

STATE OF INDIANA )  
 )ss:  
COUNTY OF MARION )

IN THE MARION SUPERIOR COURT  
CIVIL DIVISION 12  
CAUSE NO. 49D12-1007-CT-032888

DEBORAH LIENHOOP )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
INDIANA STATE TEACHERS )  
ASSOCIATION, INDIANA STATE )  
TEACHERS ASSOCIATION )  
INSURANCE TRUST, )  
ASSOCIATION INSURANCE TRUST )  
BOARD OF TRUSTEES, )  
And HUTTLESTON BENEFIT GROUP, )  
INC., )  
 )  
Defendants. )

**FILED**  
264 JUL 28 2011  
*Elizabeth J. White*  
CLERK OF THE MARION CIRCUIT COURT

**ORDER DENYING THE DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

On April 5, 2011, Defendants, Indiana State Teachers Association, Indiana State Teachers Association Insurance Trust, Indiana State Teachers Association Insurance Trust Board of Trustees, and Huttleston Benefit Group, Inc., (collectively known as "ISTA"), filed a Motion for Judgment on the Pleadings. The Plaintiff, Deborah Lienhoop ("Lienhoop"), filed a reply in Opposition to the Defendants' Motion for Judgment on the Pleadings on May 6, 2011. ISTA then filed a reply in support of their Motion for Judgment on the Pleadings on June 7, 2011 and the Plaintiff filed a Surreply in Opposition of the Defendants' Motion for Judgment on the Pleadings on June 8, 2011. Oral Arguments were held on June 9, 2011. At the Court's request, Lienhoop filed a

Notice of Supplemental Authority on June 14, 2011 and ISTA filed Defendants' Supplement Authority in Support of Motion for Judgment on the Pleadings on June 20, 2011. The Court having reviewed and read the pleadings, having considered the attorneys' oral argument on June 9, 2011, the Court now finds as follows:

**Factual Background**

1. Lienhoop had been a kindergarten teacher at Bartholomew Consolidated School Corporation in Columbus, Indiana for 31 years. *Complaint* ¶ 12.
2. On October 29, 2007, Lienhoop suffered a stroke, and immediately afterwards she underwent a craniotomy for evacuation of the intracerebral hemorrhage. *Complaint* ¶ 13.
3. Despite surgical intervention, Lienhoop developed aphasia, which damaged her ability to speak and communicate. Lienhoop also developed right spastic hemiparesis, which harmed her mobility and certain physical capabilities. *Id.*
4. During the time after the stroke, Lienhoop attempted extensive rehabilitation in order to start teaching again. Lienhoop's ultimate goal was to be able to teach her Kindergarten class when the 2008 school period began. *Complaint* ¶ 17.
5. Even though Lienhoop was making progress in her rehabilitation efforts, she was unable to return for the 2008 school year but planned to continue rehabilitation so that she would be able to return for the 2009 school year. *Id.*
6. Pursuant to the Long Term Disability Income Benefit Plan ("Benefits Plan"), ISTA agrees to provide long term disability benefits to employees of Indiana school corporations that participate in and contribute to the ISTA insurance trust. *Complaint* ¶ 4.

7. The Indiana State Teachers Association Insurance Trust Board of Trustees manages the ISTA Insurance Trust for the benefit of the Trust's participants. *Complaint ¶ 5.*
8. ISTA agrees to pay disability benefits under the Benefits Plan to members if they are unable to work due to injury or illness. *Complaint ¶ 7.*
9. During this time, Lienhoop had used all of her 195 paid sick days, which made her last day of receiving a pay check on November 13, 2008. Lienhoop was transitioned to "Leave Without Pay" status from her position as a kindergarten teacher. *Complaint ¶ 19.*
10. However, even after Lienhoop stopped receiving pay checks, she still remained employed by the school district, and she was planning on returning to work on August 7, 2009. *Complaint ¶ 20.*
11. Despite her best efforts, Lienhoop was unable to receive medical approval from her physician to return to teaching, and she was fired on August 7, 2009. *Complaint ¶ 18.*
12. After losing employment, Lienhoop filed an application for long term disability benefits under the Benefit Plan on August 27, 2009. *Complaint ¶ 22.*
13. On October 1, 2009, ISTA denied Lienhoop's claim for long term disability benefits, stating that her claim was filed more than one year following her last day of work. *Complaint ¶ 23.*
14. The two provisions ISTA claimed Lienhoop failed to comply with were sections 10.03 Notice of Claim and 10.05 Proof of Loss. *Complaint ¶ 24.*

15. 10.03 Notice of Claim states that “Lienhoop has to provide written notice within 30 days after any loss covered by the Benefit Plan. If delay is reasonable, the Administrator may waive the late filing.” *Id.*
16. 10.05 Proof of Loss states that “Lienhoop has 90 days to demonstrate the loss she has suffered. Late proof maybe accepted if it is given within one year of the actual loss.” *Id.*
17. ISTA denied Lienhoop’s Application stating that she did not meet the deadline imposed by Section 10.003 of the Benefit Plan because Lienhoop’s date of loss was October 29, 2007, the date of her stroke. *Defendants’ Memorandum in Support of Motion for Judgment on the Pleadings.*
18. Lienhoop filed a complaint in this case on July 27, 2010 against ISTA. The Complaint has two counts. Count I is for breach of contract and Count II is for Breach of Fiduciary Duty and Breach of Trust.
19. On April 5, 2011, Defendants filed a Motion for Judgment on the Pleadings, stating that the only issue before the Court is whether Lienhoop filed a timely claim for disability benefits.

**Standard for Motion for Judgment on the Pleadings**

20. Indiana Rule of Trial Procedure 12(C) governs Judgment on the Pleadings. When addressing a motion for Judgment on the Pleadings, the Court must only consider the pleadings which are the complaint, answer, and any written documents attached to the complaint. *Gregory & Appel, Inc. v. Duck*, 459 N.E.2d 46, 50 (Ind. Ct. App. 1984).

21. Judgment on the Pleadings must be granted whenever it is clear from the complaint that there is no way the Plaintiff could succeed. *Fox Dev., Inc. v. England*, 837 N.E.2d 161, 165 (Ind. Ct. App. 2005).
22. Once extraneous matters outside the pleadings are considered by the Court, the Court shall treat the motion as a motion for summary judgment. *Anderson v. Anderson*, 399 N.E.2d 391, 405 (Ind. Ct. App. 1979).
23. A motion for judgment on the pleadings is to be considered by the Court in a light most favorable to the Plaintiff. Plaintiff does not need to show there is a high probability that she will win her case, but instead just has to show a mere possibility that she could win. *Fox Dev., Inc. v. England*, 837 N.E.2d 161, 165 (Ind. Ct. App. 2005).
24. In this case, the pleadings would only consist of the Complaint filed on July 27, 2010, the Long Term Disability Income Benefit Plan and a letter sent to Linda J. DeClue on January 4, 2009, which are attached to the Complaint, and ISTA's answer filed on September 24, 2010.
25. However, the Plaintiff attached Exhibit 1, ISTA's Responses to Plaintiff's Request for Interrogatories, to the Plaintiff's Response to Motion for Judgment on the Pleadings and the Plaintiff attached Exhibit 5 to Plaintiff's Surreply in Opposition to Motion for Judgment on the Pleadings. In ISTA's Reply in Support of Motion for Judgment on the Pleadings on page 7, ISTA requests that the Court strike the outside evidence presented as irrelevant. The Court finds that Exhibit 1 to the Plaintiff's Response to Motion for Judgment on the Pleadings and Exhibit 5 to the Plaintiff's Surreply to Motion for Judgment on

the Pleadings should be stricken. Therefore, the Court hereby GRANTS ISTA's Motion to Strike and hereby strikes Exhibit 1 to the Plaintiff's Response to Motion for Judgment on the Pleadings and Exhibit 5 to the Plaintiff's Surreply to Motion for Judgment on the Pleadings.

### **The Benefit Plan**

26. There are two pertinent provisions in the Benefit Plan that are at issue in this case, section 10.03 Notice of Claim and 10.05 Proof of Loss.
27. The Defendants contend that Lienhoop failed to timely file her claim for long term disability as required by Section 10.03 Notice of Claim and 10.05 Proof of Loss in the Benefit Plan. *Defendants' Memorandum in Support of Motion for Judgment on the Pleadings*. The Defendants argue that since this is a trust, the principles of trust law apply giving the trustee broad discretion to address such matters without interference from the courts.
28. The Plaintiff argues that the provisions of the Benefit Plan are ambiguous and the term "loss" is not defined. Due to the ambiguity of the benefit plan, the Plaintiff argues the Court should apply the law used to interpret insurance policies. In doing that, the Plaintiff argues that there are least four possible dates which could qualify as the date of loss under Section 10.03 of the Benefit Plan. They are as follows: the date of the stroke, the date Lienhoop's salary ended in November 2009, the date when Lienhoop's employment ended in August 2009, or the date when Lienhoop finally acknowledged that she was totally disabled and could not work. *Plaintiff's Response to Motion for Summary Judgment*.

29. The Court must first determine whether trust law or insurance law applies to the Benefit Plan.

**Which law applies insurance law or trust law?**

30. The Benefit Plan states:

“This Benefit Plan Booklet describes the applicable benefits and provisions of the Benefit Plan. This Benefit Plan Booklet becomes yours only if:

\*you are eligible for coverage

\*you are on Active Service on the date it is to take effect; and

\* you become a Participant and remain a Participant in accordance with all the provisions of the Benefit Plan.

The coverage is to be effective only if the required premium payments are made by you or on your behalf to the ISTA Insurance Trust.” *Page 2 of the Benefit Plan.*

31. The Benefit Plan does not define the term “loss”.

32. *Black’s Law Dictionary, Seventh Edition* defines “trust” as follows: “a legal entity created by a grantor for the benefit of designated beneficiaries under the laws of the state and the valid trust instrument.”

33. *Black’s Law Dictionary, Seventh Edition* defines “insurance policy” as follows: “a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.”

34. The Court would note that the language utilized in the Benefit Plan is similar to language of insurance policies as it uses the words: coverage and premium.

35. Indiana Code § 20-42.5-2-1 states:

**(1)** Pooling of resources with other school corporations for liability insurance, property and casualty insurance, worker’s compensation insurance, employee health insurance, vision insurance, dental insurance, or other insurance, whether by pooling risks for coverage or for the purchase of coverage, or by the creation of or participation in insurance trusts, subject to the following:

(A) School corporations that elect to pool assets for coverage must create a trust under Indiana law for the assets. The trust is subject to regulation by the department of insurance...

*Ind. Code* § 20-42.5-2-1(A) (2011).

36. In *Tippecanoe Valley School Corp. v. Landis* (698 N.E.2d 1218, 1220-1222 (Ind. Ct. App. 1998), the Indiana Court of Appeals held that “injuries sustained by a teacher during his summer employment as building contractor came within plain language of an exclusion of coverage contained in school district’s health insurance coverage for injuries sustained in ‘any occupation for wage or profit’”. In determining that Landis was not entitled to coverage, the Court of Appeals applied insurance law when interpreting the plan not trust law. *Id.*, *Schilling v. Huntington County Community School Corporation*, 898 N.E.2d 385, 388 (Ind. Ct. App. 2008), *trans. denied* 2009.
37. There is no Indiana case which has addressed the question of whether insurance or trust law applies to the interpretation of an ISTA Long Term Disability Income Benefit Plan. The Court finds that I.C. § 20-42.5-2-1 illustrates the legislature’s intent to treat school employee benefit plans, like the Benefit Plan here, as an insurance product subject to regulation by the Indiana Department of Insurance.
38. When closely examining the Benefit Plan in this case, it has the qualities of an insurance policy because the insured pays a premium and the insurer pays damages to the insured which the policy covers if certain events or perils occur. Thus, whether it be health insurance, life insurance, automobile



insurance, or long term disability insurance, they are all based on the principles of an insurance policy.

39. This Benefit Plan is not an Employee Retirement Income Security Act (“ERISA”) plan wherein trust law would apply. The Defendants argue that the United States Supreme Court in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 112-113 (1989), held that “trust law” de novo standard of review is consistent with the judicial interpretation of employee benefit plans prior to the enactment of ERISA. The *Firestone* case involved an ERISA plan, and, therefore, is distinguishable.

40. Next the Defendants argue that *Bragg v. ABN AMRO N. America, Inc.*, 579 F.Supp. 875, 890-891 (E.D. Mich. 2008) (citing *Guiles v. Univ. Mich. Bd. Of Regents*, 483 N.W.2d 637, 642 (Mich. Ct. App. 1992), permitted the employer and insurers to retain complete discretion to determine eligibility for disability benefit plans that are not governed by ERISA. Although the *Bragg* Court said this, it must be considered in context with the facts of that case which are different than the facts of this case. In addition, *Bragg* dealt with an ERISA and non-ERISA plans. The non-ERISA plan addressed Michigan law. In reference to the non-ERISA plan, the *Bragg* Court discusses the decision of *Guiles* at 642, wherein the “Defendant submitted that because the plan requires that a claimant submit ‘satisfactory proof’ of total disability, the university reserved to itself, complete discretion to determine eligibility” The *Guiles* Court held “that the Defendant’s argument was disingenuous and the Court rejected it. *Bragg* at 891. Ultimately, the *Bragg* Court held that the

trial court did not err in rejecting the arbitrary and capricious standard of review on the motion for summary judgment. *Bragg* at 892.

41. The Court finds this case distinguishable from *Bragg* at this point for the following reasons: 1) the *Bragg* Court dealt with a motion for summary judgment, and 2) it involved Michigan law not Indiana law.

42. Thus, the Court hereby finds that the law used by Indiana Courts to interpret insurance policies is applicable not trust law.


#### **Law on Interpreting a Policy of Insurance**

43. The proper interpretation of an insurance policy generally presents a question of law that is appropriate for summary judgment. *Schilling* at 388. However, the Court notes the issue before this Court on the Defendants' Motion for Judgment on the Pleadings is whether or not the Lienhoop has pleading in her Complaint any set of facts which she might prevail.

44. Contracts of insurance are governed by the same rules of construction as other contracts. *Id.* The goal of contract interpretation is to ascertain and enforce the parties' intent as manifested in the contract. *Id.* An insurance policy should be construed as a whole and the Court should consider all of the provisions of the contract, not just individual words, phrases, or paragraphs." *Id.* An ambiguity exists where a provision is susceptible to more than one interpretation and reasonable persons would differ as to its meaning. *Id.* However, when an insurance contract is clear and unambiguous, the language must be given its plain meaning. *Id.*

45. When the Court considers all the language of the Benefit Plan, the Complaint, and Answer, the Court finds that Lienhoop has plead facts in her complaint which she might prevail on. Therefore, the Court hereby DENIES the Defendants' Motion for Judgment on the Pleadings.

SO ORDERED, ADJUDGED, AND DECREED THIS 28<sup>th</sup> day of July, 2011

  
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Heather Welch, Judge  
Marion Superior Court, Civil 12

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