third cause of action does not seek to directly void the transfer of cemetery property and assets; rather it seeks to marshal all assets back to the newly reorganized Rural Home Cemetery Association after reorganization and an action for reorganization accrued on January 1, 2004. In their prayer for relief (and in their first cause of action—Declaration re: Dissolution), Plaintiffs also seek a declaration that both warranty deeds of February 3, 2013 be declared void. Thus, the accrual date for that aspect of the third cause of action solely concerning the transfer of the real property is February 3, 2013; all other aspects of that third cause of action have an accrual date of January 1, 2004.

B. The appropriate Statute of Limitations.

Plaintiffs contend that this case is not about a “liability—whether created by statute or otherwise,” but, rather that it is about “the existence of a cemetery association, whether that association executed a conveyance of its property, and reorganization of a new association.” Plaintiffs assert that Wis. Stat. § 893.93(1)(a) does not apply.

Plaintiffs make an unsubstantiated assertion that reorganization and attempts to recoup cemetery association property are not a “liability.” Accordingly, the Court considered analogous cases that discussed when a liability created by statute arose.

In 1901, the State Supreme Court concluded that enforcing a right that accrued to a bank, under statute, to compel corporate officers to account for and pay over to an assignee assets of the bank lost through their wrongdoing was a “liability created by statute.” *Gores v. Fields*. 109 Wis. 408, 414, 84 N.W.867 (1901). That is similar to the relief sought here. The *Craig II* Plaintiffs seek to reorganize the Rural Home Cemetery Association and to compel its former officers to rescind the transfer to Big Bend and to have real property and assets returned to a new association.

In *Lehman v. Superior Court*, 145 Cal. App. 4th 109, 118 (Cal. Ct. App. 2d App. Dist. 2006) (a case cited for its persuasive value only), the California court

references *Gores* when discussing the definition of a “liability created by statute.” *Lehman* holds that a “liability created by statute” is one that would not exist “*but for* the statute.” *Id.* at 119. It is one that “comes into being solely by statute and one which had no existence prior to the enactment creating it.” *Id.* And, in *Plesko v. Figgie International*, 190 Wis. 2d 764, 528 N.W.2d 444 (Ct. App. 1994), the court held that a claim for registration under Wis. Stat. § 408.405(3) was covered under the “catch-all” umbrella of the “liability created by statute” provisions of Wis. Stat. § 893.93(1)(a).

Finally, Black’s Law Dictionary, 10th Ed. 2014, 1053, states that a “liability” is “the quality, state, or condition of being legally obligated or accountable; legally responsible to another or to society, enforceable by civil remedy or criminal punishment.” Here, the cemetery association members are bound by law (Wis. ch. 157) to conduct elections, comply with their by-laws and otherwise enforce the corporate formalities each year in order to remain as a viable cemetery association. They are legally responsible and are, thus, subject to a civil remedy.

Here, but for the cemetery reorganization statute, the *Craig I* and *II* Plaintiffs would have no legal basis to seek to reorganize the cemetery association and to recover costs and expenses as well as to obtain the return of the cemetery’s real property and other assets. Therefore, the Court concludes that there is a sufficient “liability created by statute” to warrant the application of Wis. Stat. § 893.93(1)(a).

Additionally, Plaintiffs’ reliance on the 30-year real estate statute of limitations is further flawed. Taken on their face, all three *Craig II* causes of action (I Declaration re: Dissolution, II Reorganization of Cemetery Association and III Declaration re: Vesting of Cemetery Property) arise from the statutory authority vested in cemetery plot owners under Wis. Stat. ch. 157. Declarations of statutory dissolution and reorganization are not necessarily tied to transfers of real estate.

If Plaintiffs are correct with respect to their reliance upon the 30-year real estate conveyance statute of limitation, other plot holders of cemetery associations where the cemetery real property has *not* been transferred would have no statute of limitations applicable to their causes of action. In other words, to give credence to Plaintiffs’ argument that there is no “liability” thus the six-year statute under Wis. Stat. § 893.93(1)(a) doesn’t apply for anyone seeking to reorganize a cemetery association, there would be *no* applicable time limit whatsoever for any cemetery association reorganization. There being no legislation or caselaw on the appropriate statute of limitations for cemetery association reorganizations, the Court declines to

conclude that such a claim to reorganize a cemetery association based upon a failure to follow association formalities can be brought at any time after a statutory “dissolution”—even 100 years later. Some statute of limitations must apply—and only the six-year statute under Wis. Stat. § 893.93(1)(a) fits the bill. Moreover, the 30-year statute of limitations with respect to real estate is only applicable if there are *no other* applicable statutes of limitation. Here, the six-year statute is applicable and, thus, more appropriate.

In summary, Wis. Stat. § 893.93(1)(a) applies to the entire *Craig II* action. The first two *Craig II* causes of action are, thus, time-barred under the six-year statute of limitations under Wis. Stat. § 893.93(1)(a). Only that part of the third cause of action related to the transfer of the real estate and other assets to Big Bend is not time-barred. Given, however, that it is barred under other legal theories, it too, cannot stand.

V. Request for sanctions.

Having prevailed on its motion to dismiss, Defendant seeks the imposition of sanctions in the form of attorneys’ fees and costs under Wis. Stat. § 895.044(1). That statute is discretionary and allows a Court to find a party liable for costs and fees in certain circumstances including where the party or its counsel knew or should have known that the complaint was without any reasonable basis in law or equity or is not supported by a good faith argument for an extension, modification, or reversal of existing law. See Wis. Stat. § 895.044(1)(b). Plaintiffs assert that their lawsuit is meritorious and that, regardless, they should not be punished if it is dismissed.

In this case, because the issues were so complex and convoluted, the Court finds that none of the circumstances allowing for sanctions warrant their imposition. Accordingly, in its discretion, the Court is denying the request for sanctions.

CONCLUSION

The claims in *Craig II* could have been litigated in *Craig I*, therefore, claim preclusion bars this action in its entirety. In addition, both issue preclusion and a failure to exhaust administrative remedies bar any challenges to the transfer of the Rural Home Cemetery Association’s cemetery real property and assets to the Village of Big Bend. Moreover, the statute of limitations bars all causes of action in *Craig II* aside from that part of the third cause of action related to the transfer of

the cemetery real property and assets to Big Bend. Therefore, taken altogether, the entirety of the pending lawsuit is barred by at least one legal doctrine.

Accordingly, Defendant Village of Big Bend's Motion to Dismiss is GRANTED in its entirety. The corresponding Request for Sanctions Under Wis. Stat. § 895.044 is DENIED.

Dated this 16th day of November, 2015.

BY THE COURT:



Maria S. Lazar
Circuit Court Judge

THIS IS A FINAL ORDER FOR PURPOSES OF APPEAL.

cc: Daniel Kelly
Nathan J. Bayer