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**Department of Employee Trust Funds**  
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 SECRETARY

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**Correspondence Memorandum**

**Date:** January 25, 2018

**To:** Group Insurance Board

**From:** David H. Nispel, General Counsel  
 Dan Hayes, Attorney

**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 (ETF) and/or the Group Insurance Board (GIB). In order to maintain Wisconsin Retirement System (WRS) 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 GIB 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 either an assistant attorney general from the Department of Justice (DOJ) or a private attorney retained by Wisconsin Physicians Service (WPS). If you have any questions about a particular case, we will be able to provide you with the name of the attorney handling the case.

As of January 25, 2018, there are five cases, which can be divided into the following categories:

**Court Cases Handled by DOJ (4)**

ETF (GIB not a party) ..... 2  
 GIB and ETF..... 2

**Subrogation Cases Handled by Private Attorney (1)**

(per Article XII, Section H, Administrative Service Agreement with WPS)

Reviewed and approved by Robert J. Conlin, Secretary

Electronically Signed 1/29/18

Board	Mtg Date	Item #
GIB	2.21.18	9D

## **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 Equal Protection Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution and the Patient Protection and Affordable Care Act.

Summary – ETF, the GIB, 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 Wisconsin Retirement System members who are represented by the American Civil Liberties Union.

Status – The complaint was filed on April 7, 2017. On June 22, 2017, the state moved to dismiss various plaintiffs from the lawsuit. The motion has been briefed and a decision is pending. In December 2017, plaintiffs filed their First Set of Requests for Admission, Interrogatories and Requests for Production of Documents. The state filed an initial response on January 16, 2018.

Attorney – DOJ attorney.

### **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 review of a final decision issued by the GIB on April 21, 2017. The GIB and ETF are named respondents

Status – The member filed the Petition to Review in Dane County Circuit Court on July 14, 2017. The appeal is being briefed; the briefing schedule has been extended and now is set to conclude on March 19, 2018.

Attorney – DOJ attorney.

**Case No. 3:**

Issue – ETF provided Income Continuation Insurance (ICI) 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 Dane 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.

Status – A trial is scheduled to begin on April 9, 2018.

Attorney – DOJ attorney.

**Case No. 4:**

Issue – ETF provided income continuation insurance benefits and long-term disability 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.

Status – A jury trial is scheduled for October 9, 2018.

Attorney – DOJ attorney.

**WPS SUBROGATION CASES**

WPS has retained private counsel to handle these cases, and no ETF or DOJ attorney is involved. There is one case pending in which GIB or ETF has a subrogation interest in a court action filed by a WRS member because ETF provided benefits to that member following a personal injury.

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