



STATE OF WISCONSIN
Department of Employee Trust Funds
 Robert J. Conlin
 SECRETARY

Wisconsin Department
 of Employee Trust Funds
 PO Box 7931
 Madison WI 53707-7931
 1-877-533-5020 (toll free)
 Fax 608-267-4549
 etf.wi.gov

Correspondence Memorandum

Date: October 26, 2018

To: Group Insurance Board

From: David H. Nispel, General Counsel
 Dan Hayes, Attorney
 Office of Legal Services

Subject: Status of Pending Legal Cases

This memo is for informational purposes only. No Board action is required.

This memorandum presents the status of pending or recently concluded court cases involving insurance issues, the Department of Employee Trust Funds and/or the Group Insurance Board (Board). In order to maintain Wisconsin Retirement System member confidentiality, the names of the parties and case numbers are not identified in this memorandum.

The purpose of this memorandum is to inform you of litigation in which the Board and/or ETF are parties or are otherwise involved, not to provide any legal advice concerning the cases listed here. Each of the cases is being handled by an assistant attorney general from the Department of Justice (DOJ). If you have any questions about a case, we will be able to provide you with the name of the attorney handling it.

As of October 17, 2018, there are three cases, which can be divided into the following categories:

ETF (Board not a party)..... 1
 Board and ETF 2

COURT CASES HANDLED BY DOJ

Case No. 1:

Issue – Uniform Benefits offered through the State of Wisconsin Group Health Benefit Program contains an exclusion for “Procedures, services and supplies related to surgery and sex hormones associated with gender reassignment.” The issue in this litigation is whether that exclusion violates Title VII of the Civil Rights Act of 1964, the

Reviewed and approved by Robert J. Conlin, Secretary



Electronically Signed 10/26/18

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Equal Protection Clause of the 14th Amendment of the U.S. Constitution and the Patient Protection and Affordable Care Act.

Summary – ETF, the Board and ETF Secretary Conlin, among others, are named defendants in a complaint filed in the United States District Court for the Western District of Wisconsin. The plaintiffs are two WRS members who are represented by the American Civil Liberties Union and the Hawks Quindel law firm, located in Madison.

Status – On September 18, 2018, the court issued a decision and order in favor of the plaintiffs pursuant to a motion for summary judgment. A two-day trial on the issue of damages followed on October 9 and 10. The court then issued its final decision on October 11, 2018, permanently enjoining the use of the exclusion by the defendants and entering judgment in favor of the plaintiff's in the amount of \$780,500. That amount does not include attorneys' fees, which will be decided separately. The DOJ has 30 days from the date of the court's final order to file an appeal with the Seventh Circuit Court of Appeals.

Attorney – DOJ attorneys.

Case No. 2:

Issue – Whether ETF properly calculated the member's long-term disability insurance (LTDI) benefit based on wages reported by her employer.

Summary – A member requested judicial review of a final decision issued by the Board on April 21, 2017 (Appeal #2012-013-GIB). The Board and ETF are named respondents.

Status – The member filed the Petition to Review in Dane County Circuit Court on July 14, 2017. The court issued a decision on July 24, 2018, affirming the Board's decision in its entirety. The member did not appeal, and the case is closed.

Attorney – DOJ attorney.

Case No. 3:

Issue – ETF provided income continuation insurance (ICI) benefits and LTDI benefits following plaintiff's involvement in an automobile accident and seeks repayment for those payments made.

Summary – ETF was named an involuntary plaintiff in a Racine County Circuit Court case in which the plaintiff seeks damages for personal injuries sustained in the accident and a determination of ETF's subrogation interest.

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Status – The case settled. ETF recovered a portion of the ICI and LTDI payments made.

Attorney – DOJ attorney.

WPS SUBROGATION CASES

In past memos, we reported on subrogation cases handled by WPS through private counsel. Because WPS is no longer administering the self-funded IYC Access Plan, they are not handling any subrogation matters for ETF. At the time the relationship ended, there were no cases pending in which the Board or ETF has a subrogation interest in a court action filed by a WRS member.

Staff will be available at the board meeting to answer questions.