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Appeals Court: ADA does not prevent insurance companies from offering inferior service to PWAs

by Peg Byron
Special to Q-Notes

CHICAGO—In a decision with possible disastrous implications for many health insurance policyholders, a divided federal appeals court overturned a ruling that had struck down drastic restrictions on coverage for two Chicago men with HIV, despite a mountain of evidence showing there is no need for such discriminatory caps.

Lambda Legal Defense and Education Fund and AIDS Legal Council of Chicago (ALCC) expressed disappointment over the decision which severely undermines the anti-discrimination protections of the Americans with Disabilities Act (ADA). Lambda and ALCC filed the case on behalf of the men.

A panel of the United States Court of Appeals for the Seventh Circuit ruled 2-1 on June 2 in *Doe and Smith v. Mutual of Omaha* that the ADA does not apply to the content of insurance policies, even if those policies are discriminatory. The majority interpreted the ADA as prohibiting businesses from excluding altogether people with disabilities, but not from

offering them inferior services.

Heather C. Sawyer, the staff attorney in Lambda's Midwest Regional Office who argued the case before the Seventh Circuit in March, said, "Insurance policies place all sorts of across-the-board limitations on coverage to reduce costs. However, singling out a disability and refusing to cover expenses from it is unprecedented. Discrimination is the only possible explanation for such cruel limits." She added, "Mutual conceded that its caps lack any sound actuarial justification whatsoever and the HIV-related medical care is not costlier than that for other diseases."

ALCC Executive Director Ann Fisher said, "This tortured interpretation of the ADA will affect all policy holders. The ruling gives the entire insurance industry broad license to institute coverage caps on any health problem it chooses, regardless of the real costs of care. For people with AIDS, it legalizes irrational discrimination by health insurers."

In his dissent from the majority, Judge Terence T. Evans wrote, "[W]e are being asked to decide whether an insurer can discriminate

against people with AIDS, refusing to pay for them the same expenses it would pay if they did not have AIDS. The ADA assigns to the courts the task of passing judgment on such conduct. And to me, the Mutual of Omaha policies at issue violate the act."

Mutual of Omaha issued the health insurance policies for the two men, identified as "John Doe" and "Richard Smith" in court papers, but put a lifetime ceiling for HIV-related coverage at \$100,000 and \$25,000, respectively. These artificially low restrictions have forced Doe and Smith to consider foregoing state-of-the-art therapies that could prolong their lives.

Mutual, however, does not put such restrictions on coverage for a host of other serious illnesses which are insured by the company for up to \$1 million. It reinstates an additional \$1 million in coverage for policyholders who make no new claims after two years.

The appeals court ruling opens the door for Mutual to restore the caps in Doe's and Smith's policies which the company agreed to remove under a December 1998 order by US District Judge Suzanne B. Conlon. ▼



Vermont state auditor Ed Flanagan

Openly-gay US Senate candidate to make history

by David Stout
Q-Notes Staff

MONTPELIER, VT—For the first time in American history, an openly-gay candidate will try to win a seat in the US Senate. Vermont state auditor Ed Flanagan hopes to defeat Republican incumbent Sen. James Jeffords in the next election and political analysts say the well-respected challenger is a viable contender. Flanagan is currently the nation's first and only openly-gay statewide elected official.

Now serving in his fourth term as state auditor, Flanagan has become known for his effectiveness at protecting healthcare and retirement security for Vermont's working families while standing up for taxpayers as a watchdog against wasteful government spending.

"As a Vermonter working for Vermont's working families, I have been a voice for taxpayers and consumers whose healthcare and retirement security have been threatened by needless government waste," said Flanagan. "I deeply believe that fiscal responsibility and social responsibility go hand in hand. Vermonters deserve a government in Washington that knows the value of their hard-earned tax dollars and champions their common-sense progressive values."

As a senator, Flanagan would continue to advocate healthcare reform and retirement security. He is strongly committed to strengthening Social Security, Medicare and Medicaid for the growing number of America's senior citizens; boosting the minimum wage to keep pace with the increasing cost of living; toughening enforcement of laws to guarantee equal pay for equal work; passing the Employment Non-Discrimination Act to protect Americans from job discrimination based on sexual orientation; and ensuring the implementation of sound, strong public health policies to combat the AIDS epidemic and meet women's health needs.

"On a wide range of issues, I am committed to championing the values we Vermonters hold dear — while holding our government to the highest standards of fiscal and ethical accountability," added Flanagan. "This is what I have done in Vermont and this is what I will do for Vermonters in Washington."

Flanagan has the backing of US Rep. Barney Frank (D-MA); Vermont state House Speaker Michael Obuchowski; and many other Vermonters. See *CANDIDATE* on page 8

Embattled proprietor given new flag violation notice

by Dan Van Mourik
Q-Notes Staff

MYRTLE BEACH, SC—City code inspectors issued Linda Robertson, owner of the Rainbow House Bistro, a violation notice Friday, May 21, saying her prisoner of war/missing in action (POW/MIA) flag violates the city's sign ordinance. Robertson is currently fighting the city over the right to fly rainbow flags at her business.

"I feel [Robertson] has every right to fly the POW/MIA flag to honor the men and women who were prisoners of war as well as those that are still missing and may yet be prisoners," said Jim Dudgeon, retired sergeant first class with the Army. "It really sounds as if the city is ignoring the veterans of all the wars who fought and gave them the freedom to make such decisions."

Robertson said she was shocked the city won't allow a POW/MIA flag, especially given the country's military conflict in Kosovo.

"It devastated me," Robertson said. "That flag is making a statement to remember every

person who ever served. To say we can't fly that flag — what's next? What other rights will be stripped?"

This latest incident was added to Robertson's lawsuit against the City of Myrtle Beach which was filed in federal court by the SC American Civil Liberties Union. The suit asks that the city be barred from enforcing the sign ordinance.

Robertson had been flying the POW/MIA flag along with the rainbow flags. She said she flies it out of respect and for an employee who has a family member missing in action.

The city did not notify Robertson earlier that the POW/MIA flag was in violation because city inspectors didn't notice it, said Mark Kruea, the city's public information officer. He said the city doesn't have a problem with the message of the flag, it just doesn't allow flags in the amusement park district (where Robertson's business is located) unless a business owner has more than five acres. Though the city does not allow the POW/MIA flag, the federal government has mandated that the flag be flown at

least six days a year at military installations, federal national cemeteries, the National Korean War Veterans Memorial, the National Vietnam Veterans Memorial, US post offices and other federal sites — among those the White House. The six days are Armed Forces Day, Memorial Day, Flag Day, Independence Day, National POW/MIA Recognition Day and Veterans Day.

"What is their reason for not wanting to support something as patriotic and American as supporting American troops?" asked Ann Mills-Griffiths, executive director for the National League of POW/MIA Families, which is the organization that designed the flag and garnered it national recognition.

"It's very insensitive, particularly when we have troops serving in Kosovo," Mills-Griffiths observed.

"I don't think [Robertson] should take the flag down by any means," retired Army Pvt. Gene Westfall added in support. "I was a prisoner of war for 14 months in World War II. I don't want — I don't think the American people should ever forget." ▼

Gay US Olympians dive into aquatics competition

by Charles Carson
Special to Q-Notes

ATLANTA—US Olympic diver David Pichler and US Olympic swimmer Bruce Hayes are expected to return to the Atlanta Olympic Pool to join more than 1000 swimmers, divers and water polo players at the Tenth International Gay & Lesbian Aquatics (IGLA) Championships scheduled for June 18-20. The host for the meet is the Atlanta Rainbow Trout, a predominantly gay and lesbian masters team comprised of more than 100 members.

Both Pichler and Hayes know the Atlanta facility well. A finalist in the 10-meter platform event in Atlanta, Pichler moved up in the last round to finish sixth. Hayes, gold medalist in the 4 x 200m freestyle relay at the 1984 Los Angeles Olympic Games, was Assistant Competition Manager for Swim-

ming in 1996.

Pichler will not compete but is appearing courtesy of Speedo, an official sponsor of the 1999 IGLA Championships. Pichler has been a longtime member of Team Speedo, a group of athletes endorsed by the swimwear giant.

"As a gay athlete, I am proud to represent Speedo at the IGLA Championships," said Pichler. "I've heard good things about this event and I hope to assist in making this the best year ever."

Since the Atlanta Olympic Games, both Pichler and his current coach, US Olympic diver Patrick Jeffrey (Seoul, 1988; Atlanta, 1996), have been featured in *The Advocate*, a gay newsmagazine. Pichler's interviewer was Greg Louganis, who came out as gay during two highly-publicized and well-received diving exhibitions at the 1994 Gay Games.



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