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Correspondence Memorandum

Date: July 25, 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 (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 July 25, 2018, there are four 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 (0)

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

Reviewed and approved by Robert J. Conlin, Secretary

 Electronically Signed 7/30/18

Board	Mtg Date	Item #
GIB	8.22.18	10D

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 14th 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 and the Hawks Quindel law firm, located in Madison.

Status – The complaint was filed on April 7, 2017. On June 22, 2017, the state moved to dismiss various defendants from the lawsuit, and the court ordered that several defendants be dismissed. Plaintiffs’ counsel conducted depositions throughout the months of April and May, 2018. A trial is scheduled in October, 2018.

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 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. Legal briefs have been filed, and a decision by the court is pending.

Attorney – DOJ attorney.

Case No. 3:

Issue – ETF provided 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 – A jury trial is scheduled for October 9, 2018.

Attorney – DOJ attorney.

Case No. 4:

Issue – ETF provided ICI benefits following plaintiff's involvement in an automobile accident and seeks repayment for those payments made.

Summary – Aetna Life Insurance Company, ETF's third-party administrator for the ICI program, was named a Nominal Defendant in a Milwaukee County Circuit Court case in which the plaintiff seeks damages for breach of contract and bad faith from her automobile insurer and a determination of ETF's subrogation interest.

Status – The case has been settled. ETF was unable to recover any benefits paid because recovery came solely from the defendant's uninsured motorist coverage, which did not provide damages for lost wages.

Attorney – DOJ attorney.

WPS SUBROGATION CASES

WPS retains private counsel to handle these cases, and no ETF or DOJ attorney is involved. There are currently no cases 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.