

2016

Diane Welty and Jacob Lopez, Plaintiffs and Appellants, vs. Utah State Retirement Board, Public Employees' Group Term Life Program, Respondent and Appellee.

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

DIANE WELTY and JACOB LOPEZ,

Plaintiffs and Appellants,

vs.

UTAH STATE RETIREMENT BOARD,
PUBLIC EMPLOYEES' GROUP TERM
LIFE PROGRAM,

Respondent and Appellee.

VS.

CASE NO. 20150746

Agency Case No. 13-12L

Respondent and Appellee.

BRIEF OF APPELLEE

David B. Hansen [8197]
Liza J. Eves [9660]
Erin L. Gill [13010]
Associate General Counsel
UTAH STATE RETIREMENT BOARD
560 East 200 South
Salt Lake City, UT 84102
Attorneys for Appellee

FEB 24 2016

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BRIEF OF APPELLEE

APPEAL FROM THE UTAH STATE RETIREMENT BOARD

Diana J. Huntsman	David B. Hansen [8197]
Steven M. Rogers	Liza J. Eves [9660]
Chelsey Phippen	Erin L. Gill [13010]
HUNTSMAN LOFGRAN	Associate General Counsel
623 East Fort Union Blvd.,	UTAH STATE RETIREMENT BOARD
Suite 201	560 East 200 South
Midvale, UT 84047	Salt Lake City, UT 84102
Attorneys for Appellants	Attorneys for Appellee

Diana J. Huntsman	David B. Hansen [8197]
Steven M. Rogers	Liza J. Eves [9660]
Chelsey Phippen	Erin L. Gill [13010]
HUNTSMAN LOFGRAN	Associate General Counsel
623 East Fort Union Blvd.,	UTAH STATE RETIREMENT BOARD
Suite 201	560 East 200 South
Midvale, UT 84047	Salt Lake City, UT 84102
Attorneys for Appellants	Attorneys for Appellee

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES	1
STANDARD OF REVIEW	1
DETERMINATIVE STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2
SUMMARY OF THE FACTS	6
SUMMARY OF THE ARGUMENT	14
ARGUMENT	19
I. AS A MATTER OF LAW, THE HEARING OFFICER CORRECTLY RULED THAT PEHP PROPERLY PAID THE LIFE INSURANCE PROCEEDS OF JESSE LOPEZ TO HIS LAST NAMED BENEFICIARY IN ACCORDANCE WITH UTAH LAW AND THE PEHP MASTER POLICY.....	19
A. Utah Law Requires PEHP to Pay the Last Named Beneficiary.....	19
B. The Plain Language of the PEHP Life Master Policy Requires PEHP to Pay the Last Named Beneficiary.....	22
C. The Beneficiary Change Form Required PEHP to Pay the Last Named Beneficiary.....	23
II. THIS COURT SHOULD APPLY THE PLAIN LANGUAGE OF THE MASTER POLICY AS WRITTEN BECAUSE MR. LOPEZ FAILED TO INCORPORATE THE DIVORCE DECREE INTO THE POLICY, AND THE DIVORCE DECREE DID NOT APPLY TO PEHP.....	24
A. The Divorce Decree Was Not Incorporated by Reference into the PEHP Life Master Policy.....	24

B.	In the Alternative, Even If the Divorce Decree Was Incorporated into the PEHP Life Master Policy, the Plain Language of the Divorce Decree Only Imposed Obligations on Mr. Lopez, and Not PEHP.	28
C.	In the Alternative, Even If the Divorce Decree Was Incorporated into the PEHP Life Master Policy, This Merely Created an Ambiguity in the Contract Which Must Be Resolved in Favor of PEHP.	31
III.	AS A MATTER OF EQUITY, PEHP SHOULD NOT BE HELD RESPONSIBLE TO PAY BENEFITS TWICE, PARTICULARLY WHEN THE WELTYS WAITED SIX YEARS TO BRING A CLAIM FOR MR. LOPEZ’S LIFE INSURANCE BENEFITS..	35
A.	The Hearing Officer’s Ruling that PEHP Correctly Paid the Benefits Must Be Upheld Because PEHP’s Good Faith Payment of Life Insurance Benefits to Mr. Lopez’s Last Named Beneficiary Discharges It from Further Liability.	36
B.	Utah Common Law Related to Life Insurance Under a Divorce Decree Only Adjudicates Between Competing Beneficiaries and Not Between an Insurer and a Potential Beneficiary.	39
C.	The Equities Favor PEHP Because the Weltys’ Almost Six-Year Delay in Making a Claim Created an Irreparable Harm to PEHP in Reasonably Evaluating Their Claim.....	43
	CONCLUSION	45
	CERTIFICATE OF COMPLIANCE.....	47
	CERTIFICATE OF SERVICE	48
	ADDENDUM	49

TABLE OF AUTHORITIES

Federal Cases

<i>Crosby v. Crosby</i> , 986 F.2d 79 (4th Cir. 1993)	17, 21, 35, 36, 40
<i>Hillman v. Maretta</i> , --- U.S. ---, 133 S. Ct. 1943 (2013)	21
<i>Ridgway v. Ridgway</i> , 454 U.S. 46 (1981)	21
<i>Rogers v. Unionmutual Stock Life Insurance Co.</i> , 782 F.2d 1214 (4th Cir.1986)	36
<i>Rollins v. Metropolitan Life Ins. Co.</i> , 912 F.2d 911 (7th Cir. 1990)	42
<i>Weed v. Equitable Life Assurance Society of U.S.</i> , 288 F.2d 463 (5th Cir.1961)	36
<i>Wissner v. Wissner</i> , 338 U.S. 655 (1950)	21

State Cases

<i>Appelman v. Appelman</i> , 410 N.E.2d 199 (Ill. App. Ct. 1980)	42
<i>Bhatia v. Ret. Bd., Long-Term Disability Program</i> , 2013 UT App 103, 302 P.3d 140	1
<i>Brookside Mobile Home Park, Ltd. v. Peebles</i> , 2002 UT 48, 48 P.3d 968	36, 37
<i>Cal Wadsworth Const. v. City of St. George</i> , 865 P.2d 1373 (Utah Ct. App. 1993)	26
<i>CIG Exploration, Inc. v. State</i> , 2001 UT 37, 24 P.3d 966	44
<i>Commire v. Automobile Club of Michigan Ins. Group</i> , 454 N.W.2d 248 (Mich. Ct. App. 1990)	36
<i>Consolidated Realty Group v. Sizzling Platter, Inc.</i> , 930 P.2d 268 (Utah Ct. App. 1996)	25, 26
<i>Culbertson v. Cont'l Assur. Co.</i> , 631 P.2d 906 (Utah 1981)	23
<i>Daines v. Vincent</i> , 2008 UT 51, 190 P.3d 1269	32
<i>Dairy Product Servs. Inc. v. City of Wellsville</i> , 2000 UT 81, 13 P.3d 581	31

<i>Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg</i> , 2010 UT 51, 238 P.3d 1054	44
<i>Gee v. Utah State Ret. Bd.</i> , 842 P.2d 919 (Utah Ct. App. 1992)	1, 4, 33
<i>Glenn v. Reese</i> , 2009 UT 80, 225 P.3d 185	28
<i>Green River Canal Co. v. Thayn</i> , 2003 UT 50, 84 P.3d 1134	33
<i>Green v. Green</i> , 433 N.E.2d 92 (Mass. App. Ct. 1982)	38
<i>Hansen v. Utah State Ret. Bd.</i> , 652 P.2d 1332 (Utah 1982)	21
<i>Harper v. Prudential Ins. Co. of America</i> , 662 P.2d 1264 (Kan. 1983)	36
<i>Hous. Auth. of Cty. of Salt Lake v. Snyder</i> , 2002 UT 28, 44 P.3d 724	25, 26
<i>In re Estate of Thompson</i> , 426 N.E.2d 1 (Ill. App. Ct. 1981)	36
<i>Insight Assets, Inc. v. Farias</i> , 2013 UT 47, 321 P.3d 1021	44
<i>Interwest Const. v. Palmer</i> , 886 P.2d 92 (Utah Ct. App. 1994)	25, 26
<i>Kelly Health Care Inc. v. Prudential Ins. Co. of America, Inc.</i> , 309 S.E.2d 305 (Va. 1983)	36
<i>Lunceford v. Lunceford</i> , 2006 UT App 266, 139 P.3d 1073	32
<i>Madsen v. Estate of Moffitt</i> , 542 P.2d 187 (Utah 1975)	31, 40, 41
<i>Mawhinney v. Jensen</i> , 232 P.2d 769 (Utah 1951)	44
<i>McKissick v. McKissick</i> , 560 P.2d 1366 (Nev. 1977)	42
<i>McLeod v. Ret. Bd.</i> , 2011 UT App 190, 257 P.3d 1090	1, 34
<i>Nielsen v. Nielsen</i> , 535 P.2d 1239 (Utah 1975)	31, 40, 41
<i>Peterson & Simpson v. IHC Health Servs., Inc.</i> , 2009 UT 54, 217 P.3d 716	26
<i>Pratt v. Nelson</i> , 2007 UT 41, 164 P.3d 366	36
<i>R.J. Daum Constr. Co. v. Child</i> , 247 P.2d 817 (Utah 1952)	26

<i>Reeves v. Reeves</i> , 223 S.E.2d 112 (Ga. 1976).....	42
<i>Simonds v. Simonds</i> , 380 N.E.2d 189 (N.Y. 1978).....	42
<i>State Farm Life Ins. Co. v. Martinez</i> , 216 S.W.3d 799 (Tex. 2007).....	22
<i>Thomas v. Studley</i> , 571 N.E.2d 454 (Ohio Ct. App. 1989).....	42, 43
<i>Tintocalis v. Tintocalis</i> , 25 Cal. Rptr. 2d 655 (Cal. Ct. App. 1993).....	42
<i>Travelers Ins. Co. v. Lewis</i> , 531 P.2d 484 (Utah 1975).....	21, 31, 39, 40
<i>United Cal. Bank v. Prudential Ins. Co. of Am.</i> , 681 P.2d 390 (Ariz. Ct. App. 1983).....	26
<i>Village Inn Apartments v. State Farm Fire & Cas. Co.</i> , 790 P.2d 581 (Utah Ct. App. 1990).....	33
<i>WebBank v. Am. Gen. Annuity Serv. Corp.</i> , 2002 UT 88, 54 P.3d 1139.....	32
<i>Winegar v. Froerer Corp.</i> , 813 P.2d 104 (Utah 1991).....	33

State Statutes

Utah Code Title 49.....	2, 14, 19
Utah Code Ann. § 31A-1-103(3)(f).....	37
Utah Code Ann. § 31A-22-413(2)(a).....	37
Utah Code Ann. § 31A-22-428(3).....	38
Utah Code Ann. § 49-11-101.....	3
Utah Code Ann. § 49-11-201.....	3
Utah Code Ann. § 49-11-609.....	2, 3, 12, 14, 20, 21, 28, 31, 49
Utah Code Ann. § 49-11-610.....	2, 20, 23, 49
Utah Code Ann. § 49-11-613(7).....	1
Utah Code Ann. § 49-11-618.....	11
Utah Code Ann. § 49-20-105(1).....	2, 3
Utah Code Ann. § 75-2-804.....	37

State Rules

Utah R. App. P. 14.....	1
Utah R. App. P. 24(c).....	36
Utah R. App. P. 24(f)(1).....	47
Utah R. App. P. 27(b).....	47
Utah R. Civ. P. 60(b).....	7

Other Authorities

17A C.J.S. <i>Contracts</i> § 299, at 136 (1963).....	25
<i>Divorce and Life Insurance: Post Modern Remedies for Breach of a Duty to Maintain a Policy for a Designated Beneficiary,</i> 61 Mo. L. Rev. 533 (1996)	41, 42

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction over formal administrative proceedings of the Utah State Retirement Board (“Board”) pursuant to Utah Code Ann. § 49-11-613(7), § 63G-4-403(1), § 78A-4-103(2)(a), and Rule 14 of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES

1. As a matter of law, did the Hearing Officer correctly rule that Public Employees’ Health Program (“PEHP”) properly paid life insurance proceeds according to Utah law and the PEHP Life Master Policy?
2. As a matter of equity, should PEHP be required to pay life insurance benefits twice on the same policy when Ms. Welty and Mr. Lopez waited six years to bring a claim?

STANDARD OF REVIEW

This Court has said, “We review the Board’s application or interpretation of a statute as a question of law under the correction-of-error standard.” *Bhatia v. Ret. Bd., Long-Term Disability Program*, 2013 UT App 103, ¶ 5, 302 P.3d 140 (quoting *McLeod v. Ret. Bd.*, 2011 UT App 190, ¶ 9, 257 P.3d 1090).

In addition, “Questions of contract interpretation not requiring resort to extrinsic evidence are matters of law, and on such questions we accord [the Board’s] interpretation no presumption of correctness.” *Gee v. Utah State Ret. Bd.*, 842 P.2d 919, 920 (Utah Ct. App. 1992) (citation omitted).

DETERMINATIVE STATUTORY PROVISIONS

Utah Code Ann. § 49-11-609(2) (emphasis added):

The *most recent* beneficiary designations signed by the member and filed with the office [PEHP], including electronic records, at the time of the member's death *are binding in the payment of any benefits due under this title.*

Utah Code Ann. § 49-11-610(1) (emphasis added):

(a) Any benefits payable to a beneficiary shall be made in the name of and delivered to the beneficiary

. . .

(d) The total of the payments made under this section *shall fully discharge and release the office [PEHP] from any further claims.*

Utah Code Ann. § 49-20-105(1) (emphasis added):

The purpose of this chapter is to provide a mechanism for covered employers to provide covered individuals with group health, dental, medical, disability, *life insurance*, medicare supplement, conversion coverage, cafeteria, flex plan, and other programs requested by the state, its political subdivisions, or educational institutions *in the most efficient and economical manner.*

STATEMENT OF THE CASE

The Utah Legislature enacted the Utah State Retirement and Insurance Benefit Act ("Retirement Act" or "Act"), found in Title 49 of the Utah Code, in order to provide a comprehensive system of retirement and health insurance benefits to state and local public employees throughout the State of Utah. In order to administer the benefit programs in a consistent and uniform way, the Legislature created within the Retirement

Act an administrative office—the Utah State Retirement Office, also known as the Utah Retirement Systems (the “Retirement Office” or “URS”), and a governing body—the Utah State Retirement Board (“Board”). *See* Utah Code Ann. §§ 49-11-201, -202.

In addition, Chapter 11 of the Act provides general provisions which govern all systems, plans and programs administered by the Retirement Office. Sections 49-11-609 and -610 specifically govern the distribution of payments to beneficiaries. *See* Utah Code Ann. § 49-11-101 et seq. Chapter 20 of the Act, known as the Public Employees’ Benefit and Insurance Program Act, creates a program allowing self-insured insurance benefits for public employees. *See id.* § 49-20-101, -103, -105, and -401(1)(a). The Public Employees’ Benefit and Insurance Program, known as the Public Employees’ Health Program (“PEHP”), a program within the Utah State Retirement Office, administers these statutory insurance benefits. *See id.* § 49-20-103. The statute provides, “The purpose of this chapter is to provide a mechanism for covered employers to provide covered individuals with group health, dental, medical, disability, *life insurance*, medicare supplement, conversion coverage, cafeteria, flex plan, and other programs requested by the state, its political subdivisions, or educational institutions *in the most efficient and economical manner.*” *Id.* § 49-20-105(1) (emphasis added). Pursuant to this statutory authority, the PEHP Group Term Life Program (referred to herein as “PEHP”) administers the life insurance benefits that are the subject of this dispute. *See id.* § 49-20-103.

Appellant Diane Welty (“Ms. Welty”) is the ex-wife of Jesse Gavino Lopez (“Mr. Lopez”), and Appellant Jacob Lopez (“Jacob”) is the son of Mr. Lopez (Ms. Welty and

Jacob collectively referred to as “the Weltys”). R. 108-09. Mr. Lopez was employed by Salt Lake City Corporation (“City”) and was covered by a group term life insurance policy offered to City employees through PEHP at the time of his death on July 9, 2006. R. 108.

On the date of his death, July 9, 2006, Mr. Lopez was still an active employee of the City and had life insurance coverage with PEHP in the amount of \$173,000.00. R. 177. On July 26, 2006, PEHP received a Claimant’s Statement from Mr. Lopez’s designated beneficiary, Mary Ellen Lopez, his wife. R. 197. At that time, PEHP received no other claims to Mr. Lopez’s life insurance proceeds. R. 243-45. On or about August 2, 2006, PEHP issued a check in the amount of \$173,000.00 to Mary Ellen Lopez, the beneficiary designated on the Group Term Life/Accident Plan Beneficiary Change Form signed by Mr. Lopez on or about March 13, 2006 (“2006 Beneficiary Change Form”). R. 243-44.

It was not until nearly six years later, on or about May 1, 2012, that PEHP received notice that a claim was being made by the Weltys for Mr. Lopez’s life insurance proceeds, by virtue of a summons and complaint to PEHP in Third District Court to recover the claimed life insurance proceeds. R. 246. In addition to PEHP and URS, the complaint also named as a defendant Mary Ellen Lopez, the named beneficiary who received the proceeds at the time of Mr. Lopez’s death. *Id.* On September 19, 2012, the action brought in Third District Court was dismissed as to PEHP and URS because the Court lacked subject matter jurisdiction over the claims against PEHP and URS. *Id.* Upon information and belief, the action was later dismissed as against Mary Ellen Lopez.

See Case History, Welty v. Lopez, Case No. 120902041, dated Dec. 8, 2014, attached hereto as Appellee's Addendum F.

Not until August 28, 2012, did the Weltys submit a Notice of Claim to PEHP for the death of Mr. Lopez. R. 245. On December 4, 2012, the PEHP Life Claims Review Committee sent a letter denying the claim because PEHP properly paid the life insurance proceeds to the beneficiary listed at the time of Mr. Lopez's death. R. 214-15. On February 8, 2013, the Weltys appealed to the Executive Director of URS and requested that he reconsider the decision made by the PEHP Life Claims Review Committee. R. 217-19. On February 28, 2013, the URS Executive Director sent a letter denying Appellants' appeal because he determined that PEHP had correctly paid the benefits to the named beneficiary at the time of death under the terms of the PEHP Group Term Life & Group Accident Master Policy ("PEHP Life Master Policy" or "Master Policy"). R. 221-22.

The Weltys filed a Request for Board Action to appeal the Executive Director's decision on or about April 4, 2013. R. 28. They later amended the Request. R. 102-03. Ultimately, the Board's Adjudicative Hearing Officer heard the matter on July 16, 2015, and ruled in favor of PEHP. R. 239, 289-98. The Board subsequently adopted the Hearing Officer's ruling. R. 297.

The Weltys thereafter appealed the Board's final action to this Court.

SUMMARY OF THE FACTS

Statement of Stipulated Facts

The Parties stipulated to the following facts in writing before the Board:

1. Jesse Gavino Lopez ("Mr. Lopez") was employed by Salt Lake City Corporation ("City") and was covered by a group term life insurance policy offered to City employees through the Public Employees' Health Program ("PEHP") Life Program.
2. Mr. Lopez, and petitioner, Diane Welty ("Ms. Welty") were married in August 1978 and divorced in October 1997.
3. On October 29, 1997, a Decree of Divorce was ordered by Judge Pat B. Brian of the 3rd District Court of Salt Lake County, Utah.
4. In the Decree of Divorce, Mr. Lopez was ordered as follows:

24. That the Respondent currently has in force and effect a life insurance policy on his life in the face amount of \$325,000.00. That Respondent is ordered to maintain in full force and effect said life insurance policy until such time as the last of the parties' children reaches age 18 or alimony terminates, whichever is later. During the period that the child support is due, the Respondent should be ordered to irrevocably designate the Petitioner, as trustee for the minor children, beneficiary on said life insurance policy. The Respondent should be ordered to provide the Petitioner with proof that the insurance is in effect within 30 days of entry of the Divorce Decree and providing verification that said insurance is in effect by January 15th of each year thereafter.
5. In July 1999, Mr. Lopez had coverage of \$173,000.00 with the Life Program, of which \$50,000.00 was funded by the City and the rest funded by Mr. Lopez.
6. On December 3, 1999, PEHP received a Group Term Life Application from Mr. Lopez dated on or about November 29, 1999. The application indicated that Mr. Lopez was applying

for \$300,000.00 in Basic Group Term Life Coverage. The application named Diane (petitioner) for minor children as per attached divorce decree and Mary Ellen Lopez his wife as secondary beneficiary. Mr. Lopez's request for additional coverage was cancelled in December 1999 based upon contact from the City's Human Resources Department.

7. On December 3, 1999 the Life Program received a Beneficiary Change Form signed by Mr. Lopez on November 29, 1999, which listed Petitioner, "Diane (petitioner) for minor children as per attached divorce decree" as primary beneficiary and Mary Ellen Lopez his wife as secondary beneficiary.
8. The Life Program received a written copy of the Decree of Divorce entered by the Third District of the State of Utah on October 29, 1997 attached to the Beneficiary Change Form submitted by Mr. Lopez on or about December 3, 1999.
9. In a Verified Response to Petitioner's Order to Show Cause signed by Mr. Lopez on December 6, 1999, Mr. Lopez provided the following:
 - a. On or about the 31st day of October, 1997 this Court entered a Decree of Divorce based upon the entry of Respondent's default.
 - b. The Decree of Divorce contained a number of misstatements of fact, some even inconsistent with the terms of the Petition from which the default was taken. Respondent was not provided with a copy of the Decree of Divorce until long after the time to set the default had expired under Rule 60(b), U.R.C.P.
 - c. In reality Respondent never had a life insurance policy on his life with a face amount of \$325,000.00.
 - d. At the time of divorce Respondent owned two policies. The first was a basic term policy offered through his employment for approximately \$100,000. The second was a universal life insurance policy offered through Allstate Insurance which insured his life for only \$50,000.00, and which also insured the life of Petitioner for \$50,000.00. Thus, Respondent's factual burden to carry insurance has always been approximately \$150,000.00.

...

10. On July 24, 2003, the Life Program received an Additional Group Term Life Employee Enrollment Form signed by Mr. Lopez on or about July 15, 2003. Mr. Lopez applied for additional coverage up to \$300,000. The designated primary beneficiary was Petitioner Diane Lopez, his ex-wife[,] for minor child \$300,000 per divorce decree and his son Petitioner Jacob Lopez as contingent beneficiary. This beneficiary change form also reflects Jacob Lopez's date of birth as August 27, 1988. However, Mr. Lopez did not complete underwriting requirements, and he was never issued the additional coverage.
11. In addition to the Additional Group Term Life Employee Enrollment Form on July 24, 2003, PEHP received a Beneficiary Change Form signed on or about July 15, 2003, by Mr. Lopez. The form revoked any previous nominations of beneficiary(ies) and designated Mary Ellen Lopez his wife and his ex-wife Diane Lopez petitioner for minor child as primary beneficiaries.
12. On October 24, 2003, PEHP received a Group Term Life Change Form signed by Mr. Lopez on or about October 21, 2003. The form stated in relevant part: "Revoking any previous nomination or beneficiary(ies), I hereby designate the following individuals to receive all benefits payable upon my death." Mr. Lopez designated Mary Ellen Lopez, his wife, as primary beneficiary and Joshua G. Lopez, his son, as contingent beneficiary.
13. On March 20, 2006, PEHP received a Group Term Life/Accident Plan Beneficiary Change Form signed by Mr. Lopez on or about March 13, 2006. The form stated in relevant part: "Revoking any previous nomination or beneficiary(ies), I hereby designate the following individuals to receive all benefits payable upon my death." Mr. Lopez designated Mary Ellen Lopez his wife as primary beneficiary.
14. Mr. Lopez died on July 9, 2006.
15. Jacob Lopez was 17 years old at the time of Mr. Lopez's death.
16. On July 26, 2006, PEHP received a Group Term Life Program Claimant's Statement from Mary Ellen Lopez.
17. On or about August 2, 2006, PEHP issued a check in the amount of \$173,000.00 to Mary Ellen Lopez, the beneficiary designated on the

Group Term Life/Accident Plan Beneficiary Change Form signed by Mr. Lopez on or about March 13, 2006.

18. The Life Program Group Term Life Master Policy ("Master Policy") is the contract between the Life Program and its covered members.
19. The Master Policy states:

PAYMENT OF BENEFITS

If a Subscriber and/or Dependent dies, the Plan will pay to the beneficiary, subject to the provisions set forth herein, the amount of coverage for which the Subscriber and/or Dependent is covered.

...

PAYMENT OF BENEFITS

All benefits will be payable to the beneficiary. . . . Any payment made in good faith pursuant to this provision fully discharges the Plan to the extent of the payment.

...

BENEFICIARY

A subscriber shall designate a primary beneficiary and a contingent beneficiary at the time of application for coverage. A subscriber may change his or her beneficiary(ies) by filing a written notice of the change with the Plan. The change will take effect as [of] the date the Subscriber signed the notice of change Any payment made by the Plan in good faith pursuant to this provision shall fully discharge the Plan to the extent of such payment.

...

MODIFICATION

No change in this Master Policy shall be valid unless approved by the Plan and unless such approval is evidenced by endorsement or amendment to this Master Policy. No agent has authority to change this Master Policy or waive any of its provisions.

...

NOTICE OF CLAIM

A written notice of claim must be given to the Plan within (20) days after the death of a Subscriber and/or Dependent

unless it was not reasonably possible to do so. Notice given by or on behalf of a Subscriber and/or Dependent or his beneficiary if any, to the Plan at its office in Salt Lake City, Utah, with information sufficient to identify the Subscriber and/or Dependent, shall be deemed notice to the Plan.

...

TIME OF PAYMENT OF BENEFITS

Benefits payable hereunder will be paid as soon as reasonably possible after receipts of an acceptable written proof of loss together with all supporting materials. . . .

...

PAYMENT OF BENEFITS

All benefits will be payable to the beneficiary. If any payment remains unpaid at the death of the beneficiary, or if the beneficiary is a minor or is, in the opinion of the Plan, legally incapable of giving a valid receipt and discharge for any payment, the Plan, at its option, may pay such benefit to any relative or relatives by blood or connection by marriage of the Subscriber and/or Dependent who is deemed by the Plan to be equitably and legally entitled to receive the payment. Any payment made in good faith pursuant to this provision fully discharges the Plan to the extent of the payment. . . .

...

LEGAL ACTION

No legal action may be brought against the Plan for unpaid benefits until at least sixty (60) days after written proof of loss has been furnished in accordance with the requirements stated above. No legal action may be brought after the expiration of three years after the time written proof of loss is required to be furnished.

...

ENTIRE CONTRACT

This Master Policy, any modifications to it, and the written statements, if any, of Subscribers, constitute the entire contract.

20. On August 28, 2012, Petitioner, Ms. Welty submitted a notice of claim to the Life Program in which she presented a dispute

regarding the distribution of Mr. Lopez's life insurance coverage.

21. Ms. Welty indicated that Mr. Lopez had a life insurance policy with Allstate Life Insurance in the amount of \$300,000.00 on or about October 29, 1997.
22. Pursuant to Utah Code Ann. § 49-11-618, "All data in the possession of the office is confidential, and may not be divulged by the office except as permitted by board action." Petitioners were not, and could not be, supplied with beneficiary designation information until they brought this request for board action.
23. On or about May 1, 2012, Diane Welty and Jacob Lopez served a summons and complaint to Utah Retirement Services and PEHP in Third District Court to recover life insurance proceeds paid by PEHP through the Group Term Life Plan to Mary Ellen Lopez the designated beneficiary of Mr. Lopez. Mary Ellen Lopez was also named as a Defendant in this action.
24. On September 19, 2012, the action brought in Third District Court against PEHP was dismissed without adjudication because the Court lacked subject matter jurisdiction over the claims against PEHP. In a Declaration submitted in the Third District Court, Petitioner, Ms. Welty indicated the following: "1. Shortly after the death of my ex-husband, Mr. Lopez, I contacted Mrs. Lopez regarding the life insurance proceeds for my minor son, Jacob Lopez. 2. Mrs. Lopez told me that she had discussed the issue with her attorney, and that she did not have to pay any money to Jacob, but merely had to list Jacob on the title to her condo."
25. Petitioners filed an Amended Request for Board Action on April 5, 2013.
26. On September 3, 2013, Respondents waived all arguments relating to barring claims pursuant to an applicable statute of limitations.

R. 240-48.

Clarifications to Appellants' Statement of Additional Facts

Appellants' Fact #1: Petitioners had power to determine that a submitted change of beneficiary form is invalid. Appellants' Br., at 17.

Board's Response: First, PEHP specifically rejects any notion that Petitioners the Weltys had power to determine a change of beneficiary form is invalid. However, even presuming the Weltys meant "Respondent" PEHP instead of "Petitioners," by law and contract, PEHP was bound to pay the last properly designated beneficiary. As a matter of practice, if the beneficiary form was unclear as to the insured's intent based on the form, such as if beneficiary designation was not signed by the insured, PEHP may ask for further clarification as to intended beneficiary. R. 299, HT, at 28:3-12; 30:4-8. However, PEHP does not have the authority under law to completely disregard a facially valid beneficiary designation form. *See* Utah Code Ann. § 49-11-609.

Appellants' Fact #2: Jacob Lopez has taken out student loans to fund his college education. Appellants' Br., at 17.

Board's Response: PEHP does not have sufficient information to either confirm or deny this assertion, but for purposes of this appeal does not dispute it. Nothing in the record indicates that Jacob Lopez relied in any way on the PEHP life insurance in obtaining student loans.

Appellants' Fact #3: Ms. Welty filed a motion for an order to show cause against Mr. Lopez related to the requirement that he carry life insurance and irrevocably designate Ms. Welty as a beneficiary.

Board's Response: PEHP was not a party to this action, but for purposes of this appeal does not dispute this fact.

Statement of Additional Relevant Facts

1. The Weltys were aware of Mr. Lopez's passing at or near the time of his death. R. 300, Respt.'s Hr'g Ex. M, ¶¶ 1-2.
2. The Weltys were aware at or near the time of Mr. Lopez's death of his obligation under the October 29, 1997 decree of divorce ("Divorce Decree") to maintain life insurance coverage on behalf of Jacob. *Id.*
3. The Weltys were aware at or near the time of Mr. Lopez's death that the Divorce Decree discussed an obligation to maintain Ms. Welty as the beneficiary of his life insurance. *Id.*; *see also* R. 123, 125-35.
4. Ms. Welty spoke to Ms. Mary Ellen Lopez just after Mr. Lopez's death about her belief that the Mr. Lopez's PEHP life insurance benefits ought to be paid to Jacob. Upon information and belief, Mrs. Mary Ellen Lopez told Ms. Welty that instead of paying the benefits, she would list Jacob on the title to Mr. Lopez's condo. R. 300, Respt.'s Hr'g Ex. M, ¶¶ 1-2.
5. The Weltys failed to file a claim with PEHP for Mr. Lopez's life insurance benefits until roughly six years after Mr. Lopez's death. R. 245.

SUMMARY OF THE ARGUMENT

I. AS A MATTER OF LAW, THE HEARING OFFICER CORRECTLY RULED THAT PEHP PROPERLY PAID LIFE INSURANCE PROCEEDS OF JESSE LOPEZ TO HIS LAST NAMED BENEFICIARY IN ACCORDANCE WITH UTAH LAW AND THE PEHP MASTER POLICY.

The Court should affirm the Hearing Officer's ruling that PEHP correctly paid life insurance benefits to the last named beneficiary of Mr. Lopez—Ms. Mary Ellen Lopez—as a matter of law. Both Utah law and the PEHP Life Master Policy require that PEHP pay the last named beneficiary.

PEHP is created and governed by Utah Code Title 49, the Utah Retirement Act. Section 49-11-609(2) requires, “[T]he most recent beneficiary designations signed by the member and filed with the office . . . are binding in the payment of any benefits due under this title.” Section 49-11-610(1)(d) then absolves PEHP, upon payment, from any additional claim related to paying these benefits in stating, “The total of the payments made [to a beneficiary] under this section shall fully discharge and release [PEHP] from any further claims.” Thus, under Utah law, PEHP was fully discharged and released from any claims by the Weltys when it paid the life insurance benefits to the last named beneficiary of Mr. Lopez.

The plain language of the PEHP Life Master Policy, which is the contract between Mr. Lopez and PEHP, as originally written, also requires that PEHP pay the last named beneficiary and absolves PEHP of further liability once it has done so. The Master Policy requires that PEHP “will pay to the beneficiary, subject to the provisions set forth herein, the amount of coverage for which the Subscriber . . . is covered.” R. 300, Respt.’s Hr’g

Ex. L, at 10. The provisions of the Master Policy allow Mr. Lopez to change his beneficiary at any time. Section V states, “A subscriber may change his or her beneficiary(ies) by filing a written notice of the change with the Plan.” *Id.* Section V concludes by providing, “Any payment made by the Plan in good faith pursuant to this provision shall fully discharge the Plan to the extent of such payment. . . .” *Id.*

Thus, under applicable law and the contract, as written, PEHP properly allowed Mr. Lopez to modify his beneficiaries in accordance with the policy language, and PEHP must be discharged for the good faith payment it made to the last named beneficiary after Mr. Lopez’s death.

II. THIS COURT SHOULD APPLY THE PLAIN LANGUAGE OF THE PEHP MASTER POLICY AS WRITTEN BECAUSE MR. LOPEZ FAILED TO INCORPORATE THE DIVORCE DECREE INTO THE POLICY, AND THE DIVORCE DECREE DID NOT APPLY TO PEHP.

This Court should apply the plain language of Title 49 and the PEHP Life Master Policy to this matter and not incorporate the Divorce Decree between Ms. Welty and Mr. Lopez into the contract. In this case, Mr. Lopez did not specifically incorporate his Divorce Decree into the Master Policy. Although Mr. Lopez filed a change of beneficiary form in 2003 naming “Diane for minor children as per attached divorce decree,” this was not specific enough to incorporate the Divorce Decree into the policy – particularly when the document never mentions incorporation or any applicability to PEHP. Additionally, PEHP never consented to incorporation of the Divorce Decree, which is a prerequisite for it to be incorporated by reference.

Yet, even if this Court were to hold that the Divorce Decree was incorporated by reference into the PEHP Life Master Policy, the plain language of the Divorce Decree only ordered Mr. Lopez to take certain actions, not PEHP. Section 24 of the Divorce Decree, the only section that relates to life insurance, states,

. . . That Respondent [Mr. Lopez] currently has in force and effect a life insurance policy on his life in the amount of \$325,000.00. That Respondent [Mr. Lopez] is ordered to maintain in full force and effect said life insurance policy until such time as the last of the parties' children reaches age 18 or alimony terminates, whichever is later. During the period that the child support is due, the Respondent [Mr. Lopez] should be ordered to irrevocably designate the Petitioner [Ms. Welty], as trustee for the minor children, beneficiary on said life insurance policy. . . .

R. 123, ¶ 24; R. 241, ¶ 4. Nowhere in the language of the Divorce Decree is PEHP named in any way or required to take any action. R. 116-24. As such, this Court cannot impose new duties on PEHP today.

In the alternative, even if this Court were to hold that the Divorce Decree was incorporated by reference into the PEHP Master Policy, and that the terms of the Divorce Decree apply to PEHP, this would merely create an ambiguity in the Policy. The PEHP Life Master Policy clearly allows for an insured to modify beneficiary designations at will. R. 210. This is contrary to the Divorce Decree, which the Weltys argue required Mr. Lopez to create an irrevocable beneficiary. R. 123. Such an ambiguity must be resolved through the Court's contract construction rules by looking to the intent of the parties. The language of the policy, beneficiary change forms, and actions of Mr. Lopez

and PEHP in submitting and accepting beneficiary change forms clearly show that neither party intended to create an irrevocable beneficiary.

III. AS A MATTER OF EQUITY, PEHP SHOULD NOT BE HELD RESPONSIBLE TO PAY BENEFITS TWICE, PARTICULARLY WHEN THE WELTYS WAITED SIX YEARS TO BRING A CLAIM FOR MR. LOPEZ'S LIFE INSURANCE BENEFITS.

Although this case can and should be determined as a matter of law on the arguments above, even if this Court were to review equitable claims and arguments, PEHP must still prevail. As a matter of equity, absent bad faith, a life insurer like PEHP is only required to pay on a policy once. *See, e.g., Crosby v. Crosby*, 986 F.2d 79, 83 (4th Cir. 1993) (“[A]n insurer is discharged from all subsequent liability when it makes good faith payments to a purported beneficiary without notice of any competing claims.”). The Weltys never made a claim and point to nothing in their brief which contradicts that PEHP made payment to Mr. Lopez’s last named beneficiary in good faith. As such, even if PEHP had made a mistaken payment and Ms. Welty is adjudged to have been the proper beneficiary, PEHP is absolved from any claim that it has to pay Mr. Lopez’s life insurance benefit to Ms. Welty under general common law, and Ms. Welty’s remedy is against the party who received the payment.

The Utah common law, while allowing beneficiaries to be adjudicated under a divorce decree, has never held that divorce decrees apply to non-party insurers. The Weltys did not point to one case, and Appellees cannot find one, absent bad faith, that found divorce decrees binding on the life insurer itself or requiring a life insurance company to pay proceeds more than once to competing beneficiaries.

Further, equity clearly favors PEHP in this matter due to the Weltys' nearly six-year delay in bringing a claim for life insurance benefits. Mr. Lopez died on July 9, 2006. R. 243, ¶ 14. The very first contact the Weltys made with PEHP after Mr. Lopez's death was not until May 1, 2012. *See id.* ¶ 20. This delay prevented PEHP from timely investigating the Weltys' claims prior to payment. Thus, because of their failure to bring a timely claim, the Weltys' equitable claims fail according to the principles embodied in the common law doctrine of laches. PEHP would be injured due to the Weltys' lack of diligence if it has to pay the benefit twice when it only received premium for one life insurance benefit.

ARGUMENT

I. AS A MATTER OF LAW, THE HEARING OFFICER CORRECTLY RULED THAT PEHP PROPERLY PAID THE LIFE INSURANCE PROCEEDS OF JESSE LOPEZ TO HIS LAST NAMED BENEFICIARY IN ACCORDANCE WITH UTAH LAW AND THE PEHP MASTER POLICY.

This Court should affirm the Hearing Officer's ruling that PEHP correctly paid life insurance benefits to the last named beneficiary of Mr. Lopez following his death. No dispute exists between the parties that Mr. Lopez maintained life insurance coverage with PEHP through his employment with Salt Lake City Corporation. *See* R. 240, ¶ 1. Upon Mr. Lopez's death, PEHP paid the life insurance benefit of \$173,000 to his last named beneficiary, Ms. Mary Ellen Lopez, in accordance with the PEHP Life Master Policy and Utah law. R. 243-44, at ¶ 17. The only dispute is whether PEHP correctly paid the last named beneficiary under the Master Policy and Utah law or should have waited almost six years for a challenge by the Weltys before paying out the claim.

A. Utah Law Requires PEHP to Pay the Last Named Beneficiary.

The Hearing Officer correctly ruled that PEHP was required by both Utah statute and contract to pay life insurance benefits to the last named beneficiary of an insured. URS and PEHP are governed by Utah Code Title 49, the Utah State Retirement Act. Chapter 20 of this Title is the specific chapter which creates and governs PEHP as a "program" of URS. However, Chapter 11 of Title 49 provides general information and definitions which govern all the systems, plans and programs administered by URS, including PEHP.

Utah Code section 49-11-609 states in relevant part in regards to URS/PEHP

beneficiaries:

- (1) As used in this section, "member" includes a . . . covered individual
- (2) The most recent beneficiary designations signed by the member and filed with the office, including electronic records, at the time of the member's death are binding in the payment of any benefits due under this title.

. . .

The term "covered individual" is defined in section 49-11-102(17) as "any individual covered under Chapter 20, Public Employees' Benefit and Insurance Program Act." Mr. Lopez was a "covered individual" under Title 49 because he was covered by PEHP life insurance. Mr. Lopez's "most recent beneficiary designation[]" regarding his PEHP life insurance was his current wife, Mary Ellen Lopez. Utah Code Ann. § 49-11-609(2).

Under statute, this beneficiary designation was thus "binding in the payment of any benefits due" from PEHP. Utah Code Ann. § 49-11-609(2). Therefore, PEHP correctly paid the life insurance benefit to Mr. Lopez's most recent named beneficiary.

Because PEHP paid the benefit to the most recent named beneficiary, Utah law releases PEHP from any further claims for that paid benefit. Utah Code section 49-11-610(1)(d) states, "The total of the payments made [to a beneficiary] under this section shall fully discharge and release [PEHP] from any further claims." Thus, under Utah law, PEHP was fully discharged and released from any claims by the Weltys, or any other alleged beneficiary, when it paid the life insurance benefits to the last named beneficiary of Mr. Lopez.

Despite the clear language of these Utah statutes, the Weltys attempt to use Utah common law¹ to claim PEHP must pay life insurance benefits pursuant to the beneficiaries listed in a Divorce Decree to which PEHP was not a party. *See* Appellants' Br., at 20-21, 28-29 (citing *Travelers Ins. Co. v. Lewis*, 531 P.2d 484 (Utah 1975)). "Of course, where a conflict arises between the common law and a statute or constitutional law, the common law must yield."² *Hansen v. Utah State Ret. Bd.*, 652 P.2d 1332, 1337-38 (Utah 1982) (citations omitted). As such, these Utah statutes override any legal or equitable common law claims made by the Weltys regarding how a benefit should be paid.

As such, because Utah statutes governing PEHP apply, this Court must find that common law contract and equitable arguments take a back seat to the plain statutory language, which may not be disregarded. Thus, in any claim against PEHP, if PEHP pays the last named beneficiary, it is released from any further liability as a matter of law by statute. *See* Utah Code Ann. §§ 49-11-609 and -610.

¹ As discussed *infra*, the common law, like the statutes, also absolves a life insurance company from paying twice if it did so in good faith. *See, e.g., Crosby v. Crosby*, 986 F.2d 79, 83 (4th Cir. 1993) ("[A]n insurer is discharged from all subsequent liability when it makes good faith payments to a purported beneficiary without notice of any competing claims."). Absent a competing claim by the Weltys, or notice from Mr. Lopez that he intended to maintain the Weltys as his designated beneficiaries, it cannot be said that PEHP had "notice of any competing claims." *Id.*

² The U.S. Supreme Court recognized this principle, finding that state common law yields to applicable federal statute. *See, e.g., Ridgway v. Ridgway*, 454 U.S. 46 (1981) (ruling that benefit must be paid to last named beneficiary of life insurance, despite contrary divorce decree, because "controlling provisions of the [Serviceman's Group Life Insurance Act] SGLIA prevail over and displace inconsistent state law," including equitable remedies such as a constructive trust); *see also Wissner v. Wissner*, 338 U.S. 655 (1950); *Hillman v. Maretta*, --- U.S. ---, 133 S. Ct. 1943 (2013).

B. The Plain Language of the PEHP Life Master Policy Requires PEHP to Pay the Last Named Beneficiary.

The Utah statutes are dispositive of this issue. However, even if the Utah statutes do not apply, the PEHP Life Master Policy, as originally written, also forbids PEHP from paying anyone except the last designated beneficiary and allowed Mr. Lopez to change his beneficiary at any time. The PEHP Life Master Policy, the contract between Mr. Lopez and PEHP governing his life insurance benefits, states, "If a Subscriber and/or Dependent dies, *the Plan will pay to the beneficiary, subject to the provisions set forth herein*, the amount of coverage for which the Subscriber . . . is covered." R. 210 (emphasis added). Generally, an insured's right to change beneficiaries is governed by the terms of the insurance policy. *See, e.g., State Farm Life Ins. Co. v. Martinez*, 216 S.W.3d 799, 802 (Tex. 2007). The PEHP Life Master Policy allows Mr. Lopez to change his beneficiary at any time. Section V of the Master Policy states,

BENEFICIARY

A Subscriber [insured employee] shall designate a primary beneficiary and a contingent beneficiary at the time of application for coverage. *A Subscriber may change his or her beneficiary(ies) by filing a written notice of the change with the Plan. . . . Any payment made by the Plan in good faith pursuant to this provision shall fully discharge the Plan to the extent of such payment. . . .*

R. 300, Respt.'s Hr'g Ex. L, at 10 (emphasis added). The Master Policy plainly allows a Subscriber, such as Mr. Lopez, to change his beneficiary by filing a written notice of the change. The Utah Supreme Court has declared,

The beneficiary of an insurance policy has merely an expectancy, contingent on the insured's death. The insured, if owner of the policy, during his lifetime, has a right to deal with his policy in any manner he desires. This includes the

right to change the beneficiary, or to cash in the policy or sell or assign his interest.

Culbertson v. Cont'l Assur. Co., 631 P.2d 906, 909-10 (Utah 1981).

Furthermore, the PEHP Life Master Policy, like the applicable statute in Utah Code section 49-11-610, discharges PEHP of its liability for life insurance proceeds upon a payment made in good faith. *See* R. 300, Respt.'s Hr'g Ex. L, at 10 ("Any payment made by the Plan in good faith pursuant to this provision shall fully discharge the Plan to the extent of such payment.").

Thus, based on the plain language of the Master Policy, Mr. Lopez was able to change his beneficiary without permission from the beneficiary and at any time he chose, and PEHP was obligated to pay the last named beneficiary. In so doing, PEHP was accordingly discharged of any further liability.

C. The Beneficiary Change Form Required PEHP to Pay the Last Named Beneficiary.

In addition to the specific language in the Utah statutes and the PEHP Life Master Policy, the 1999 PEHP beneficiary change form submitted by Mr. Lopez, that the Weltys allege incorporates the Divorce Decree, specifically states that benefits will only be paid to "the most recent beneficiary." R. 300, Respt.'s Hr'g Ex. C. In fact, the 1999 beneficiary form states under the heading "Consideration when naming beneficiaries," that "Beneficiary payments are paid from the *most recent* beneficiary designation on file with PEHP." *Id.* (emphasis added). This statement makes no sense unless all beneficiary designations are revocable with PEHP under the plan.

Thus, when PEHP paid Mr. Lopez's last named beneficiary, it complied with Utah statutes, the contract governing the life insurance benefit as written, and the beneficiary form that declared beneficiary designations revocable. Thus, the Hearing Officer's ruling that PEHP paid the benefit to the correct party should not be disturbed.

II. THIS COURT SHOULD APPLY THE PLAIN LANGUAGE OF THE MASTER POLICY AS WRITTEN BECAUSE MR. LOPEZ FAILED TO INCORPORATE THE DIVORCE DECREE INTO THE POLICY, AND THE DIVORCE DECREE DID NOT APPLY TO PEHP.

This Court should apply the plain language of the statutes and the PEHP Life Master Policy as written, which require PEHP to pay the last designated beneficiary of Mr. Lopez. Despite this plain language, the Weltys try to muddy this issue by incorrectly attempting to incorporate the Divorce Decree into the PEHP Life Master Policy, something neither Mr. Lopez nor PEHP intended. But even if the Divorce Decree was incorporated into the PEHP Life Master Policy, PEHP must prevail as a matter of law under the Court's contractual construction rules.

A. The Divorce Decree Was Not Incorporated by Reference into the PEHP Life Master Policy.

As a matter of law, Mr. Lopez's 1999 change of beneficiary form failed to incorporate the Divorce Decree between Mr. Lopez and Ms. Welty into the life insurance contract by reference. Although documents may be incorporated into contracts by reference, Utah appellate courts have held individuals wishing to incorporate documents to a strict standard. The Utah Supreme Court has stated,

Admittedly, parties may incorporate the terms of another document by reference into their contract. Yet, the terms of another document cannot be incorporated by reference without specific language. Rather, "the reference must be

clear and unequivocal,” and alert the non-drafting party that terms from another document are being incorporated.

Hous. Auth. of Cty. of Salt Lake v. Snyder, 2002 UT 28, ¶ 19, 44 P.3d 724 (quoting *Consolidated Realty Group v. Sizzling Platter, Inc.*, 930 P.2d 268, 273 (Utah Ct. App. 1996)) (rejecting attempt to incorporate terms by reference when terms were not clear and unequivocal). This Court has restated the rule:

In order “[f]or the terms of another document to be incorporated into the document executed by the parties, the reference must be clear and unequivocal, and must be called to the attention of the other party, *[the party] must consent thereto*, and the terms of the incorporated document must be known or easily available to the contracting parties;”

Interwest Const. v. Palmer, 886 P.2d 92, 97 n. 8 (Utah Ct. App. 1994) (emphasis added) (quoting 17A C.J.S. *Contracts* § 299, at 136 (1963)).

In this case, Mr. Lopez did not specifically incorporate his Divorce Decree from Ms. Welty into the PEHP Life Master Policy. On December 3, 1999, Mr. Lopez filed a change of beneficiary form with PEHP. R. 241-42, ¶ 7; 300, Respt.’s Hr’g Ex. B. Mr. Lopez stated on that form that he named as his beneficiary, “Diane for minor children as per attached divorce decree.” *Id.* This statement did not provide a last name of Diane, nor name the minor children. Only by referring to the Divorce Decree could the beneficiaries be properly identified. Thus, while the Divorce Decree helped to name Mr. Lopez’s beneficiary, on its face, it did not clearly or unequivocally incorporate the Divorce Decree into the contract, change or modify any terms of the PEHP Life Master Policy, or create an irrevocable beneficiary. Mr. Lopez’s statement on the 1999 beneficiary form is hardly the “specific,” and “clear and unequivocal” language that is

required to incorporate a document by reference—particularly when the actual language never says that any document is being incorporated. *See, e.g., Snyder*, 2002 UT 28, ¶ 19; *Palmer*, 886 P.2d at 97 n. 8.

Furthermore, PEHP (and likely Mr. Lopez) never consented to the incorporation of the Divorce Decree into the contract. The Utah Supreme Court has held as a requirement to incorporation, “Additionally, the party ‘must consent thereto, and the terms of the incorporated document must be known or easily available to the contracting parties.’” *Peterson & Simpson v. IHC Health Servs., Inc.*, 2009 UT 54, ¶ 15, 217 P.3d 716 (finding that arbitration rules were agreed to and incorporated into agreement between parties) (quoting *Consol. Realty Group*, 930 P.2d at 273). Consent is more than the mere mention of the existence of a divorce decree. *See, e.g., United Cal. Bank v. Prudential Ins. Co. of Am.*, 681 P.2d 390, 419-20 (Ariz. Ct. App. 1983) (“Mere reference to a document for descriptive purposes does *not* operate as an incorporation of the document into a contract.” (Citations omitted.)). Instead, consent is a type of “acceptance” under contract law. “[A] response is an acceptance where the offeree manifests ‘unconditional agreement to all of the terms of the offer.’ The offeree must ‘manifest a definite intention to accept the offer and every part thereof . . . without material reservations or conditions.’” *Cal Wadsworth Const. v. City of St. George*, 865 P.2d 1373, 1376 (Utah Ct. App. 1993), *aff’d*, 898 P.2d 1372 (Utah 1995), (quoting *R.J. Daum Constr. Co. v. Child*, 247 P.2d 817, 819 (Utah 1952)).

Nowhere can the Weltys point to where PEHP agreed or consented to all the Divorce Decree terms as part of the PEHP Life Master Policy. The Weltys misstate the

law when they claim that PEHP must be “bound by the incorporated decree even if they were unaware of what the decree stated, chose not to read the decree, or simply did not care to implement the decree.” Appellant’s Br., at 26-27. This only applies if PEHP had actually consented to the Divorce Decree, something the Weltys conveniently leave out of their analysis. Consent is of critical importance here because the Divorce Decree purports to modify the plain terms of the actual written contract.

The Master Policy itself dictates how consent would be manifested, “MODIFICATION: No change in this Master Policy shall be valid unless approved by the Plan and unless such approval is evidenced by endorsement or amendment to this Master Policy. . . .” R. 210. Neither party to the Master Policy asserts that an endorsement or amendment was supplemented to the Master Policy.

The Weltys cite to another provision of the Master Policy to contradict this requirement, asserting that written statements of a subscriber can modify the contract without PEHP’s express consent. The Master Policy states, “ENTIRE CONTRACT: This Master Policy, any modifications to it, and the written statements, if any, of Subscribers, constitute the entire contract.” *Id.* Reading these provisions together, it is clear that to the extent that a Subscriber’s written statement purports to change the terms of the Master Policy, for example, to strike the subscriber’s right to change a beneficiary designation at any time and instead designate an irrevocable beneficiary, such a modification must be made with PEHP’s approval, evidenced by a written endorsement or amendment.

Because PEHP did not consent to the Divorce Decree or its terms, and the reference to incorporation was not clear and unequivocal, the Divorce Decree was not incorporated into the contract under Utah law, and PEHP correctly paid the last designated beneficiary in accordance with the contract terms.

B. In the Alternative, Even If the Divorce Decree Was Incorporated into the PEHP Life Master Policy, the Plain Language of the Divorce Decree Only Imposed Obligations on Mr. Lopez, and Not PEHP.

Despite the plain language of Utah Code sections 49-11-609 and -610, which require PEHP to pay the last named beneficiary and absolve PEHP of further liability once it has paid benefits, and despite the plain language in the PEHP Life Master Policy that an employee can “change his or her beneficiary . . . ,” in the alternative, even if this Court were to hold that the Divorce Decree was incorporated by reference into the PEHP Life Master Policy, the plain language of the Divorce Decree only ordered Mr. Lopez to take certain actions, but did not order PEHP to take any action. Even the Weltys seem to admit that the Divorce Decree only applied to Mr. Lopez when they state in the stipulated facts, “In the Decree of Divorce, *Mr. Lopez* was ordered as follows: . . .” R. 241, ¶ 4 (emphasis added).

When enforcing the terms of an insurance contract, the Court looks to the plain language. “Well-accepted rules of contract interpretation require that we examine the language of a contract to determine meaning and intent. Where the language is unambiguous, the parties’ intentions are determined from the plain meaning of the contractual language” *Glenn v. Reese*, 2009 UT 80, ¶ 10, 225 P.3d 185 (citations omitted).

Therefore, assuming *arguendo* that the Divorce Decree became part of the insurance contract, the plain language of the Divorce Decree only imposed duties on Mr. Lopez, and not on PEHP, a non-party.³ Section 24 of the Divorce Decree, the only section that relates to life insurance, states,

24. That the Respondent [Mr. Lopez] currently has in force and effect a life insurance policy on his life in the amount of \$325,000.00. That Respondent [Mr. Lopez] is ordered to maintain in full force and effect said life insurance policy until such time as the last of the parties' children reaches age 18 or alimony terminates, whichever is later. During the period that the child support is due, the Respondent [Mr. Lopez] should be ordered to irrevocably designate the Petitioner [Ms. Welty], as trustee for the minor children, beneficiary on said life insurance policy. The Respondent [Mr. Lopez] should be ordered to provide the Petitioner [Ms. Welty] with proof that the insurance is in effect within 30 days of entry of the Divorce Decree and providing verification that said insurance is in effect by January 15th of each year thereafter.

R. 123, ¶ 24; R. 241, ¶ 4. Nowhere in the language of the Divorce Decree is PEHP named in any way or ordered to take any action. R. 116-24. This Court cannot now make up obligations for a non-party like PEHP nearly twenty years after the divorce. *See id.* The Weltys' remedy to enforce the Divorce Decree is similarly clear, they are to bring an order to show cause with the Court.⁴

³ PEHP did not and would not ignore a valid Court order that applied to it. In this case, PEHP did not ignore the Divorce Decree, it simply was not a party to the divorce proceedings and therefore was not ordered by the Court to take any action.

⁴ Interestingly, Ms. Welty obviously knew how to enforce the Divorce Decree since she filed for an order to show cause in November 1999. *See Appellants' Br.*, at 32 ("In November of 1999, Ms. Welty took the extraordinary step of paying the costs associated with moving the court for an order to show cause regarding violation of the decree of divorce."); R. 125. However, because Mr. Lopez was required provide verification of the

Furthermore, the Divorce Decree language was so factually deficient in regards to the life insurance Mr. Lopez maintained at the time of divorce, that it may not even apply to Mr. Lopez, let alone to PEHP. At the time of divorce, Mr. Lopez maintained \$100,000, not \$325,000, in life insurance with PEHP. R. 265, ¶ 9(d). Mr. Lopez admitted to the District Court in 1999 that he had at least one other life insurance policy, through Allstate Insurance, in addition to the PEHP coverage at the time of the divorce. *Id.* Because the Divorce Decree speaks in the singular regarding “a life insurance policy,” it is unclear whether the requirement in the Divorce Decree was on Mr. Lopez to maintain the PEHP policy, the Allstate policy, or some other policy that PEHP may be unaware exists. R. 123. Such an ambiguity cannot be said to create a duty upon PEHP to maintain a beneficiary of a policy that was not named and cannot be reasonably inferred from the language.

Additionally, the plain language of the Divorce Decree is unclear regarding what it actually ordered Mr. Lopez to do versus what Mr. Lopez “should be” ordered to do. The Divorce Decree never actually ordered Mr. Lopez to name a specific beneficiary, but only that he “should be ordered” to irrevocably designate Ms. Welty as beneficiary of the unnamed life insurance policy.⁵ Absent some additional, more specific order from the Court, even Mr. Lopez was not specifically ordered to create an irrevocable beneficiary, let alone PEHP having such a duty as a non-party. Indeed, if the Divorce Decree purports

life insurance policy annually, his failure to do so should have prompted Ms. Welty to take further action to enforce the Divorce Decree.

⁵ Contrast that language with the specific language in the divorce decree where Mr. Lopez “is ordered to maintain . . . said life insurance policy.” R. 264, ¶ 4.

to create some legal duty upon PEHP, it may have been a due process violation for the Court to order a non-party to perform certain actions in a civil matter absent notice and the right to appear. *See Dairy Product Servs. Inc. v. City of Wellsville*, 2000 UT 81, ¶ 49, 13 P.3d 581 (“The minimum requirements [of due process] are adequate notice and an opportunity to be heard in a meaningful manner.”).

Therefore, as a matter of law⁶ and on its face, the Divorce Decree did not require any action on the part of PEHP because PEHP was not a party and had no notice or opportunity to be heard in the divorce proceeding.

C. In the Alternative, Even If the Divorce Decree Was Incorporated into the PEHP Life Master Policy, This Merely Created an Ambiguity in the Contract Which Must Be Resolved in Favor of PEHP.

Despite the plain language of Utah Code section 49-11-609, which requires PEHP to pay the last named beneficiary, and section 49-11-610, which absolves PEHP from further liability if it pays the last named beneficiary, and despite the plain language in the PEHP Life Master Policy that an employee can “change his or her beneficiary . . . ,” in the alternative, even if this Court were to hold that the Divorce Decree was incorporated by reference into the PEHP Life Master Policy, this merely creates an ambiguity in the Policy. Such an ambiguity must be resolved through the Court’s contract construction

⁶ The cases that require payment of life insurance proceeds to a divorced ex-spouse are awarded in equity, and not as a matter of law. *See, e.g., Travelers Ins. Co. v. Lewis*, 531 P.2d 484 (Utah 1975); *Nielsen v. Nielsen*, 535 P.2d 1239 (Utah 1975); *Madsen v. Estate of Moffitt*, 542 P.2d 187 (Utah 1975). The Weltys seem to conflate the two at times in their brief arguing both that the Divorce Decree was incorporated into the agreement, and that Utah law requires the payment of proceeds to Welty in equity under common law. *See Appellants’ Br.*, at 20-23. Regardless of whether Appellants make an argument in equity or law, it makes no difference to the outcome here since PEHP prevails under either theory.

rules by looking to the intent of the parties which clearly show that Mr. Lopez did not intend to create an irrevocable beneficiary with PEHP.

Assuming *arguendo* that the Divorce Decree was incorporated into the PEHP Life Master Policy, this would result in a contract ambiguity.

A contractual term or provision is ambiguous “if it is capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial deficiencies.” . . . [C]ontractual ambiguity can occur in two different contexts: (1) facial ambiguity with regard to the language of the contract and (2) ambiguity with regard to the intent of the contracting parties.

Daines v. Vincent, 2008 UT 51, ¶ 25, 190 P.3d 1269 (quoting *WebBank v. Am. Gen. Annuity Serv. Corp.*, 2002 UT 88, ¶ 20, 54 P.3d 1139).

Moreover, in evaluating ambiguity within the plain meaning of a contract, a court will attempt to harmonize all of the contract's provisions and all of its terms. If, however, a court cannot resolve the problem by harmonizing ambiguous or conflicting terms, as a matter of law, then the court may properly conclude there is an ambiguity.

Lunceford v. Lunceford, 2006 UT App 266, ¶ 15, 139 P.3d 1073 (citations omitted).

Incorporation of the Divorce Decree would result in two conflicting provisions: First, the PEHP Life Master Policy plainly states, “A Subscriber may change his or her beneficiary(ies) by filing a written notice of the change with the Plan.” R. 300, Respt.’s Hr’g Ex. L, at 10. And second, in contrast, the Divorce Decree states, “24. . . . [Mr. Lopez] should be ordered to irrevocably designate [Ms. Welty], as trustee for the minor children, beneficiary on said life insurance policy. . . .” R. 240, ¶ 4.

This ambiguity would be resolved through the Court's contract construction rules by looking to the intent of the parties. "Insurance policies are contracts, and are interpreted under the same rules governing ordinary contracts." *Gee v. Utah State Ret. Bd.*, 842 P.2d 919, 920 (Utah Ct. App. 1992) (citing *Village Inn Apartments v. State Farm Fire & Cas. Co.*, 790 P.2d 581, 582 (Utah Ct. App. 1990)). The Utah Supreme Court has stated, "In interpreting a contract, the intentions of the parties are controlling." *Winegar v. Froerer Corp.*, 813 P.2d 104, 108 (Utah 1991). "When interpreting a contract, 'we look to the writing itself to ascertain the parties' intentions, and we consider each contract provision . . . in relation to all of the others, with a view toward giving effect to all and ignoring none." *Green River Canal Co. v. Thayn*, 2003 UT 50, ¶ 17, 84 P.3d 1134 (internal quotation omitted).

Looking to the intent of the parties, it is clear that neither Mr. Lopez nor PEHP intended to create an irrevocable beneficiary at any time. PEHP's intent is perfectly clear from the plain language of the PEHP Life Master Policy. As stated *supra*, the actual Master Policy language without the claimed incorporated Divorce Decree plainly states that the subscriber/employee can change their beneficiary designation.

This intent is further evidenced by the testimony of the PEHP Life and Accident Manager, Chris Lamkin ("Mr. Lamkin"), and the actions of PEHP. Mr. Lamkin testified at the hearing on cross examination:

Q Could there be information - a box check [on the PEHP beneficiary change form], so to speak, that made a beneficiary irrevocable?

A No. We - our beneficiaries are always revocable.

R. 299, HT at 34:25-35:2. Further, PEHP always acted as if the named beneficiary was revocable. Specifically, PEHP never made any statement that the beneficiary designation by Mr. Lopez was irrevocable. And PEHP accepted additional beneficiary designations from Mr. Lopez after the 1999 beneficiary designation, and ultimately paid the last designated beneficiary. R. 300, Respt.'s Hr'g Ex. F, and H. Appellants have nothing to show that PEHP intended to create an irrevocable beneficiary in Ms. Welty.

Similarly, Mr. Lopez's actions also show that he did not intend to create an irrevocable beneficiary. Neither Ms. Welty, nor her son, Jacob, ever testified at the hearing that Mr. Lopez had made a statement to them that he had made the beneficiary designation with PEHP irrevocable. All Jacob testified to was that his father told him that he wanted him to go to college. R. 299, HT 17:1-10 ("[Mr. Lopez] always had a big desire for like all of us to finish school, and go to college, be successful. . . . It's like he always wanted us to go to college. . . .").⁷ This statement is wholly unrelated to the life insurance beneficiary designation.

Because Mr. Lopez is deceased, there was no direct testimony from him as to whether he intended to create an irrevocable beneficiary. We only have his actions and the language of the contract. Given that Mr. Lopez changed his beneficiary after sending

⁷ Of note, the Weltys' equitable argument that Jacob bore the burden of PEHP's error utterly fails. The Weltys never provided any evidence or made any argument that they relied in any way on the PEHP life insurance proceeds to their detriment. Indeed, under a theory of equitable estoppel they would have to show that the sole reason for Jacob incurring student loans was in reliance on being paid the life insurance proceeds from Mr. Lopez. See e.g., *McLeod v. Ret. Bd.*, 2011 UT App 190, ¶ 21, 257 P.3d 1090 (ruling that member could not prevail against the Board on theory of equitable estoppel because he failed to prove a specific statement that was later repudiated). This they have not done.

the Divorce Decree to PEHP, it is clear that he did not believe that he had created an irrevocable beneficiary either. R. 300, Respt.'s Hr'g Ex. F, and H.

Because both PEHP and Mr. Lopez acted in accordance with Utah law and the PEHP Life Master Policy that a beneficiary could be changed at any time, any ambiguity in the contract must be interpreted to find that PEHP and Mr. Lopez intended all of Mr. Lopez's beneficiary designations to be revocable.

III. AS A MATTER OF EQUITY, PEHP SHOULD NOT BE HELD RESPONSIBLE TO PAY BENEFITS TWICE, PARTICULARLY WHEN THE WELTYS WAITED SIX YEARS TO BRING A CLAIM FOR MR. LOPEZ'S LIFE INSURANCE BENEFITS.

The Hearing Officer's ruling should be affirmed as a matter of law under both the statute and PEHP Life Master Policy as discussed *supra*. However, even if this Court were to review equitable claims and arguments, PEHP must still prevail. As a matter of equity, absent bad faith, a life insurer like PEHP is only required to pay on a policy once. *See, e.g., Crosby v. Crosby*, 986 F.2d 79, 83 (4th Cir. 1993) ("...an insurer is discharged from all subsequent liability when it makes good faith payments to a purported beneficiary without notice of any competing claims."). In addition, if the Weltys' delay of roughly six years from the date of Mr. Lopez's death in bringing a claim causes PEHP to pay twice, that would substantially harm PEHP and would set a precedent that causes hardship upon legitimate beneficiaries who would have to wait for years before payment of life insurance benefits.

A. The Hearing Officer's Ruling that PEHP Correctly Paid the Benefits Must Be Upheld Because PEHP's Good Faith Payment of Life Insurance Benefits to Mr. Lopez's Last Named Beneficiary Discharges It from Further Liability.

The common law across the country discharges and absolves insurers, such as PEHP, from any further liability for life insurance proceeds after making a payment in good faith to the last named beneficiary. Thus, the Hearing Officer correctly stated that PEHP properly paid these benefits to the last named beneficiary. R. 289-98. Both Federal and State Courts have held that there is a

. . . widespread principle that an insurer is discharged from all subsequent liability when it makes good faith payments to a purported beneficiary without notice of any competing claims. *Rogers v. Unionmutual Stock Life Insurance Co.*, 782 F.2d 1214 (4th Cir.1986); *Weed v. Equitable Life Assurance Society of U.S.*, 288 F.2d 463, 464 (5th Cir.1961); *Commire v. Automobile Club of Michigan Ins. Group*, 454 N.W.2d 248, 249 (Mich. Ct. App. 1990); *Kelly Health Care Inc. v. Prudential Ins. Co. of America, Inc.*, 309 S.E.2d 305, 306 n. 1 (Va. 1983); *Harper v. Prudential Ins. Co. of America*, 662 P.2d 1264, 1273 (Kan. 1983); *In re Estate of Thompson*, 426 N.E.2d 1 (Ill. App. Ct. 1981). Such a rule minimizes the chances for imposing double liability for mistaken, but good faith payments to a purported beneficiary.

Crosby, 986 F.2d at 83 (finding insurer acted reasonably in paying life insurance benefits to named beneficiary and absolving insurer from liability to ex-wife). The Weltys have never claimed that PEHP made payment to Mr. Lopez's last named beneficiary in anything but good faith. See R. 261-76; 299, HT 38:8-46:14; see also Appellant's Br., at 20-38. Indeed, they cannot make such a claim for bad faith for the first time now.⁸ Also,

⁸ "Generally, 'in order to preserve an issue for appeal the issue must be presented to the trial court in such a way that the trial court has an opportunity to rule on that issue.'" *Pratt v. Nelson*, 2007 UT 41, ¶ 15, 164 P.3d 366 (quoting *Brookside Mobile Home Park*,

it is undisputed that at the time PEHP paid the claim to Ms. Mary Ellen Lopez, the Weltys had not made any claim on the life insurance proceeds with PEHP or given PEHP any notice of a disputed claim. R. 245. As such, under the widespread common law rule, even if PEHP had made a mistaken payment and Ms. Welty is adjudged to have been the proper beneficiary, having paid in good faith, PEHP is absolved from any further payment.

The Utah Legislature has adopted a similar policy by statute in the Utah Insurance Code governing life insurance. Although as a self-insured, employer-sponsored life insurance program PEHP is not subject to the Utah Insurance Code,⁹ the Utah Insurance Code illustrates Utah's policy of protecting life insurance companies in paying benefits. As a policy matter, the principle in this provision can be applied to PEHP, particularly in regard to timely payment of claims. Utah Code section 31A-22-413(2)(a) states in relevant part, "... Notwithstanding section 75-2-804,¹⁰ the insurer discharges its obligation under the insurance policy or certificate of insurance if it pays the properly designated beneficiary unless it has actual notice of either an assignment or a change in beneficiary designation" Utah law discharges these insurers because Utah also requires significant interest to be paid by a life insurance company that does not pay a

Ltd. v. Peebles, 2002 UT 48, ¶ 14, 48 P.3d 968). Further, the Weltys cannot now make a new claim of bad faith in a reply brief. Utah Rules of Appellate Procedure 24(c) ("Reply briefs shall be limited to answering any new matter set forth in the opposing brief.").

⁹ See Utah Code Ann. § 31A-1-103(3)(f), "Except as otherwise expressly provided, this title does not apply to . . . self-insurance[.] . . ."

¹⁰ Utah Code section 75-2-804 creates a presumption, absent express terms to the contrary, revoking any revocable beneficiary designation to a former spouse at the time of divorce or annulment.

claim within 30 days from the date the insurer receives notice of the claim. *See* Utah Code Ann. § 31A-22-428(3) (requiring insurers to pay 10% interest on top of regular interest to beneficiaries after 30 days from employer receiving notice of death and claim). Thus, as a policy matter, Utah encourages life insurers to review and resolve claims in a timely manner, and then discharges insurers who do so from having to pay twice. This policy also protects legitimate beneficiaries from having to wait perhaps years to receive life insurance proceeds to see if some unnamed beneficiary may challenge the life insurance claim. Such a delay in paying life insurance claims would create an undue hardship on the life insurance company to pay additional interest, and particularly on legitimate beneficiaries that are not able to access such life insurance proceeds. As such, as a policy matter, life insurers like PEHP should be encouraged to adjudicate and decide claims in a timely manner.

In addition to such policy arguments, Courts in some cases have even refused to allow claimed beneficiaries to bring claims against insurers for double payment. For example, the Massachusetts Court of Appeals held, in *Green v. Green*,

The cases are legion in which wives or children who were removed as beneficiaries of life insurance policies in violation of the terms of separation agreements or divorce judgments have been permitted to recover the proceeds of such policies either from the improperly substituted beneficiaries *or, where the proceeds had not been paid out, from the insurers.*

Green v. Green, 433 N.E.2d 92, 93-94 (Mass. App. Ct. 1982) (emphasis added) (citations omitted) (awarding children of first marriage life insurance proceeds from widow after life insurer had paid last named beneficiary widow). Thus, only when the proceeds had

not already been paid out could a person seek a remedy from the insurer in equity. *See id.*

Rather than a remedy from PEHP, the Weltys' remedy is in equity against Mary Ellen Lopez, the last named beneficiary to whom PEHP paid the proceeds, or from the estate of Mr. Lopez, who was the one purported to be in contempt of the Divorce Decree. In fact, the Weltys have already brought suit against Mary Ellen Lopez in Utah District Court to recover the proceeds, but the claim appears to have been dismissed. *See Case History, Welty v. Lopez*, Case No. 120902041, dated Dec. 8, 2014, attached hereto as Appellee's Addendum F. Nevertheless, because PEHP had already paid out the proceeds of the insurance policy when the Weltys first made a claim against PEHP roughly six years following Mr. Lopez's death, PEHP cannot equitably be held responsible to pay out additional proceeds.

B. Utah Common Law Related to Life Insurance Under a Divorce Decree Only Adjudicates Between Competing Beneficiaries and Not Between an Insurer and a Potential Beneficiary.

Rather than a remedy from PEHP, the Weltys' remedy is in equity against Mary Ellen Lopez, the last named beneficiary to whom PEHP paid the proceeds, or from the estate of Mr. Lopez, who was the one purported to be in contempt of the Divorce Decree. Utah follows the general common law rule that a divorce decree can direct the distribution of life insurance proceeds between competing beneficiaries. *Travelers Ins. Co. v. Lewis*, 531 P.2d 484 (Utah 1975). However, the Weltys' attempt to extend the

Utah common law cases far beyond their actual holdings¹¹ and to impose duties on PEHP or other insurers through divorce decrees even though they were non-parties to the divorce proceeding should be rejected by this Court.

In *Travelers Ins. Co. v. Lewis*, Travelers Insurance Company brought an interpleader action between competing beneficiaries, the children of the deceased from his first marriage, and the current widow. The Court held that in equity (not in law), a divorce decree “should control the disposition of an insurance policy *between contending beneficiaries*.” 531 P.2d at 485-86 (emphasis added). The Court then awarded the proceeds of the life insurance policy to the deceased’s children from his first marriage. *See id.* at 485 n.1. Thus, *Travelers*, far from requiring a life insurer like PEHP to pay both the named beneficiary and the beneficiary under a divorce decree, holds only that, in equity, a divorce decree can direct the original payment of life insurance benefits between contending beneficiaries. *See also Nielsen v. Nielsen*, 535 P.2d 1239 (Utah 1975) (splitting life insurance benefit between ex-wife and widow where the amount of life insurance was more than the amount available at divorce); *Madsen v. Estate of Moffitt*, 542 P.2d 187 (Utah 1975) (allowing ex-wife a portion of life insurance proceeds up to the

¹¹ The Weltys’ brief makes many broad questionable statements regarding the common law in Utah, such as, “The Life Program was in the best position, and were [sic] obligated to enforce the contractual rights established by the decree of divorce.” Appellants’ Br., at 31. However, Appellants cite no authority for such a position, and PEHP believes there is none. The Weltys later similarly stated, “Life insurance programs . . . bear the risk of double payment if they pay a beneficiary that replaced an irrevocable beneficiary designation.” *Id.* at 33. Again, no authority is provided, and this is similarly untrue. *See Crosby v. Crosby*, 986 F.2d 79, 83 (4th Cir. 1993) (“ . . . an insurer is discharged from all subsequent liability when it makes good faith payments to a purported beneficiary without notice of any competing claims.”).

amount held at the time of divorce). The Weltys are simply incorrect with regard to PEHP when they state, “Utah law dictates that when a divorce decree orders that a beneficiary be irrevocable, subsequent changes of beneficiary are forbidden. . . . Utah contract law binds [PEHP] to perform in light of the terms of the decree of divorce submitted by Mr. Jesse Lopez.” Appellants’ Br., at 28-29. The implication is that the life insurer cannot accept any additional beneficiary changes after the divorce decree. This is not factually correct in any of the Utah cases as all involved situations when the beneficiary was changed. *See, e.g., Nielsen*, 535 P.2d 1239; *Madsen*, 542 P.2d 187. Of course a person ordered to maintain a certain beneficiary CAN change that beneficiary, it just means that they may be held in contempt for doing so by the divorce court. *Id.* Thus, a more correct way to phrase the Court’s holdings under the Utah cases would be— Parties to a divorce that are ordered to maintain beneficiaries on life insurance policies are forbidden from changing their beneficiary designations or risk being held in contempt of court for violating the decree of divorce.

In harmony with the Utah cases, both legal scholars and other courts have recognized that when a court orders a beneficiary to be designated in a divorce decree, that this does not bind the life insurer.

. . . [S]omething like irrevocability [of a life insurance beneficiary] can result when the owner of the policy promises, or is ordered by a court, to designate a certain person as beneficiary, and not to change the designation thereafter. *Such mandates involve only the owner, not the insurer[.]* . . . Of course, since the insurer is not involved, it may not be bound by the promise, or order, if the owner fails to name the appropriate beneficiary, or subsequently changes that designation

Kelvin H. Dickinson, *Divorce and Life Insurance: Post Modern Remedies for Breach of a Duty to Maintain a Policy for a Designated Beneficiary*, 61 Mo. L. Rev. 533, 537 (1996) (emphasis added). After finding that the ex-spouse had an equitable interest in a life insurance policy of the insured, the New York Court of Appeals articulated the rule that, "This is not to say that an insurance company may not rely on the insured's designation of a beneficiary. *None of this opinion bears on the rights or responsibilities of the insurer in law or in equity.*" *Simonds v. Simonds*, 380 N.E.2d 189, 192 (N.Y. 1978) (emphasis added). In other words, the divorce decree does nothing to bind the insurer, but only splits the benefits in equity between the competing beneficiaries.

Even in the Weltys' cited cases from other state jurisdictions that support the Utah common law,¹² the Weltys did not point to one case that found divorce decrees binding

¹² See Appellant's Br., 21 n.3, citing *Rollins v. Metropolitan Life Ins. Co.*, 912 F.2d 911, 917 (7th Cir. 1990) (holding under Indiana law that as between competing beneficiaries, unpaid life insurance proceeds in an amount existing at the time of divorce decree were properly placed in an equitable constructive trust for children of first marriage); *Tintocalis v. Tintocalis*, 25 Cal. Rptr. 2d 655, 659 (Cal. Ct. App. 1993) (holding that estate of deceased was liable to ex-wife for the value of life insurance proceeds defined in divorce under equitable constructive trust); *Reeves v. Reeves*, 223 S.E.2d 112, 115 (Ga. 1976) (determining between competing beneficiaries to allow minor children to receive unpaid life insurance proceeds in amounts in force on date of divorce); *Appelman v. Appelman*, 410 N.E.2d 199, 202-03 (Ill. App. Ct. 1980) (recognizing a cause of action for "imposition of a constructive trust upon the recipient of life insurance proceeds to which the plaintiff has an equitable claim"); *Simonds v. Simonds*, 380 N.E.2d 189, 195 (N.Y. 1978) (holding named beneficiaries liable to ex-wife under theory of constructive trust when insurer had already paid life insurance proceeds to beneficiaries); *McKissick v. McKissick*, 560 P.2d 1366, 1368-69 (Nev. 1977) (concluding that life insurance proceeds received by second wife were held in constructive trust for the benefit of first wife and children pursuant to divorce decree); *Thomas v. Studley*, 571 N.E.2d 454, 459-60 (Ohio Ct. App. 1989) (holding estate of deceased liable to ex-wife on behalf of minor child for

on the life insurer itself or that require a life insurance company to twice pay proceeds to competing beneficiaries. As such, PEHP requests this Court to uphold the common law by finding that divorce decrees apply only to the parties to the divorce, but do not bind non-parties, like PEHP, to create irrevocable beneficiaries.

C. The Equities Favor PEHP Because the Weltys' Almost Six-Year Delay in Making a Claim Created an Irreparable Harm to PEHP in Reasonably Evaluating Their Claim.

As a matter of law, PEHP paid the correct last named beneficiary of Mr. Lopez. However, even if this Court determines that PEHP paid the incorrect beneficiary, the Weltys' roughly six-year delay in bringing a claim for life insurance benefits prevented PEHP from timely investigating the Weltys' claims prior to payment.

Mr. Lopez died on July 9, 2006. R. 243, ¶ 14. On July 26, 2006, PEHP received a claim from Mary Ellen Lopez. *Id.* ¶ 16. Having received no other claim on the benefits, PEHP paid the life insurance benefit to Mary Ellen Lopez, the last named beneficiary, on or about August 2, 2006. R. 243-44, ¶ 17. The very first contact the Weltys made with PEHP after Mr. Lopez's death was on May 1, 2012, nearly six years later. *See id.* ¶ 20. The Weltys made no claim at the hearing or in their brief that they did not know that Mr. Lopez had died, nor that they were unaware of the life insurance policy. Indeed, Ms. Welty admits to talking to Ms. Mary Ellen Lopez just after the death about payment of the life insurance proceeds to Ms. Welty on behalf of Jacob. R. 300, Respt.'s Hr'g Ex. M, ¶¶ 1-2. The only excuse offered by Ms. Welty in failing to timely file a notice of

amounts of life insurance awarded in divorce decree); excluding Utah cases discussed *supra*.

claim with PEHP was that she was told by Mary Ellen Lopez “that [Mary Ellen Lopez] had discussed the issue with her attorney, and that she did not have to pay any money to Jacob, but merely had to list Jacob on the title to her condo.” *Id.* at ¶ 2.¹³ As a matter of equity, failure to even assert a claim against PEHP within nearly six years of the death is not what a reasonably diligent person would do to perfect a claim for life insurance benefits.

In equity, PEHP should not be punished by having to pay the life insurance benefits twice due to the Weltys’ failure to bring a timely claim. An evaluation of this equitable factor is akin to the common law doctrine of laches. “‘The equitable doctrine of laches is founded upon considerations of time and injury. Laches in legal significance is not mere delay, but delay that works a disadvantage to another.’” *Insight Assets, Inc. v. Farias*, 2013 UT 47, ¶ 17, 321 P.3d 1021 (quoting *Mawhinney v. Jensen*, 232 P.2d 769, 773 (Utah 1951)). “Laches is ‘based upon [the] maxim that equity aids the vigilant and not those who slumber on their rights.’” *Id.* (quoting *CIG Exploration, Inc. v. State*, 2001 UT 37, ¶ 14, 24 P.3d 966 (alteration in original)). “[L]aches has two elements: (1) a party’s lack of diligence and (2) an injury resulting from that lack of diligence.” *Id.* ¶ 19 (quoting *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg*, 2010 UT 51, ¶ 27, 238 P.3d 1054 (alteration in original)).

¹³ This certainly begs the question as to whether the parties to the divorce had worked out a different arrangement outside the decree of divorce in regards to Mr. Lopez’s life insurance obligations. It is certainly possible that Mr. Lopez promised Jacob the “condo” in exchange for changing the beneficiary on his PEHP life insurance. Nevertheless, this again highlights the impossible nature of an insurance company like PEHP being put in a position to enforce a divorce decree when the company was not a party to the divorce proceedings.

The principle embodied in the doctrine of laches directly applies to and prevents the Weltys' equitable claim. The Weltys failed to take any action with respect to Mr. Lopez's life insurance until nearly six years following Mr. Lopez's death. This certainly shows a lack of diligence when the filing of a claim would have sufficed to put PEHP on notice of a potential claim. Further, PEHP would be injured due to the Weltys' lack of diligence if it has to pay the benefit twice due to the Weltys' neglect when it only received premium for one life insurance benefit. Thus, the Weltys' equitable or public policy arguments should be rejected under the doctrine of laches because the Weltys waited nearly six years before attempting to bring a life insurance claim following the death of Mr. Lopez.

In sum, the Weltys provide no equitable reason for this Court to disturb the Hearing Officer's ruling. Under the common law, absent bad faith, an insurance company like PEHP cannot be held to pay the benefit twice. Utah cases support this position that divorce decrees may adjudicate life insurance rights between competing beneficiaries, but do not apply to non-party insurers. Furthermore, even considering the equities in this case, the equities fall in PEHP's favor because the Weltys waited roughly six years prior to asserting a claim for benefits against PEHP.

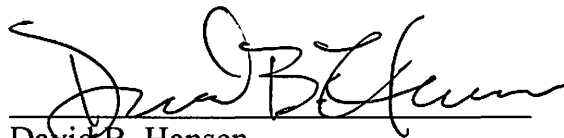
CONCLUSION

The Hearing Officer's Order that PEHP properly paid the last named beneficiary should be affirmed in both law and equity. Utah statutes specifically require PEHP to pay the last named beneficiary and then absolve PEHP, upon payment, from any additional liability. The PEHP Life Master Policy does the same. Thus, when PEHP

paid the last named beneficiary, it was released from any further liability as a matter of law. The Weltys' attempt to incorporate the Divorce Decree into the PEHP Master Policy fails because the language is not clear and unequivocal, and the Divorce Decree terms were never consented to by PEHP.

In addition, even if this Court were to only look at the equities of the matter, PEHP should not be required to pay the life insurance benefit twice because it paid the claim in good faith. PEHP takes no position regarding the relative fairness of what Mr. Lopez did with his beneficiary designations with PEHP. Perhaps Mr. Lopez violated the terms of the Divorce Decree. But the Weltys' remedy for any alleged violation of the Divorce Decree is against the named beneficiary who received the proceeds or the estate of Mr. Lopez. PEHP cannot be held liable for someone else's alleged failure to discharge their duty. The equities fall in PEHP's favor since the Weltys waited almost six years after the death of Mr. Lopez to put PEHP on notice of their competing claim. For the foregoing reasons, PEHP requests that the Hearing Officer's Order, approved by the Board, be affirmed.

Respectfully submitted this 24th day of February, 2016.




David B. Hansen
Associate General Counsel
Utah Retirement Systems

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because:
 - ☒ this brief contains 13,716 words, excluding the parts of the brief exempted by Utah R. App. P.24(f)(1)(B), or
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Dated this 24th day of February, 2016.

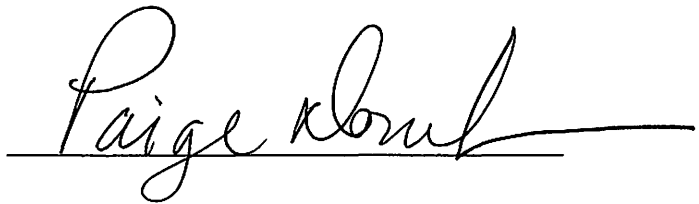


DAVID B. HANSEN
Associate General Counsel
Utah State Retirement Systems

CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of February, 2016, I mailed two (2) true and correct copies of the above **Brief of Appellee Utah State Retirement Board**, to the following:

Diana J. Huntsman
Steven M. Rogers
Chelsey Phippen
HUNTSMAN | LOFGAN
623 East Fort Union Blvd., Suite 201
Midvale, UT 84047
Attorneys for Appellants

A handwritten signature in cursive script, reading "Paige Boulton", written over a horizontal line.

ADDENDUM

Findings of Fact, Conclusions of Law, and OrderA

PEHP Group Term Life & Group Accident Plan Master Policy (relevant portions)B

Utah Code Ann. § 49-11-609C

Utah Code Ann. § 49-11-610D

Case History, *Welty v. Lopez*, Case No. 120902041E

ADDENDUM A

Prepared by:

LIZA J. EVES [9660]
ERIN L. GILL [13010]
HOWARD, LARSEN, HANSEN & EVES, LLC
Attorneys for Respondent
560 East 200 South, Suite 230
Salt Lake City, UT 84102
Telephone: (801) 320-4040
Fax: (801) 366-7706
Email: LIZA@HLHELAW.COM

BEFORE THE UTAH STATE RETIREMENT BOARD	
DIANE WELTY AND JACOB LOPEZ, Petitioners, v. UTAH STATE RETIREMENT BOARD, PUBLIC EMPLOYEES' GROUP TERM LIFE PROGRAM, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER File #: 13-12L Hearing Officer: J. Dennis Frederick

A hearing was held on July 16, 2015, before the Adjudicative Hearing Officer on Petitioners' Request for Board Action. Petitioners, Diane Welty and Jacob Lopez, were represented by Scott M. Rogers with Huntsman Lofgran, and Respondent, the Utah State Retirement Board ("USRB"), Public Employees' Health Program's ("PEHP") Group Term Life Program ("Life Program"), was represented by Liza J. Eves with Howard, Larsen, Hansen & Eves, LLC. Based upon the testimony given, the evidence received and the legal memoranda submitted, the Adjudicative Hearing Officer issued a Ruling on July 16, 2015, and requested that counsel for the PEHP Life Program prepare an order. The Adjudicative Hearing Officer now makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Parties stipulated to the following facts in writing prior to the hearing:

1. Jesse Gavino Lopez ("Mr. Lopez") was employed by Salt Lake City Corporation ("City") and was covered by a group term life insurance policy offered to City employees through the Public Employees' Health Program ("PEHP") Life Program.

2. Mr. Lopez, and petitioner, Diane Welty ("Ms. Welty") were married in August 1978 and divorced in October 1997.

3. On October 29, 1997, a Decree of Divorce was ordered by Judge Pat B. Brian of the 3rd District Court of Salt Lake County, Utah.

4. In the Decree of Divorce, Mr. Lopez was ordered as follows:

24. That the Respondent currently has in force and effect a life insurance policy on his life in the face amount of \$325,000.00. That Respondent is ordered to maintain in full force and effect said life insurance policy until such time as the last of the parties' children reaches age 18 or alimony terminates, whichever is later. During the period that the child support is due, the Respondent should be ordered to irrevocably designate the Petitioner, as trustee for the minor children, beneficiary on said life insurance policy. The Respondent should be ordered to provide the Petitioner with proof that the insurance is in effect within 30 days of entry of the Divorce Decree and providing verification that said insurance is in effect by January 15th of each year thereafter.

5. In July 1999, Mr. Lopez had coverage of \$173,000.00 with the Life Program, of which \$50,000.00 was funded by the City and the rest funded by Mr. Lopez.

6. On December 3, 1999, PEHP received a Group Term Life Application from Mr. Lopez dated on or about November 29, 1999. The application indicated that Mr. Lopez was applying for \$300,000.00 in Basic Group Term Life Coverage. The application named Diane (petitioner) for minor children as per attached divorce decree and Mary Ellen Lopez his wife as secondary beneficiary. Mr. Lopez's request for additional coverage was cancelled in December 1999 based upon contact from the City's Human Resources Department.

7. On December 3, 1999 the Life Program received a Beneficiary Change Form signed by Mr. Lopez on November 29, 1999 which listed Petitioner, "Diane (petitioner) for minor children as per attached divorce decree" as primary beneficiary and Mary Ellen Lopez his wife as secondary beneficiary.

8. The Life Program received a written copy of the Decree of Divorce entered by the Third District of the State of Utah on October 29, 1997 attached to the Beneficiary Change Form submitted by Mr. Lopez on or about December 3, 1999.

9. In a Verified Response to Petitioner's Order to Show Cause signed by Mr. Lopez on December 6, 1999, Mr. Lopez provided the following:

- a. On or about the 31st day of October, 1997 this Court entered a Decree of Divorce based upon the entry of Respondent's default.
- b. The Decree of Divorce contained a number of misstatements of fact, some even inconsistent with the terms of the Petition from which the default was taken. Respondent was not provided with a copy of the Decree of Divorce until long after the time to set the default had expired under Rule 60(b), U.R.C.P.
- c. In reality Respondent never had a life insurance policy on his life with a face amount of \$325,000.00.
- d. At the time of divorce Respondent owned two policies. The first was a basic term policy offered through his employment for approximately \$100,000. The second was a universal life insurance policy offered through Allstate Insurance which insured his life for only \$50,000.00, and which also insured the life of Petitioner for \$50,000.00. (See Exhibit "A") [Exhibit not included]. Thus, Respondent's factual burden to carry insurance has always been approximately \$150,000.00.

10. On July 24, 2003, the Life Program received an Additional Group Term Life Employee Enrollment Form signed by Mr. Lopez on or about July 15, 2003. Mr. Lopez applied for additional coverage up to \$300,000. The designated primary beneficiary was Petitioner Diane Lopez, his ex-wife for minor child \$300,000 per divorce decree and his son Petitioner Jacob Lopez as contingent beneficiary. This beneficiary change form also reflects Jacob Lopez's date of birth as

August 27, 1988. However, Mr. Lopez did not complete underwriting requirements, and he was never issued the additional coverage.

11. In addition to the Additional Group Term Life Employee Enrollment Form on July 24, 2003, PEHP received a Beneficiary Change Form signed on or about July 15, 2003, by Mr. Lopez. The form revoked any previous nominations of beneficiary(ies) and designated Mary Ellen Lopez his wife and his ex-wife Diane Lopez petitioner for minor child as primary beneficiaries.

12. On October 24, 2003, PEHP received a Group Term Life Change Form signed by Mr. Lopez on or about October 21, 2003. The form stated in relevant part: "Revoking any previous nomination or beneficiary(ies), I hereby designate the following individuals to receive all benefits payable upon my death." Mr. Lopez designated Mary Ellen Lopez, his wife, as primary beneficiary and Joshua G. Lopez, his son, as contingent beneficiary.

13. On March 20, 2006, PEHP received a Group Term Life/Accident Plan Beneficiary Change Form signed by Mr. Lopez on or about March 13, 2006. The form stated in relevant part: "Revoking any previous nomination or beneficiary(ies), I hereby designate the following individuals to receive all benefits payable upon my death." Mr. Lopez designated Mary Ellen Lopez his wife as primary beneficiary.

14. Mr. Lopez died on July 9, 2006.

15. Jacob Lopez was 17 years old at the time of Mr. Lopez's death.

16. On July 26, 2006, PEHP received a Group Term Life Program Claimant's Statement from Mary Ellen Lopez.

17. On or about August 2, 2006, PEHP issued a check in the amount of \$173,000.00 to Mary Ellen Lopez, the beneficiary designated on the Group Term Life/Accident Plan Beneficiary Change Form signed by Mr. Lopez on or about March 13, 2006.

18. The Life Program Group Term Life Master Policy ("Master Policy") is the contract between the Life Program and its covered members.

19. The Master Policy states:

PAYMENT OF BENEFITS

If a Subscriber and/or Dependent dies, the Plan will pay to the beneficiary, subject to the provisions set forth herein, the amount of coverage for which the Subscriber and/or Dependent is covered.

...

PAYMENT OF BENEFITS

All benefits will be payable to the beneficiary. . . . Any payment made in good faith pursuant to this provision fully discharges the Plan to the extent of the payment.

...

BENEFICIARY

A Subscriber shall designate a primary beneficiary and a contingent beneficiary at the time of application for coverage. A Subscriber may change his or her beneficiary(ies) by filing a written notice of the change with the Plan. The change will take effect as the date the Subscriber signed the notice of change . . . Any payment made by the Plan in good faith pursuant to this provision shall fully discharge the Plan to the extent of such payment.

...

MODIFICATION

No change in this Master Policy shall be valid unless approved by the Plan and unless approved by the Plan and unless such approval is evidenced by endorsement or amendment to this Master Policy. No agent has authority to change this Master Policy or waive any of its provisions.

...

NOTICE OF CLAIM

A written notice of claim must be given to the Plan within (20) days after the death of a Subscriber and/or Dependent unless it was not reasonably possible to do so. Notice given by or on behalf of a Subscriber and/or Dependent or his beneficiary if any, to the Plan at its office in Salt Lake City, Utah, with information sufficient to identify the Subscriber and/or Dependent, shall be deemed notice to the Plan.

...

TIME OF PAYMENT OF BENEFITS

Benefits payable hereunder will be paid as soon as reasonably possible after receipt of an acceptable written proof of loss together with all supporting materials. . . .

...

PAYMENT OF BENEFITS

All benefits will be payable to the beneficiary. If any payment remains unpaid at

the death of the beneficiary, or if the beneficiary is a minor or is, in the opinion of the Plan, legally incapable of giving a valid receipt and discharge for any payment, the Plan, at its option, may pay such benefit to any relative or relatives by blood or connection by marriage of the Subscriber and/or Dependent who is deemed by the Plan to be equitably and legally entitled to receive the payment. Any payment made in good faith pursuant to this provision fully discharges the Plan to the extent of the payment. . . .

...
LEGAL ACTION

No legal action may be brought against the Plan for unpaid benefits until at least sixty (60) days after written proof of loss has been furnished in accordance with the requirements stated above. No legal action may be brought after the expiration of three years after the time written proof of loss is required to be furnished.

...
ENTIRE CONTACT

This Master Policy, any modifications to it, and the written statements, if any, of Subscribers, constitute the entire contract.

20. On August 28, 2012, Petitioner, Ms. Welty submitted a notice of claim to the Life Program in which she presented a dispute regarding the distribution of Mr. Lopez's life insurance coverage.

21. Ms. Welty indicated that Mr. Lopez had a life insurance policy with Allstate Life Insurance in the amount of \$300,000.00 on or about October 29, 1997.

22. Pursuant to Utah Code Ann. § 49-11-618 "All data in the possession of the office is confidential, and may not be divulged by the office except as permitted by board action." Petitioners were not, and could not be, supplied with beneficiary designation information until they brought this request for board action.

23. On or about May 1, 2012, Diane Welty and Jacob Lopez served a summons and complaint to Utah Retirement Services and PEHP in Third District Court to recover life insurance proceeds paid by PEHP through the Group Term Life Plan to Mary Ellen Lopez the designated beneficiary of Mr. Lopez. Mary Ellen Lopez was also named as a Defendant in this action.

24. On September 19, 2012, the action brought in Third District Court against PEHP was

dismissed without adjudication because the Court lacked subject matter jurisdiction over the claims against PEHP. In a Declaration submitted in the Third District Court, Petitioner, Ms. Welty indicated the following: "1. Shortly after the death of my ex-husband, Mr. Lopez, I contacted Mrs. Lopez regarding the life insurance proceeds for my minor son, Jacob Lopez. 2. Mrs. Lopez told me that she had discussed the issue with her attorney, and that she did not have to pay any money to Jacob, but merely had to list Jacob on the title to her condo."

25. Petitioners filed an Amended Request for Board Action on April 5, 2013.

26. On September 3, 2013 Respondents waived all arguments relating to barring claims pursuant to an applicable statute of limitations.

CONCLUSIONS OF LAW

1. Petitioners brought this action under Utah Code Ann. § 49-11-613(4) which states, "The moving party in any proceeding brought under this section shall bear the burden of proof."
2. PEHP is governed by Title 49, Chapter 20 of the Utah Code.
3. The PEHP Life Program Master Policy is the contract between PEHP's Life Program and its covered members.
4. Petitioners' Request for Board Action in this matter is a legal dispute distinguishable from an equitable dispute.
5. Pursuant to the Master Policy, the Life Program paid proceeds to the designated beneficiary listed on Mr. Lopez's Beneficiary Change Form, dated March 20, 2006. The LTD Program followed the procedures for the payment of life proceeds in accordance with the Master Policy terms created by statutory frame work.
6. Petitioners did not meet their burden of proof that there was an error or legal defect in how the Life Program paid the beneficiary proceeds to Mary Ellen Lopez.

ORDER

IT IS HEREBY ORDERED that Petitioners' request for the payment of life insurance proceeds because the Life Program paid the wrong beneficiary is denied.

BOARD RECONSIDERATION

Within ten (10) days of a Board order, any party may file a written request for reconsideration stating the specific grounds upon which relief is requested as set forth in Utah Code Ann. § 49-11-613. This filing for reconsideration is not a prerequisite for seeking judicial review of the order on review. The request for reconsideration shall be filed with the Board and one copy sent by mail to each party by the person making the request. The Board chairman or executive director shall issue a written order granting or denying the request within twenty (20) days of receipt. If no order is issued within twenty (20) days, the request is denied.

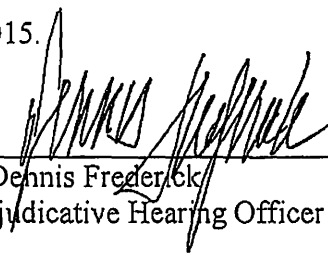
JUDICIAL REVIEW

If any party is aggrieved with the final Board order, that party may seek a judicial review within thirty (30) days after the date that the order constituting final Board action is issued. The appealing party shall name the Board and all other appropriate parties as respondents. The Utah Court of Appeals has jurisdiction to review all final Board actions resulting from formal proceedings. All parties shall follow the procedures established in Utah Code Ann. § 63G-4-101 et. seq.

APPROVED AS TO FORM:

Steven M. Rogers, Counsel for Petitioner

DATED this 5th day of Aug., 2015.


J. Dennis Frederick
Adjudicative Hearing Officer

The foregoing Findings of Fact, Conclusions of Law, and Order of the Adjudicative Hearing Officer are hereby adopted as the Order of the Utah State Retirement Board.

Dated this 18th day of August, 2015.

UTAH STATE RETIREMENT BOARD

BY 

Richard K. Ellis, Board President

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of August, 2015, I mailed a true and correct copy of the above **Finding of Facts and Conclusions of Law and Order**, postage pre-paid, to the following:

Steven M. Rogers
HUNTSMAN | LOFGRAN
623 East Fort Union Blvd., Suite 201
Midvale, Utah 84047

Liza Eves
Howard, Larsen, Hansen & Eves, LLC
560 East 200 South, Suite 230
Salt Lake City, Utah 84102

Luanne Miskin

ADDENDUM B



www.pehp.org

Group Term Life & Group Accident Plan

Master Policy



SELF-FUNDED AND ADMINISTERED GROUP TERM LIFE and ACCIDENT PLAN MASTER POLICY

This Term Life and Accident Plan is created for its insureds, pursuant to the terms and conditions of Title 49, Chapter 20 of the Utah Code Annotated. This Master Policy establishes the coverage and benefits available to Employees and their eligible Dependents. The provisions of these coverages are set forth in detail on subsequent pages.

GENERAL DEFINITIONS

Act Of Terrorism

Means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear. An Act of Terrorism is a Catastrophic Event under this Master Policy.

Act Of War

War, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power. An Act of War is not a Catastrophic Event under this Master Policy.

Catastrophic Event

Means all individual losses arising out of and directly occasioned by one sudden, unexpected, unusual specific event occurring at an identifiable time and place. However, the duration and extent of any such event shall be limited to 72 consecutive hours and within a 100 mile radius for any such event hereunder, and no individual loss which occurs outside such period and/or radius shall be included in that Catastrophic Event. PEHP may choose the date and time when such period of consecutive hours commences and also the specific 100 mile radius determining an event. If any event is of greater duration than the above period, PEHP may divide that event into two or more events, provided that no two periods overlap and provided no period commences earlier than the date and time of the first recorded individual loss to PEHP arising out of the event.

Coverage

The eligibility of a Subscriber and/or Dependent to benefits provided under this Master Policy, subject to the terms, conditions, Limitations and Exclusions of this Master Policy. Benefits must be provided, a) when this Master Policy is in effect; b) prior to the date that any individual termination condition occurs.

Dependent

1. The Subscriber's lawful spouse.
2. Children or stepchildren of the Subscriber that are not and have never been married up to the age of 26 who have a Parental Relationship with the Subscriber.
3. Unmarried legally adopted children, foster children, and children through legal guardianship up to the age of 26 are eligible subject to PEHP receiving adequate legal documentation. (Legal guardianship must be court appointed.)
4. Unmarried children who are incapable of self support because of an ascertainable mental or physical impairment, upon attaining age 26, may continue Dependent Coverage, while remaining totally disabled, subject to the Subscriber's Coverage continuing in effect. Periodic medical documentation is required. Insured must furnish written notification of the disability to PEHP no later than 31 days after the date the Coverage would normally terminate. In the notification, the Insured shall include the name of the Dependent, date of birth, a statement that the Dependent is unmarried, and details concerning:
 - The condition which led to the Dependent's physical or mental disability;
 - Income, if any, earned by the Dependent; and
 - The capacity of the Dependent to engage in employment, attend school, or engage in normal daily activities.

- If proof of disability is approved, the Dependent's Coverage may be continued as long as he/she remains totally disabled and unable to earn a living, and as long as none of the other causes of termination occur (e.g. marriage). Proof of the Dependent's continued disability may be required periodically by PEHP.

5. Stepchildren who no longer have a Parental Relationship with a Subscriber will no longer be eligible to receive benefits under this Group Plan.
6. Dependent does not include an unborn fetus.

Employee

An Employer's Employee who is eligible to enroll in the Group Term Life and Accident Plan.

Employer

The State, its educational institutions and political subdivisions that are eligible to participate and have elected to participate in the Public Employee's Benefit and Insurance Program of Title 49, Chapter 20 of the Utah Code Annotated.

Enrollment

The process whereby an Employee makes written application for Coverage through PEHP, subject to specified time periods and policy provisions.

Nuclear, Chemical, Biological Terrorism

Means an event in any way caused or contributed by an act of terrorism involving the use or release or the threat thereof of any nuclear weapon or device or chemical or biological agent. Nuclear, Chemical or Biological Terrorism is not a Catastrophic Event under this master policy.

Parental Relationship

The relationship between a natural child or stepchild and a parent while the child or stepchild is dependent on the parent for insurance. Example-the stepfather has coverage on a child then divorces the child's natural mother. The stepfather no longer has a Parental Relationship with the child.

Plan

This plan of coverage administered by the Public Employees Health Program.

Subscriber

An Employer's Employee who has enrolled for Coverage in the Group Term Life and/or Accident Plan.

SECTION I

GROUP TERM LIFE DEFINITIONS

Accelerated Benefit

The amount of group coverage which will be paid in advance of a Subscriber's death if the Subscriber is terminally ill.

Evidence Of Insurability

Evidence that an Employee enrolling for coverage meets the underwriting requirements of the Plan.

Line-Of-Duty Death

A death resulting from external force, violence, or disease occasioned by an act of duty as an employee.

Terminally Ill

A person is terminally ill if he or she has been diagnosed by a physician as having a medical condition which causes the Employee or Subscriber to have a life expectancy of 18 months or less from the date of the diagnosis. The Subscriber must provide the Plan satisfactory proof of the limited life expectancy. Such proof must include certification by a physician. The Plan reserves the right to obtain a medical opinion from a second physician at its own expense.

SECTION II

GROUP TERM LIFE SCHEDULE OF BENEFITS

EMPLOYEE MINIMUM TERM COVERAGE

Employee minimum Term Coverage is funded exclusively by the Employer. Coverage is available in amounts up to \$50,000, subject to an automatic 50% reduction at age 71 and again at age 76.

Line-of-Duty Death Benefit: If a Subscriber suffers a "Line-of-duty Death" the Plan will pay to the beneficiary, subject to the provisions set forth herein, a lump sum in the amount of \$50,000.

Accident Benefit Rider – An employee who is killed in an accident will be eligible for an additional \$10,000 benefit, subject to the provisions of the Public Employees Health Program Group Accident Plan.

EMPLOYEE BASIC TERM COVERAGE

Employees enrolled in Minimum Term Coverage may enroll in Basic Term Coverage. Employee Basic Term Coverage is funded exclusively by the Employee at rates to be determined by the Public Employees Health Plan. Employee Basic Term Coverage is available to Employees without Evidence of Insurability if applied for within 60 days of employment. Evidence of Insurability will be required if Employee Basic Term Coverage is applied for after the 60 day time period. Employee Basic Term Coverage is subject to automatic reductions at ages 71 and 76.

EMPLOYEE ADDITIONAL TERM COVERAGE (OPTIONAL)

Eligible Subscribers may select optional coverage amounts, subject to underwriting requirements. If a Subscriber covered by the Plan is also covered as a Spouse under Dependent coverage, the maximum cumulative coverage for any individual is \$450,000. The maximum coverage for a spouse who is not an Employee is \$450,000.

Coverage amounts are subject to automatic reduction at age 71 and again at age 76 in amounts determined by the Public Employees Health Plan.

Evidence of Insurability will be required before coverage will be issued for Additional Term Coverage. The Plan has the right, if the Evidence of Insurability is not satisfactory, to decline coverage to the Subscriber and/or Dependents.

SPOUSE AND DEPENDENT TERM COVERAGE

Subscriber may enroll Spouse and/or Dependents in Dependent Term Coverage as follows:

- Spouse - Subscriber may enroll for Spouse Coverage in amounts from \$5,000 to \$450,000.

Coverage amounts are subject to automatic reduction at age 71 and again at age 76 in amounts determined by the Public Employees Health Plan.

- Children - Subscriber may enroll for Dependent Child Coverage for up to \$10,000.

Coverage for newborns is limited to \$1,000 up to age 6 months. The maximum Child Coverage is \$10,000 per eligible subscriber.

Underwriting Requirements

A Spouse may be enrolled in up to \$15,000 of Spouse Term Coverage within sixty (60) days of the Subscriber's date of hire without providing Evidence of Insurability.

A Spouse may apply for higher levels of coverage, which requires providing Evidence of Insurability.

A Subscriber who does not apply for coverage for his or her Spouse or Dependents within sixty (60) days from the date of their eligibility, must furnish, at Subscriber's own expense, satisfactory evidence of the Dependent's insurability before the Dependent can obtain coverage. The Plan has the right, if the Evidence of Insurability is not satisfactory, to decline coverage to the Spouse or Dependents.

GROUP TERM LIFE ACCELERATED BENEFIT

Coverage Clause

If a Subscriber is terminally ill, the Plan will pay an Accelerated Benefit to the Subscriber. The Accelerated Benefit will be a percentage of the total term coverage in force on the life of the Terminally Ill Subscriber. The Accelerated Benefit will not exceed 75% of the total coverage in force and will be paid either in one lump sum or monthly payments as directed by the Subscriber.

Conditions

The Accelerated Benefit will be available to a Subscriber on a voluntary basis only. Therefore:

- If a Subscriber is required by law to use this option to meet the claim of creditors, whether in bankruptcy or otherwise, the Subscriber is not eligible for this benefit, or
- If a Subscriber is required by a government agency to use this option in order to qualify for, apply for, or continue a government benefit or entitlement, the Subscriber is not eligible for this benefit.

EFFECT ON COVERAGE

The Accelerated Benefit payment will reduce the face amount of the group coverage and thus reduce correspondingly the amount to be paid to the beneficiary(ies) upon the death of the Subscriber. The reduction will be equal to the sum of the following amounts:

- The amount paid under the Accelerated Benefits option; and
- An interest charge on the benefit amount commencing from the Accelerated Benefit payment date to the date of death calculated at the current yield on the ninety (90) day US Treasury Bill (to a maximum of 18 months of interest); and
- Current monthly term coverage premiums the Subscriber and/or Employer was paying prior to the date of election of Accelerated Benefits commencing from the date of the first payment of the Accelerated Benefit until the date of death.

PEHP PLUS TERM LIFE OPTION

An Employee or spouse who has been declined coverage because of PEHP underwriting requirements may qualify for coverage, if approved, under the PEHP Plus Term Life option. Specific underwriting requirements and higher rates have been established for this option. For more information regarding PEHP Plus, contact PEHP at 801-366-7495 or 800-753-7495.

LIMITATIONS AND EXCLUSIONS

Group Term Life Suicide Exclusion

For Subscribers, with respect to any amounts in excess of Minimum Term Coverage, or for Dependents with respect to all coverage, benefits will not be paid or payable if the Subscriber and/or Dependent commits suicide within two years of the effective date of coverage. Any premiums paid for such coverage will be refunded.

Homicide Exclusion

Accidental deaths are routinely investigated. Absolutely no benefit will be paid to a beneficiary if the beneficiary intentionally takes the life of the insured Subscriber and/or dependent.

Misstatement Of Material Fact

In the absence of fraud, the validity of any coverage will not be contested, except for nonpayment of premiums, after it has been in force for two years from the effective date of coverage. No statement made by any person relating to his or her ability to be covered will be used in contesting the validity of the coverage with respect to which the statement was made after the coverage has been in force, prior to the contest, for a period of two years during the person's lifetime, nor will the statement be used unless it is contained in a written instrument signed by the covered individual.

GENERAL INFORMATION

When a Subscriber selects additional coverage amounts, the Subscriber may do so subject to the Employer's election and the Plan limitations. If the Employer changes to a lesser amount of coverage, the Subscriber's coverage will be decreased to conform to the new election and effective as of the first day of the Subscriber's annual enrollment. (See Section III, Effective Date of Coverage)

If a Subscriber's coverage amount changes due to age, the Subscriber's coverage will be decreased to the correct coverage amount as of the date the Subscriber's age changes.

Any changes in coverage amounts will be effective on the date specified in writing by the Plan.

All Employees must be enrolled in Employee Minimum Term Coverage.

The Plan reserves the right to decline coverage of an Employee and/or Dependent if Evidence of Insurability is not satisfactory.

Employees Entering Late

An Employee who does not apply for coverage within sixty (60) days from the date of eligibility, or who reappplies for coverage after his or her coverage has been canceled at the Employee's own request or without termination of employment, must furnish satisfactory Evidence of Insurability in order to obtain coverage. An Employee who does not apply for coverage for his or her Dependents within sixty (60) days from the date of eligibility, must furnish, at the Employee's expense, satisfactory evidence of the Dependent's insurability before the Dependent can obtain coverage. The Plan has the right to decline coverage if the Evidence of Insurability is not satisfactory.

Coverage When Disability Coverage Exists

If a Subscriber is receiving long-term disability benefits pursuant to a policy or plan issued to the Employer and whose disability occurred while the Subscriber was covered under this coverage, Minimum Coverage will continue as long as the Subscriber receives the long-term disability benefit. If a Subscriber who is receiving long-term disability benefits and is eligible under this provision dies, the Plan will pay to the beneficiary the benefit amount of the Minimum Term Life Coverage for which the Subscriber is covered. PEHP will have the right to require proof that the Subscriber is still receiving long-term disability benefits.

A Subscriber may continue Additional Term coverage in the same amount that was in effect on the date of disability for a maximum of twelve (12) months from the date of disability with the current premium waived for twelve (12) months. After twelve (12) months, the Subscriber funded portion of Additional Term coverage may be continued, but is limited to 50% of the amount of coverage for which the Subscriber was enrolled at the end of the twelve (12) month period from the date of disability. Application for this coverage must occur within sixty (60) days from the end of the twelve (12) month period referred to above. Eligibility for this coverage will continue for as long as the Subscriber receives long-term disability benefits. Separate rules for this coverage may be established by the Plan. If a Subscriber becomes ineligible to receive long-term disability benefits and the

Employer has maintained continuous Additional Term coverage with the Plan, the existing coverage in effect may be continued under the Continuation of Coverage provision.

GROUP TERM LIFE CONTINUATION OF COVERAGE

An individual covered under this Plan does not have a right to convert coverage to an individual policy in the event that the person loses coverage hereunder for any reason. However, a Subscriber and his or her Dependents may continue partial coverage hereunder if, after losing eligibility, the Subscriber and/or his or her Dependents continue to be member(s) of any retirement system sponsored by the Utah Retirement Systems and pay premiums.

Coverage under this provision is limited to 25% of the amount of coverage for which the individual was enrolled on the date preceding the date of loss of eligibility. Separate rates for this coverage will be established by the Plan. Application for this coverage must occur within sixty (60) days from the date of loss of eligibility as an active Employee or termination of coverage under the Plan. A line-of-Duty Death benefit is not part of the continuation coverage under this section.

MISSTATEMENT OF AGE

If the age of any Subscriber and/or Dependent has been misstated, the Plan will make a premium adjustment so that the Plan shall be fully charged or credited, as the case may be, for the difference in premiums for the full time any coverage has been in force. If the amount of coverage would have been affected by the misstatement of age, the amount shall be adjusted to the amount which the Subscriber and/or Dependent would have been entitled at his or her correct age, and the adjustment of premium shall be based on such adjusted amount of coverage.

PREMIUM CALCULATION

Any premiums payable may be adjusted annually to determine an average premium rate per \$1,000 of coverage then in force. Premium rates will be determined on the attained age to the nearest birthday of each Subscriber and/or Dependent, and the amount of coverage on each Subscriber and/or Dependent.

SECTION III

GROUP ACCIDENT PLAN DEFINITIONS

Annual Salary

The amount certified by the Employer as the monthly salary, excluding such amounts as overtime, bonuses, discretionary payments, etc., of the Subscriber. If there is a discrepancy between the certified amount and the amount actually paid, PEHP shall determine the regular monthly salary.

Hospital

1. An institution, which is licensed by the state in which it resides, accredited by the Joint Commission for Accreditation (JCAHO), and maintains Medicare and Medicaid approval for services.
2. Any other institution which is operated pursuant to law, under the supervision of a staff of physicians and with twenty-four hour per day nursing service, which is primarily engaged in providing;
 - General inpatient medical care and treatment of sick and injured persons through medical, diagnostic, and major surgical facilities, all of which facilities must be provided on its premises or under its control, or
 - Specialized inpatient medical care and treatment of sick or injured persons through medical and diagnostic facilities (including x-ray and laboratory) on its premises, under its control, or through a written agreement or with a specialized Provider of those facilities.

In no event shall the term Hospital include a facility operated primarily as an out-patient or free standing unit, or a convalescent nursing home or an institution or part thereof which is used principally as a convalescent, rest, or nursing facility or facility for the aged, or which furnishes primarily domiciliary or Custodial Care, including training in the routines of daily living, or which is operated primarily as a school.

Injury

A bodily injury sustained solely thorough accidental means and independently of all other causes and occurs while coverage is in effect under the policy; except that, with respect to the Accident Weekly Indemnity and Accident Medical Expense Benefit, it means any such bodily injury for which no benefits are payable under a worker's compensation or similar law or act.

Loss Of A Limb

Loss by physical separation of a hand at or above the wrist, or of a foot at or above the ankle.

Loss Of Hearing

Loss of hearing which is certified as being entire and irrecoverable by a licensed physician specializing in otolaryngology and certified by the American Board of Otolaryngology.

Loss Of Sight

Loss of sight which is certified as being entire and irrecoverable by a licensed physician specializing in ophthalmology and certified by the American Board of Ophthalmology.

Loss Of Speech

Loss of speech which is certified as being entire and irrecoverable by a licensed physician specializing in otolaryngology and certified by the American Board of Otolaryngology.

Loss Of Thumb And Index Finger

Loss by physical separation through or above the metacarpophalangeal joints.

Loss Of Use

With respect to Arm or Leg, paralysis resulting in total loss of all range of motion and use of such limb which continues without interruption for a period of twelve (12) months and at the end of such period is determined by competent medical authority to be continuous, permanent and irrecoverable.

MEDICAL EXPENSE

The actual expenses incurred for:

- Treatment by a legally qualified physician or surgeon; or
- Confinement within a hospital; or
- Employment of a licensed or graduate nurse; or
- X-ray examination; or
- Use of a professional ambulance service for local transportation of a subscriber; provided the expense has been incurred for necessary services, confinement or treatment given within one year of the date of the accident, and the charges therefore are reasonable and customary for the locale.

TOTAL DISABILITY

The Subscriber is unable to engage in his regular occupation and is not engaged in any other occupation, and during such period is under the regular care and attendance of a legally qualified physician or surgeon.

SECTION IV

GROUP ACCIDENT PLAN SCHEDULE OF BENEFITS

ACCIDENTAL DEATH, DISMEMBERMENT, LOSS OF USE AND LOSS OF SIGHT BENEFIT (AD&D)

Employee Coverage Only (Individual Plan)

A Subscriber may select any amount of Principal Sum ranging from \$25,000 to \$250,000.

Employee And Dependent Plan (Family Plan)

Under the Family Plan a Subscriber may select any amount of Principal Sum for Subscriber on the same basis as for the Individual Plan, and then eligible Dependents are automatically covered as follows: spouse is automatically insured for a Principal Sum equal to 40% of Subscriber's Principal Sum and each eligible Dependent child is insured for 15% of Subscriber's Principal Sum. If Subscriber has no eligible dependent children, the spouse's Principal Sum is increased to 50% of Subscriber's Principal Sum. If no spouse is eligible, each eligible dependent child's Principal Sum is increased to 20% of Subscriber's Principal Sum.

ACCIDENT WEEKLY INDEMNITY BENEFIT (AWI) (OPTIONAL COVERAGE)

Employee Coverage Only (Not Available For Dependents)

If a Subscriber is enrolled in AD&D coverage under this Group Accident Plan, in addition to the AD&D coverage he or she may purchase Accident Weekly Indemnity coverage which will pay the Subscriber benefits while he or she is totally disabled because of injury resulting from an accident which was not job related or which did not occur on the job, provided such total disability started within 90 days of the accident. Coverage begins on the first day of total disability and is payable while such disability continues, but for not more than 52 weeks for any one accident.

Amounts Of Coverage And Cost

Subscribers may purchase the AWI Coverage in units up to \$500, subject to the maximum amount indicated in the Monthly Gross Salary bracket. The Subscriber may purchase a lesser amount than the maximum amount indicated for their salary bracket but not a greater amount. The coverage table can be found in the Life and Accident Brochure.

ACCIDENT MEDICAL EXPENSE BENEFIT (AME) (OPTIONAL COVERAGE)

Employee Coverage Only (Not Available For Dependents)

If a Subscriber is enrolled as an Employee for AD&D coverage under this Group Accident Plan, in addition to the AD&D coverage (and Weekly Indemnity coverage, if elected) he or she may purchase Accident Medical Expense coverage which will pay for the following medical expenses which are in excess of expenses covered by all other Group Medical Plans and by No Fault Automobile Insurance. Such medical expenses include the reasonable costs incurred for treatment by a physician or surgeon, for hospital confinement, and for employment of a licensed or graduate nurse necessitated by injury resulting from an accident which was not job related or did not occur on the job, provided the expense was incurred within one year of the date of the accident.

Amounts Of Coverage And Cost

Subscriber may purchase the Accident Medical coverage in an amount of \$2,500.

RESERVE – NATIONAL GUARD COVERAGE

- Subject to the terms and conditions of the policy, coverage shall apply while the Subscriber hereunder is a member of an organized Reserve Corps or National Guard Unit of the United States and:
- In attendance at annual field training, cruise or other active duty or training period of fewer than 30 days (except that while attending a service school the coverage will extend for the duration of the school even though in excess of 30 days), or is enroute to or from such training; or
- Participating in a properly authorized periodic inactive duty training assembly or any other inactive duty training authorized by appropriate unit orders; or
- Participating as a member of his/her unit or detachment in an authorized parade, exhibition or ceremony on official orders.

LIMITATIONS AND EXCLUSIONS

Air Travel

The Policy, subject otherwise to its terms, limitations and condition, covers claims arising out of bodily injury sustained by an Insured Person while riding as a passenger in, alighting from, or boarding (but not while operating, learning to operate or serving as a member of a crew of) a civil aircraft having a valid airworthiness certificate from the governmental authority having jurisdiction over private aircraft in the country of its registry and flown by crop-dusting, seeding, skywriting, racing or exploration.

Exclusions

The policy does not cover any loss or claim arising out of bodily injury caused or contributed to by or resulting from:

- Engaging in or taking part in naval, military or air force service or operations, except as provided in the Reserve- National Guard provision;
- Riding or driving in any kind of race as a professional;
- Being in or on or boarding an aircraft for the purpose of flying therein or alighting there from following a flight, except as specified in the Air Travel provision;
- Suicide or attempted suicide;
- intentionally self-inflicted injury, or committing or attempting to commit a criminal or felonious act;
- Disease or natural causes, or medical or surgical treatment (except where the treatment is rendered necessary by bodily injury caused by accident within the scope of the policy);
- Voluntary self-administration of any drug or chemical substance not prescribed by and taken according to the directions of a licensed physician (accidental ingestion of a poisonous substance is not excluded); or
- Any loss caused by, resulting from or contributed to by the insured's intoxication. An insured will be considered to be intoxicated if the level of alcohol in his/her blood when the injury or loss occurs exceeds the amount at which a person is presumed, under the law of the locale in which the accident occurred, to be under the influence of alcohol or intoxicating liquor when operating a motor vehicle.

SECTION V

GENERAL INFORMATION

EFFECTIVE DATE OF COVERAGE

The effective date of the coverage is the day following the end of the payroll period for which the first payroll premium deduction is made. However, if the covered Subscriber is not actively at work and engaging in and performing his or her normal duties on a regular basis except for duties performed at home or while confined in a hospital on the effective date, coverage will become effective on the day he or she returns to active work. If the Dependents of a Subscriber are to be covered, and if a Dependent is confined to a hospital on the effective date of the Subscriber's coverage, the coverage of the Dependent will not become effective until the day after he or she is discharged. Dependent coverage is not effective prior to an Employee's effective date.

ELIGIBILITY

All Employees and their Dependents are eligible.

An individual who becomes a Dependent after the Subscriber's effective date will be eligible for coverage on the date he or she becomes a Dependent, provided the Subscriber submits a written application for coverage within sixty (60) days of that date. Coverage for prospective adoptive children will become effective on the date the child is placed for purposes of adoption provided a written application for coverage is received by the Plan within sixty (60) days of that date.

If, within sixty (60) days after the date upon which a Dependent child's coverage would otherwise terminate due to a maximum age limitation, the Plan has received a statement from a physician that the child is mentally or physically incapable of earning a living and is dependent upon the Subscriber for support, coverage will continue for the child for so long as incapacity continues.

TERMINATION OF COVERAGE

The coverage on any Subscriber ceases automatically on whichever of the following dates occurs first:

- The date this coverage is canceled; or
- The end of a coverage period for which a premium contribution was made if the Subscriber requests termination or has become ineligible, except:

- (i) when a Subscriber ceases employment because of injury or sickness, he or she will remain eligible to continue coverage for up to twelve (12) months if injury or sickness persists to that time. Premiums must be paid for coverage to continue. Termination occurs when the employer discontinues a Subscriber's coverage by so notifying the Plan or discontinuing premium payment, but in any event no later than twelve (12) months following cessation of employment due to injury or sickness; or
 - (ii) when a Subscriber ceases active work with his or her Employer due to temporary layoff or leave of absence, or for any other reason other than sickness or injury as described above, termination of employment shall be deemed to have occurred no later than twelve (12) months following the cessation of active full-time work. Premiums must be paid for coverage to continue.
- The date in which the Subscriber retires unless the Employer has established a program, with which the Plan has agreed, to continue coverage beyond retirement.

TERMINATION OF DEPENDENTS COVERAGE

The coverage on any Dependent ceases automatically on whichever of the following dates occurs first:

- Six (6) months following the date the Subscriber's coverage terminates due to the death of the Subscriber. During the six-month period between the death of the Subscriber and the date of the termination of the Dependent coverage, the premium payment for the Dependent coverage will be waived;
- The end of a coverage period for which a premium contribution was made if the Subscriber fails to make any subsequently required premium contributions.
- The date the Dependent becomes eligible for coverage as an Employee under this coverage.
- The date the Dependent becomes a full-time member of the military.
- The date of attainment of the maximum age for coverage described herein.
- The date the Dependent (spouse) is not considered the Subscriber's lawful spouse as indicated in a divorce decree.
- The date the Subscriber's coverage terminates for any reason other than death of the Subscriber, including Subscriber's retirement.

CATASTROPHIC COVERAGE

- Aggregate benefits payable for any single Catastrophic Event shall be limited to \$50 million per year. If benefits payable due to a Catastrophic Event exceed \$50 Million, benefits shall be paid on a pro rata basis.
- Aggregate benefits payable due to Acts of Terrorism shall be limited to \$50 Million per year.
- Benefits under this Master Policy shall be subject to all of the limitations, exclusions and terms of any reinsurance coverage in place to reinsure the coverages available under this Master Policy.

PAYMENT OF BENEFITS

If a Subscriber and/or Dependent dies, the Plan will pay to the beneficiary, subject to the provisions set forth herein, the amount of coverage for which the Subscriber and/or Dependent is covered. Unless otherwise requested in writing by the Subscriber, benefits payable as a result of the death of a Dependent shall be paid to the Subscriber, if living or otherwise, to the next of kin of the deceased in the order of precedence established under Title 75, Chapter 2, the Utah Uniform Probate Code.

BENEFICIARY

A Subscriber shall designate a primary beneficiary and a contingent beneficiary at the time of application for coverage. A Subscriber may change his or her beneficiary(ies) by filing a written notice of the change with the Plan. The change shall take effect as of the date the Subscriber signed the notice of change, whether or not the Subscriber is living at the time of such filing, but without prejudice to the Plan on account of any payment made by it before receipt of such notice. If there is no beneficiary designated by the Subscriber or if the designated beneficiary is not alive at the death of the Subscriber and/or Dependent, the Plan will pay the benefits of this coverage to the contingent beneficiary, and if there is no contingent beneficiary the Plan will pay the benefit amounts of this coverage to the next of kin of the deceased in the order of precedence established under Title 75, Chapter 2, the Utah Uniform Probate Code. Any payment made by the Plan in good faith pursuant to this provision shall fully discharge the Plan to the extent of such payment.

If the primary beneficiary survives the Subscriber but dies before the benefit is paid, the benefit shall be paid to the contingent beneficiary.

SECTION VI

ADDITIONAL INFORMATION

CONFORMITY

Any provision of this Plan which, on its Effective Date, is in conflict with the applicable law shall be deemed to conform to the minimum requirements of the law.

MODE OF PAYMENT

Unless otherwise arranged with the Subscriber, all premiums due from the Subscriber shall be paid to the Plan by withholding premiums from the pay checks of the Subscriber and forwarded to the Plan by the Employer. Premiums withheld shall be deemed to have been received by the Plan, but shall not constitute payment for coverage under this coverage if coverage has otherwise terminated.

ENTIRE CONTRACT

This Master Policy, any modifications to it, and the written statements, if any, of Subscribers, constitute the entire contract.

MODIFICATION

No change in this Master Policy shall be valid unless approved by the Plan and unless such approval is evidenced by endorsement or amendment to this Master Policy. No agent has authority to change this Master Policy or waive any of its provisions.

DATA TO BE FURNISHED

Subscribers are required to furnish to the Plan, when and so often as the Plan may reasonably require, all information as may be considered to have a bearing on the administration of the coverage under this Plan or the determination of the premium therefore. The Plan shall have the right to inspect, during normal business hours, an Employee's payroll and such other records which pertain to the coverage provided hereunder.

CLERICAL ERROR

Clerical error in keeping records shall not invalidate coverage otherwise in force nor continue coverage otherwise terminated. Premium adjustments shall be made if a clerical error has caused an incorrect amount of premium to be collected or paid.

RATE SCHEDULES

The Plan may revise any premium rate schedule no more frequently than annually unless a change in the coverage affecting rates occurs, and then may do so upon the effective date of such change.

SECTION VII

CLAIMS

NOTICE OF CLAIM

A written notice of claim must be given to the Plan within twenty (20) days after the death of a Subscriber and/or Dependent unless it was not reasonably possible to do so. Notice given by or on behalf of a Subscriber and/or Dependent or his beneficiary if any, to the Plan at its office in Salt Lake City, Utah, with information sufficient to identify the Subscriber and/or Dependent, shall be deemed notice to the Plan.

CLAIM AND PROOF OF LOSS FORMS

When the Plan receives a notice of a claim, it will furnish to the claimant the form it customarily uses to establish proof of loss. If such forms are not furnished within 15 days after the receipt of the notice of claim, the claimant shall be deemed to have complied with the requirements as to proof of death. Once supplied, the written proof of loss together with all supporting materials necessary to establish proof of loss must be returned to the Plan at its office within 90 days after the date of the death causing the loss under this coverage. Failure to furnish such proof within the time required will not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

TIME OF PAYMENT OF BENEFITS

Benefits payable hereunder will be paid as soon as reasonably possible after receipt of an acceptable written proof of loss together with all supporting materials.

If benefits are not paid within 30 days, interest will begin to accrue 30 days following the Plan's receipt of proof of loss form and supporting materials. The interest rate will be based on the current yield on the ninety (90) day US Treasury Bill and will be fixed on the date that interest begins to accrue.

PAYMENT OF BENEFITS

All benefits will be payable to the beneficiary. If any payment remains unpaid at the death of the beneficiary, or if the beneficiary is a minor or is, in the opinion of the Plan, legally incapable of giving a valid receipt and discharge for any payment, the Plan, at its option, may pay such benefit to any relative or relatives by blood or connection by marriage of the Subscriber and/or Dependent who is deemed by the Plan to be equitably and legally entitled to receive the payment. Any payment made in good faith pursuant to this provision fully discharges the Plan to the extent of the payment. If there is no designated beneficiary living at the death of the Subscriber and/or Dependent as to all or any part of the sum, the Plan may pay a part of that sum, not exceeding \$5,000 to any person appearing to the Plan to be equitably entitled to the money.

LEGAL ACTION

No legal action may be brought against the Plan for unpaid benefits until at least sixty (60) days after written proof of loss has been furnished in accordance with the requirements stated above. No legal action may be brought after the expiration of three years after the time written proof of loss is required to be furnished.

PHYSICIAN EXAMINATION

The Plan, at its own expense, shall have the right to require any Subscriber and/or Dependent to undergo and report the findings of a physical examination when and as often as it may reasonably require. Additionally, the Plan, at its own discretion and expense, may require that an autopsy be performed on the body of a deceased Subscriber and/or Dependent during the pendency of a claim hereunder.

MEDICAL REPORT

At the time of the claim, the Plan, at its own expense, has the right and opportunity to examine and receive medical reports, medical records, and hospital records relating to the care, treatment, and relevant medical history of the person whose death is the basis for a claim. Any person claiming benefits shall cooperate with the Plan as necessary to implement this provision.

APPEALS

If a claim is denied, in whole or in part, the Plan will send a written notice specifying the reason(s). If a Subscriber and/or Dependent, his or her beneficiary, or an authorized representative disagrees with the denial or disagrees with any decision made by the Plan which affects them, he or she may request a full review of the claim or submit the grievance by writing to:

PEHP Life Review Committee
560 East 200 South Salt Lake City, Utah 84102.

An appeal must be submitted within sixty (60) days after receiving the notice of an adverse action of the Plan. If the Subscriber and/or Dependent, beneficiary or representative desires to appeal the decision of that committee, the appeal must be directed to the Executive Director of the Utah Retirement Systems. Further appeal may be made in accordance with the procedure established under Section 49-11-613 et seq, Utah Code Annotated, as amended, 1953. A copy of this procedure is available from the PEHP Claims Review Committee.

ADDENDUM C

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Utah Code Annotated

Title 49. Utah State Retirement and Insurance Benefit Act (Refs & Annos)

Chapter 11. Utah State Retirement Systems Administration

Part 6. Procedures and Records

U.C.A. 1953 § 49-11-609

§ 49-11-609. Beneficiary designations--Revocation of beneficiary designation--Procedure--Beneficiary not designated--Payment to survivors in order established under the Uniform Probate Code--Restrictions on payment--Payment of deceased's expenses

Currentness

(1) As used in this section, "member" includes a member, retiree, participant, covered individual, a spouse of a retiree participating in the insurance benefits created by Sections 49-12-404 and 49-13-404, or an alternate payee under a domestic relations order dividing a defined contribution account.

(2) The most recent beneficiary designations signed by the member and filed with the office, including electronic records, at the time of the member's death are binding in the payment of any benefits due under this title.

(3)(a) Except where an optional continuing benefit is chosen, or the law makes a specific benefit designation to a dependent spouse, a member may revoke a beneficiary designation at any time and may execute and file a different beneficiary designation with the office.

(b) A change of beneficiary designation shall be completed on forms provided by the office.

(4)(a) All benefits payable by the office may be paid or applied to the benefit of the surviving next of kin of the deceased in the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills, if:

(i) no beneficiary is designated or if all designated beneficiaries have predeceased the member;

(ii) the location of the beneficiary or secondary beneficiaries cannot be ascertained by the office within 12 months of the date a reasonable attempt is made by the office to locate the beneficiaries; or

(iii) the beneficiary has not completed the forms necessary to pay the benefits within six months of the date that beneficiary forms are sent to the beneficiary's last-known address.

(b)(i) A payment may not be made to a person included in any of the groups referred to in Subsection (4)(a) if at the date of payment there is a living person in any of the groups preceding it.

(ii) Payment to a person in any group based upon receipt from the person of an affidavit in a form satisfactory to the office that:

(A) there are no living individuals in the group preceding it;

(B) the probate of the estate of the deceased has not been commenced; and

(C) more than three months have elapsed since the date of death of the decedent.

(5) Benefits paid under this section shall be:

(a) a full satisfaction and discharge of all claims for benefits under this title; and

(b) payable by reason of the death of the decedent.

Credits

Laws 1987, c. 1, § 25; Laws 1989, c. 81, § 8; Laws 1998, c. 267, § 2, eff. May 4, 1998; Laws 2000, c. 283, § 3, eff. March 16, 2000; Laws 2001, c. 141, § 5, eff. March 15, 2001; Laws 2002, c. 250, § 32, eff. March 26, 2002; Laws 2003, c. 240, § 11, eff. May 5, 2003; Laws 2004, c. 118, § 4, eff. July 1, 2004; Laws 2005, c. 116, § 6, eff. May 2, 2005.

Codifications C. 1953, § 49-1-606.

U.C.A. 1953 § 49-11-609, UT ST § 49-11-609

Current through 2015 First Special Session

ADDENDUM D

West's Utah Code Annotated

Title 49. Utah State Retirement and Insurance Benefit Act (Refs & Annos)

Chapter 11. Utah State Retirement Systems Administration

Part 6. Procedures and Records

U.C.A. 1953 § 49-11-610

§ 49-11-610. Benefits payable in name of beneficiary--Delivery

Currentness

(1)(a) Any benefits payable to a beneficiary shall be made in the name of and delivered to the beneficiary or the lawfully appointed guardian or conservator of the beneficiary, or delivered as otherwise ordered by a court of competent jurisdiction under Title 75, Utah Uniform Probate Code.

(b) If the benefit involves a payment not to exceed an amount authorized by the Utah Uniform Probate Code to any one beneficiary, the office may, without the appointment of a guardian or conservator or the giving of a bond, pay the amount due to the beneficiary or to the persons assuming their support.

(c) The payment shall be in either a lump sum or in monthly amounts.

(d) The total of the payments made under this section shall fully discharge and release the office from any further claims.

(2) A beneficiary who qualifies for a monthly benefit under this section shall apply in writing to the office.

(3) The allowance shall begin on the first day of the month following the month in which the:

(a) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or

(b) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

§ 49-11-610. Benefits payable in name of beneficiary--Delivery, UT ST § 49-11-610

Credits

Laws 1987, c. 1, § 26; Laws 1997, c. 31, § 4, eff. July 1, 1997; Laws 2002, c. 250, § 33, eff. March 26, 2002; Laws 2014, c. 15, § 6, eff. March 3, 2014.

Codifications C. 1953, § 49-1-607.

U.C.A. 1953 § 49-11-610, UT ST § 49-11-610

Current through 2015 First Special Session

End of Document

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ADDENDUM E

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

DIANE WELTY	:	CASE HISTORY
Plaintiff,	:	
	:	
	:	
vs.	:	Case No: 120902041 MP
	:	
MARY ELLEN LOPEZ	:	Judge: RICHARD MCKELVIE
	:	
Defendant.	:	Date: Dec. 08, 2014

CASE DISPOSITION

09/19/2012 Dismissed by Judge RICHARD MCKELVIE