

# **Arkansas Legislative Council Report For Emergency Review of Settlement Agreement**

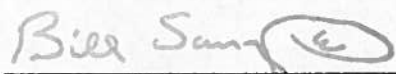
**February 13, 2014**

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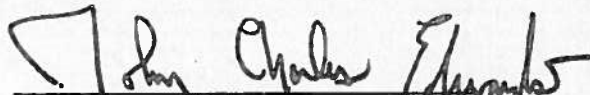
On February 12, 2014, Senator Bill Sample and Representative John Charles Edwards, Co-Chairs of the Legislative Council and Senator David Johnson and Representative Tommy Thompson, Co-Chairs of the Litigation Reports Oversight Subcommittee received written notification from Mr. Richard Weiss, Chief Fiscal Officer of the State that review of a settlement agreement in the matter of Susan Crosby v. Arkansas Teacher Retirement System, Pulaski County Circuit Court, Case No. 60-CV-12-4539, required immediate action. The Attorney General's Office requires expedited review of the settlement agreement due to pending court deadlines.

Under Rule 17 of the Rules of the Arkansas Legislative Council, the Co-Chairs of the Legislative Council and the Co-Chairs of the Litigation Reports Oversight Subcommittee unanimously determined that emergency review of the settlement agreement was essential to enable the agency to perform essential services. As such, the Senate Co-Chair and the House of Representatives Co-Chair of Legislative Council may act on behalf of the Legislative Council in regard to this settlement agreement, and state herein that this settlement agreement shall be filed as reviewed and be reported to the Legislative Council at the next regularly scheduled meeting in accordance with Rule 17.

Respectfully Submitted,



Senator Bill Sample, Co-Chair  
Arkansas Legislative Council



Representative John Charles Edwards, Co-Chair  
Arkansas Legislative Council

# **Litigation Reports Oversight Subcommittee Report For Emergency Review of Settlement Agreement**

**February 13, 2014**

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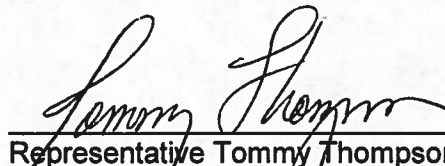
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Under Rule 17 of the Rules of the Arkansas Legislative Council, the Co-Chairs of the Legislative Council and the Co-Chairs of the Litigation Reports Oversight Subcommittee unanimously determined that emergency review of the settlement agreement was essential to enable the agency to perform essential services. A summary of the settlement agreement that was given emergency review (Attachment A) follows along with the letter from DFA (Attachment B).

Respectfully Submitted,



Senator David Johnson, Co-Chair  
ALC Litigation Reports Oversight  
Subcommittee



Representative Tommy Thompson, Co-Chair  
ALC Litigation Reports Oversight  
Subcommittee



THE ATTORNEY GENERAL  
STATE OF ARKANSAS  
DUSTIN McDANIEL

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DEPT. DIRECTORS OFFICE  
PML

Patricia V. Bell  
Assistant Attorney General

Direct dial: (501) 682-3663  
Facsimile : (501) 682-2591  
E-mail: [tricia.bell@arkansasag.gov](mailto:tricia.bell@arkansasag.gov)

February 7, 2014

**VIA HAND DELIVERY**

Mr. Richard Weiss, Director  
Department of Finance & Administration  
P.O. Box 2485  
Little Rock, AR 72203

Re: Susan Crosby v. Arkansas Teacher Retirement System  
Pulaski County Circuit Court, Case No. 60-CV-12-4539

Dear Mr. Weiss:

Enclosed for your review is a Settlement Agreement and Full Release signed by all parties to the above referenced case. Susan Crosby filed the above-referenced lawsuit alleging that the Arkansas Teacher Retirement System ("ATRS"), the Executive Director of ATRS, and the members of the Board of Trustees of ATRS, terminated her employment in violation of the Arkansas Whistle-Blower Act. She also alleged that her termination gave rise to a claim for wrongful discharge. The Defendants denied all of Ms. Crosby's allegations. The trial court granted Defendants' motion to dismiss the wrongful discharge claim and the claims against the individual Defendants pursuant to the Arkansas Whistle-Blower Act. As such, the remaining Arkansas Whistle-Blower Act claim against ATRS is scheduled for trial in June, 2014. ATRS denies all of Ms. Crosby's allegations and any liability therefore. Nonetheless, ATRS believes that it would be in the best interest of the State to settle this litigation, rather than face the uncertainties and risks of trial. Therefore, ATRS believes this settlement is an appropriate resolution of this lawsuit.

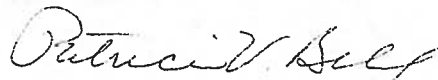
The settlement resolves this matter, and as you can see, ATRS has agreed to pay the total sum of \$98,000.00 to Ms. Crosby for all of her alleged damages, attorneys' fees

and costs. In exchange, Ms. Crosby has agreed to a full release of all claims, and has agreed that she will not apply for or accept employment with ATRS in the future. Critically, the full amount of the settlement will be paid from insurance money, and no tax payer or System money will be used.

For these reasons, we request that you submit this case to the Litigation Subcommittee with a recommendation that settlement be accomplished. We also request that you seek expedited review by the Litigation Subcommittee in order to save further expense in this case. Due to court deadlines, the parties are to begin conducting numerous additional depositions, and the expense involved in preparing for trial would not be necessary if settlement is completed. Another important reason for expediting review of the settlement is that the time and attention of ATRS senior staff for extensive trial preparation would be required during the retirement season which would adversely affect ATRS members at a critical time.

Thank you very much for your attention to this matter.

Best regards,

A handwritten signature in cursive script, appearing to read "Patricia V. Bell".

Patricia Van Ausdall Bell  
Assistant Attorney General

Enclosure

### SETTLEMENT AGREEMENT AND FULL RELEASE

This Settlement Agreement and Full Release is entered into by and between (1) Susan Crosby, her heirs, assigns, agents, attorneys, and administrators (referred to as "Crosby") and (2) Arkansas Teacher Retirement System, its past and present affiliates, related companies or entities, predecessors, successors, sister and parent companies, subsidiaries, stockholders, assigns, directors, officers, managers, agents, attorneys, insurance companies, and present and past employees (all collectively referred to as "ATRS").

Whereas, Crosby filed a Civil Action in the Circuit Court of Pulaski County, specifically, Case No. 60-CV-12-4539, styled Susan Crosby v. Arkansas Teacher Retirement System;

Whereas, the parties mutually desire to resolve all disputes between them without recourse to further legal proceedings;

Whereas, ATRS denies violating Crosby's rights and denies any liability to Crosby in any respect;

Therefore, Crosby and ATRS hereby agree, represent, covenant and warrant as follows:

#### I.

Crosby, for and in consideration of ATRS's payment in the total amount of \$98,000, representing a) \$55,105.14 payable to Susan Crosby, and b) \$42,894.86 payable to her attorneys, The Brad Hendricks Law Firm, hereby **releases and forever discharges ATRS, as defined above, of and from any and all claims, injuries, demands and causes of action, including but not limited to the following: any claims for outrage, wrongful or constructive termination, harassment, and retaliation; any claims for emotional distress or other compensatory damages, lost or future wages, and vacation, pension, and other benefits; any claims arising under the Arkansas Whistleblower Act, the Uniformed Services Employment and Reemployment Rights Act, the Arkansas Civil Rights Act of 1993, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 1981 and 1983, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Genetic Information Nondiscrimination Act of 2008, the Employee Retirement Income Security Act, and any other statute or common law (federal or state); and any claims for attorney's fees and costs. Crosby releases any and all claims she may now have or ever have as a result of, arising out of, or by reason of her employment, the termination of her employment, and any of ATRS's practices, acts or omissions to this date.**

**Crosby hereby releases and waives each and every claim for injuries, damages, and consequences, known and unknown, developed or which might develop in the future,**

**resulting from any practices, acts, or omissions of ATRS prior to the effective date of this Settlement Agreement and Full Release.**

Should ATRS incur any liability or loss relative to state or federal taxes owed by Crosby incident to the payments made in this Settlement Agreement and Full Release, Crosby agrees to indemnify and hold it harmless with respect to any such liability or loss.

II.

As further consideration for the payment referenced in Section I of the Settlement Agreement and Full Release, ATRS agrees to provide Crosby with a letter in the form attached as Appendix A.

III.

For the same consideration recited above, Crosby waives any right to employment in the future with ATRS and represents and agrees that she will not apply for or accept employment with ATRS in the future.

IV.

Crosby agrees to dismiss with prejudice any claims and causes of action that she has asserted (or that she could have asserted) in any pending action against ATRS. This release includes, but is not limited to, a release of Crosby's right to file a subsequent court action or receive individual remedies or damages in any Equal Employment Opportunity Commission proceeding/litigation or other government-filed court action concerning allegations made in this complaint or any allegations concerning any acts or omissions by ATRS to date. If needed, Crosby also agrees to cooperate in any steps necessary for this Settlement Agreement and Release to be approved by any applicable government agency or court.

V.

While recognizing that this Settlement Agreement and Full Release constitutes a public record for the purposes of the Arkansas Freedom of Information Act ("FOIA") and further is subject to the provisions set forth in Ark. Code Ann. Section 25-18-401, Crosby agrees that she will not make any written or oral statements concerning her claims against ATRS or the terms of this Settlement Agreement and Full Release except that Crosby may disclose such information to her spouse, lawyers, accountants, any state or federal governmental agency or tax authority, and, if required to do so, by subpoena, appearance in lieu of a subpoena, or court order.

ATRS also agrees that ATRS executive management will not make any written or oral statements concerning Crosby's claims against ATRS or the terms of this Settlement Agreement and Full Release except that ATRS may disclose such information to its lawyers, accountants, and individuals within ATRS on a need-to-know basis, any state or federal

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governmental agency or tax authority, to any legislator or legislative committee upon request, to any person requesting this Agreement under the Freedom of Information Act if ATRS determines that it is subject to a properly made FOIA request, and, if required to do so, by subpoena, appearance in lieu of a subpoena, or court order.

Prior to any approved disclosure, discussion, or description of the existence or terms of this Agreement, the parties shall inform the recipient of the confidentiality limitation and require the recipient to be bound by this confidentiality limitation unless the approved disclosure, discussion, or description is made (a) to a governmental agency, legislative body or tax authority; (b) by subpoena or court order (although the parties may seek an appropriate protective order to limit further disclosure, discussion, or description); or (c) pursuant to a properly made FOIA request.

If asked about the resolution of her dispute with ATRS other than in circumstances for which disclosure has been approved, Crosby agrees that she will only state "the case was resolved."

ATRS agrees that George Hopkins will not make any statement that could discredit or disparage the personal or professional reputation of Crosby, unless such a statement is truthful and made pursuant to a subpoena, appearance in lieu of a subpoena, or during the course of some type of litigation, legislative hearing, legislative inquiry, or administrative hearing.

## VI.

Crosby further understands and agrees that she:

- (a) HAS CAREFULLY READ AND FULLY UNDERSTANDS ALL OF THE PROVISIONS OF THIS SETTLEMENT AGREEMENT AND FULL RELEASE;
- (b) IS, THROUGH THIS SETTLEMENT AGREEMENT AND FULL RELEASE, RELEASING ATRS FROM ANY AND ALL CLAIMS SHE MAY HAVE AGAINST ATRS BASED ON ANY EVENT, OCCURRENCE OR CLAIM WHICH WAS RAISED OR COULD HAVE BEEN RAISED PRIOR TO THIS DATE;
- (c) KNOWINGLY AND VOLUNTARILY AGREES TO ALL THE TERMS IN THIS SETTLEMENT AGREEMENT AND FULL RELEASE;
- (d) KNOWINGLY AND VOLUNTARILY INTENDS TO BE LEGALLY BOUND BY THIS SETTLEMENT AGREEMENT AND FULL RELEASE;
- (e) WAS ADVISED AND HEREBY IS ADVISED IN WRITING TO CONSIDER THE TERMS OF THIS SETTLEMENT AGREEMENT AND FULL RELEASE AND CONSULT WITH AN ATTORNEY OF HER CHOICE PRIOR TO EXECUTING THIS SETTLEMENT AGREEMENT AND FULL RELEASE;



(f) UNDERSTANDS THAT RIGHTS OR CLAIMS UNDER THE EMPLOYMENT LAWS THAT MAY ARISE AFTER THE DATE THIS SETTLEMENT AGREEMENT AND FULL RELEASE IS EXECUTED ARE NOT WAIVED.

VII.

It is further understood and agreed that this is a compromise settlement of disputed claims; that this shall never be construed as an admission of liability on the part of the parties released, by whom allegations of liability and any unlawful or improper conduct are expressly denied; that this Settlement Agreement and Full Release contains the entire agreement between the parties; and that the terms of this Settlement Agreement and Full Release are contractual and not a mere recital and are binding on Crosby's heirs and personal representatives.

VIII.

This Settlement Agreement and Full Release shall be governed by the substantive laws of Arkansas without regard to choice of law. If any provision of this Settlement Agreement and Full Release is held illegal, invalid or unenforceable in a legal action to enforce its terms or in any other action, all other provisions shall remain in full force and effect. The illegal, invalid, or unenforceable provision shall be modified to the extent necessary to render the remaining provisions enforceable.

IX.

This Agreement shall not become effective until approved by the Director of the Department of Finance & Administration, and review by such Legislative Committee as may be required. The payments referenced in Section I of this Confidential Settlement Agreement and Release shall be tendered within fourteen (14) days of the final approval or review.

DATED this 5<sup>th</sup> day of February, 2014.

Susan Crosby  
SUSAN CROSBY

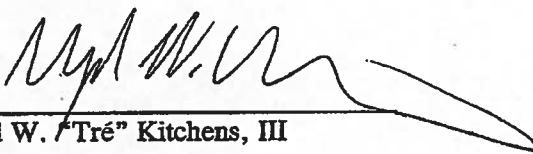
Date: 2/5/14



**ARKANSAS TEACHER RETIREMENT  
SYSTEM**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

BY:   
Lloyd W. "Tré" Kitchens, III  
Attorney for Susan Crosby

**ARKANSAS TEACHER RETIREMENT  
SYSTEM**

By: George Hoffman  
Title: Executive Director ATRS

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
Lloyd W. "Tré" Kitchens, III  
Attorney for Susan Crosby

**APPENDIX A**

To Whom It May Concern:

Susan Crosby was employed by the Arkansas Teacher Retirement System from December 27, 2009 to February 24, 2011, as the Senior Investment Analyst. Her annual salary was \$94,365.40. Ms. Crosby's performance exceeded expectations, and she is eligible for rehire.

Sincerely,

George Hopkins  
Executive Director, Arkansas Teacher Retirement System



STATE OF ARKANSAS  
**Department of Finance  
and Administration**

**OFFICE OF THE DIRECTOR**

1509 West Seventh Street, Suite 401  
Post Office Box 3278  
Little Rock, Arkansas 72203-3278  
Phone: (501) 682-2242  
Fax: (501) 682-1029  
<http://www.state.ar.us/dfa>

February 12, 2014

Senator Bill Sample, Co-Chair  
Representative John Charles Edwards, Co-Chair  
Arkansas Legislative Council  
State Capitol  
Little Rock, AR 72201

RE: Emergency Settlement Agreement Review Request  
Susan Crosby v. Arkansas Teacher Retirement System  
Pulaski County Circuit Court, Case No. 60-CV-12-4539

Dear Senator Sample and Representative Edwards:

This is to inform you that a Settlement Agreement for the above referenced lawsuit filed against the Arkansas Teacher Retirement System requires your immediate attention. The Attorney General's Office has requested an expedited review of the settlement agreement due to pending court deadlines. A copy of the settlement agreement dated February 5, 2014 is attached for your review.

I ask that you please institute emergency action procedures for consideration of this settlement agreement and sign it out of Committee per the Rules of the Arkansas Legislative Council.

Should you have any questions or require additional information, please contact Ms. Patricia Bell, Assistant Attorney General at 501-628-3663. Thank you in advance for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Weiss".

Richard A. Weiss  
Director

cc: Patricia Bell, Assistant Attorney General