



STATE OF WISCONSIN
Department of Employee Trust Funds
David A. Stella
SECRETARY

801 W Badger Road
PO Box 7931
Madison WI 53707-7931
1-877-533-5020 (toll free)
Fax (608) 267-4549
http://etf.wi.gov

CORRESPONDENCE MEMORANDUM

DATE: May 6, 2011
TO: Group Insurance Board
FROM: David H. Nispel, General Counsel
Office of the Secretary
SUBJECT: Status of Pending Legal Cases

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

This memorandum is presented to inform board members about the status of pending legal cases involving insurance issues and the Department of Employee Trust Funds (ETF) and Group Insurance Board (GIB). In order to maintain confidentiality regarding our Wisconsin Retirement System members, the names of the parties and case numbers are not identified in this memorandum.

The purpose of this memorandum is only to inform board members of litigation in which the board and ETF are parties, not to provide any legal advice concerning the cases listed here. Each of the cases is being handled by either an assistant attorney general from the Department of Justice or a private attorney retained by Wisconsin Physicians Service. If you have any questions about a particular case, I will be able to provide you with the name of the attorney handling the case.

As of May 6, 2011, there are 9 cases, which can be divided into the following categories:

- Court of Appeals Case (1)
Group Insurance Board and Employee Trust Funds.....1
Circuit Court Cases (3)
Department of Employee Trust Funds (GIB not a party) .....2
Group Insurance Board and Employee Trust Funds.....1
Subrogation (4)
Group Insurance Board.....4

Reviewed and approved by Robert J. Conlin, Deputy Secretary.
[Signature] 5/9/11
Signature Date

Table with 3 columns: Board, Mtg Date, Item #. Row 1: GIB, 6.7.11, 10D

**Federal District Court Case (1)**

United States of America et al v. Pfizer Inc. ....1  
(ETF and GIB not parties. ETF, Dept. of Veterans Affairs,  
and Dept. of Health Services separately responded to a subpoena  
on behalf of the State of Wisconsin.)

**COURT OF APPEALS CASE**

**Case No. 1:**

Issue – WPS denied a member’s request for gastric bypass services.

Summary – An Order from the circuit court dated May 26, 2010, dismissed GIB and ETF from the case pursuant to WPS’ motion. The judge prohibited the member from refiling later to add GIB and ETF because a plaintiff has 6 months to file a third-party complaint following the filing of the original complaint and the member waited 15 months. No determination letter had been issued by ETF before the circuit court action was filed.

Status – On February 16, 2011, the case was dismissed in light of the settlement in the first circuit court case noted below.

Attorney – DOJ attorney.

**CIRCUIT COURT CASES**

**Case No. 1:**

Issue – WPS denied a claim for coverage of gastric bypass procedure and paid a claim for umbilical hernia repair.

Summary – Member received medical services provided by the health care provider between May 23, 2006, and May 26, 2006. WPS had informed member that gastric bypass procedure was not a covered benefit and was expressly excluded. However, WPS did pay \$5,387.19 for the umbilical hernia repair. The member and the spouse sought judgment against WPS and GIB for payment of all services.

Status – On February 10, 2011, the case was dismissed. There was a Stipulation between the parties.

Attorney – DOJ attorney.

**Case No. 2:**

Issue – The employer did not provide the life insurance application to the employee until after the date by which the employee was required to file the application.

Summary – The insurance policy provides requirements for when an eligible employee must file an application for life insurance with the employer. Minnesota Life rejected the employee's application because it was not timely filed. ETF did not take any action in connection with this matter.

Status – On April 14, 2011, the case was dismissed. There was a Stipulation between the parties.

Attorney – DOJ attorney.

**Case No. 3:**

Issue – Member received disability benefits following a motor vehicle accident while on duty.

Summary – ETF provided the member with income continuation, duty disability and disability retirement benefits for the injuries she sustained in the accident. Thus, ETF may have a subrogation interest in this matter depending on how the case is resolved.

Status – Jury trial is scheduled for November 2011.

Attorney – DOJ attorney.

**SUBROGATION CASES**

WPS has retained private counsel to handle these cases. No ETF or DOJ attorney is involved in these cases. There are four cases pending in which GIB or ETF has a subrogation interest in an action filed in circuit court by a WRS member because ETF provided benefits to that member following a personal injury.

**FEDERAL DISTRICT COURT CASE**

**Case No. 1:**

Issue – The State of Wisconsin and 21 other states plus the District of Columbia filed this action to recover monies wrongfully paid by those entities as a result of false claims caused by the defendant.

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Summary – ETF was served with a subpoena to produce documents involving Detrol and other Urologic drugs. ETF obtained documents from health plans and submitted the documents to the DOJ attorney representing ETF. The attorney forwarded the documents to the defendant's attorney.

Status – Pending in the United States District Court in Massachusetts.

Attorney – DOJ attorney.

I will be available at the June 7, 2011, Board meeting to answer questions.