

1 Eric G. Slepian Bar # 017495
 2 SLEPIAN LAW OFFICE
 3 3737 N. 7th Street, Ste. 106
 4 Phoenix, Arizona 85014
 Telephone (602) 266-3111
 Attorney for Plaintiff

5
 6 UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

7 JOHN B. ROSS,

8
 9 Plaintiff,

NO. CV06-1474-PHX-JWS

10 vs.

**PROPOSED JOINT CASE
 MANAGEMENT PLAN**

11 EXCEL GROUP FLEXIBLE BENEFIT
 12 PLAN, a/k/a THE EXCEL GROUP
 EMPLOYEE BENEFIT PLAN; THE
 13 EXCEL GROUP; and THE HARTFORD
 a/k/a HARTFORD LIFE AND ACCIDENT
 14 INSURANCE COMPANY,

(Assigned to the Honorable
 John W. Sedwick)

15 Defendants.

16
 17 The parties submit this proposed case management plan pursuant to the Court's
 18 Order filed on May 21, 2007.

19 **1. The Nature of the Case, Setting Forth in Brief Statements the Factual**
 20 **and Legal Basis of the Plaintiff's Claims and Defendants' Defenses**

21 This lawsuit concerns a dispute over Plaintiff's entitlement to Long Term
 22 Disability benefits under a group disability insurance plan and medical benefits under
 23 the Excel Group Flexible Benefit Plan a/k/a The Excel Group Employee Benefit Plan
 24 and administered by the Hartford a/k/a Hartford Life and Accident Insurance Company
 25 (collectively "The Hartford" or "Defendants"). The parties agree that the Long Term
 26 Disability plan is subject to the Employee Retirement Income Security Act of 1974
 27
 28

1 (“ERISA”), 29 U.S.C. § 1001 et. seq. The plan further asserts that this Court has
2 jurisdiction over this matter pursuant to 29 U.S.C.S. § 1166.

3 **Plaintiff’s Claims and Defenses:**

4 Defendant The Hartford (“Hartford”) issued a policy group Long-Term Disability
5 insurance policy to The Excel Group (“Excel”), effective July 1, 2001 for the benefit of
6 Excel’s employees. At all material times, Plaintiff, John Ross (“Ross”) participated in the
7 Plan. The Plan provides monthly benefits if a participant becomes “disabled” as defined
8 by the Plan.
9

10 On or about August 16, 2004 Ross submitted a claim for long-term disability
11 benefits, asserting that he had been disabled beginning June 18, 2004. The Social
12 Security Administration and the Department of Veteran’s Administration have both
13 declared Mr. Ross disabled and unemployable. Despite a plethora of medical records,
14 objective findings and opinions of disability, the Defendant denied and continues to
15 deny the claim, all to the economic harm to Mr. Ross. Plaintiff now seeks the benefits
16 to which he is entitled.
17

18 **Defendants’ Claims and Defenses:**

19 The Hartford agrees that Ross was a participant in the ERISA-governed Excel
20 Group Long Term Disability Plan while he was an Excel Group employee and that he
21 submitted a claim for benefits in August 2004. Ross’s claimed disability, however, was
22 not supported by evidence from his physicians. His medical records actually showed
23 that he quit his job so that he could move to Phoenix to live closer to his children and
24 because his position with Excel Group was going to be eliminated, not for medical
25
26
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28

1 reasons. The Hartford, as plan administrator, exercised the discretion conferred upon
2 it in the plan and denied Ross's claim.

3 **2. Elements of Proof and Scope of Review**

4 **Plaintiff's Statement:** In determining the issues subject hereto, the Court must
5 consider Defendants' conflict of interest and other motivations and/or improprieties in
6 denying the claim. Defendants' conflict of interest affects the standard of review. Abatie
7 v. Alta Health and Life Insurance Company, 458 F.3d 955 (9th Cir. 2006).

9 **Defendants' Statement:**

10 To recover benefits under 29 U.S.C. § 1132(a)(1)(B) the plaintiff must prove that
11 The Hartford abused its discretion by denying benefits. See Abatie v. Alta Health & Life
12 Ins. Co., 458 F.3d 955 (9th Cir. 2006) (abuse of discretion standard always applies
13 where the plan confers discretion upon administrator). In accordance with Kearney v.
14 Standard Insurance Co., 175 F.3d 1084 (9th Cir. 1999), this Court will decide the merits
15 of this case after a "paper trial" – that is, a bench trial based upon the administrative
16 record. See also Abatie, 458 F.3d at 970. Discovery may be limited to production of
17 the administrative record. Or the plaintiff may seek limited discovery related to the
18 application of the standard of review only.

21 **3. The Factual and Legal Issues Genuinely in Dispute**

22 The following factual legal issues are in dispute:

23 **Plaintiff's Statement:**

24 (a) Whether Plaintiff is entitled to his Long Term Disability benefits under the
25 terms and provisions of the plan documents.
26
27
28

1 (b) Whether Defendants operated under conflict of interest effecting the
2 standard of review.

3 **Defendants' Statement:**

4 (a) Did The Hartford abuse its discretion in denying the plaintiff benefits?

5 (b) What weight, if any, should the Court give to The Hartford's "structural
6 conflict of interest" in assessing whether The Hartford abused its discretion?
7

8 **4. The Jurisdictional Basis of the Case, Citing Specific Statutes**

9 This Court has jurisdiction pursuant to ERISA, 28 U.S.C. §1132 and U.S.C. 1331.
10

11 **5. Parties, If any, Which Have not Been Served, as Well as Parties
12 Which Have Not Filed an Answer or Other Appearance, Including
13 Fictitious Parties**

14 All parties have been served.

15 **6. Names of Parties Not Subject to the Court's Jurisdiction**

16 None.

17 **7. Whether There are Dispositive or Partially Dispositive Issues to be
18 Decided by Pretrial Motions**

19 Plaintiff's Statement: The parties may file dispositive motions subsequent
20 to the completion of discovery. If denied, a bench trial is warranted. Abatie v. Alta
21 Health and Life Insurance Company, 458 F.3d 955 (9th Cir. 2006).

22 Defendants' Statement: This Court will decide the merits based upon motion
23 practice. See, e.g., Kearney v. Standard Life Ins. Co., 175 F.3d 1084 (9th Cir. 1999)
24 (court decides merits after a bench trial based on the administrative record). At this
25 point, The Hartford does not expect any interim motions seeking partial disposition of
26 the case.
27
28

1 **8. Whether the Case is Suitable for Reference to Arbitration, to a**
2 **Master, or to a United States Magistrate Judge for all Further**
3 **Proceedings.**

4 No.

5 **9. The Status of Related Cases Pending Before Other Judges of This**
6 **Court or Before Other Courts**

7 There are no related cases pending before this Court or other Courts.

8 **10. Suggested Changes, if Necessary, and the Timing, Form, or**
9 **Requirement for Disclosures Under Rule 26(A) Federal Rules of Civil**
10 **Procedure, Including a Statement of When Initial Disclosures Were**
11 **Made or Will be Made**

12 Initial disclosures will be served by August 30, 2007.

13 **11. Proposed Deadlines**

14 Plaintiff's Statement:

- 15 (a) Discovery cutoff: November 15, 2007
- 16 (b) Dispositive Motions: January 15, 2008
- 17 (c) Disclosure of Expert Testimony, if any: November 15, 2007
- 18 (d) Scheduling of the final Pretrial Conference:

19 Thirty days after determination of dispositive motions or February
20 15, 2008 whichever is later.

21 Defendants' Statement:

- 22 (a) Amendment of the pleadings: **July 30, 2007**
- 23 (b) Production and Review of Administrative Record: The Hartford
24 will produce the claim file to the plaintiff on **August 30, 2007**. The
25 plaintiff will notify The Hartford by **October 10, 2007** of his position
26 as to the following issues: (1) whether the plaintiff believes that
27 any additional documents should be added to the administrative
28 record; (2) whether the plaintiff believes that any documents
 contained in the administrative record should be omitted; and (3)
 whether the plaintiff believes that any discovery beyond the
 administrative record should be conducted and on what grounds.
 The parties will thereafter work together to resolve any issues.

- 1 (c) Filing of the Administrative Record: By **December 15, 2007**, the
2 parties will file a joint administrative record with the Court (or if
3 agreement cannot be reached, the parties may file a motion
4 regarding the same).
- 5 (d) Motion for Discovery: Also by **December 15, 2007**, the plaintiff
6 may file a motion for permission to take discovery related to the
7 standard of review.
- 8 (e) Briefing Schedule for Legal Issues/Merits of the Case: The
9 primary legal issue in this matter is whether The Hartford abused
10 its discretion in denying benefits. If a joint administrative record is
11 timely filed and the plaintiff does not seek to conduct discovery
12 beyond the administrative record, The Hartford proposes that
13 dispositive motions (whether under rule Rule 52, 56, or both) be
14 filed no later than **January 3, 2007**. Response memoranda will be
15 due **February 7, 2008**. And reply memoranda will be due on
16 **February 25, 2008**.

17 **12. The Scope and Discovery and Whether Discovery Should be**
18 **Conducted in Phases or Should Be Limited to or Focused Upon**
19 **Particular Issues**

20 Plaintiff's Statement: Plaintiff does not believe discovery should be
21 conducted in phases.

22 Defendants' Statement: The Hartford contends that discovery, if permitted at
23 all in ERISA cases, is extremely limited. Accordingly, it has suggested the procedure
24 set forth in Section 11, above.

25 **13. Suggested Changes, if any, in the Limitations On Discovery Imposed**
26 **By The Federal Rules of Civil Procedure.**

27 Plaintiff's Statement: Plaintiff does not believe that any change to the
28 Federal Rules of Civil Procedure is warranted.

Defendants' Statement: The Hartford contends that discovery, if permitted at
all in ERISA cases, is extremely limited. Accordingly, it has suggested the procedure
set forth in Section 11, above.

1 **14. Estimated Date That the Case Will be Ready for Trial and the**
2 **Estimated Length of Trial**

3 Plaintiff's Statement: Plaintiff believes that this matter will be ready for a
4 bench trial by February 15, 2008. Plaintiff expects a three day trial.

5 Defendants' Statement: In this ERISA case, the Court will decide the merits
6 based upon motion practice. See, e.g., Kearney v. Standard Life Ins. Co., 175 F.3d
7 1084 (9th Cir. 1999) (court decides merits after a bench trial based on the administrative
8 record).

9 **15. Whether a Jury Trial Has Been Requested and Whether the Request**
10 **for a Jury Trial is Contested**

11 The parties agree that under ERISA there is no right to a jury trial. Nevill v. Shell
12 Oil Co., 835 F.2d 209 (9th Cir. 1987); Blau v. Del Monte Corp., 748 F.2d 1348 (9th Cir
13 1985).

14 **16. The Prospects for Settlement, Including Any Request to Have a**
15 **Settlement Conference Before Another United States District Court**
16 **Judge or Magistrate Judge, or Other Requests of the Court for**
17 **Assistance in Settlement Efforts.**

18 The parties may engage in mediation at the appropriate time.

19 **17. Whether the Parties Desire to have a Scheduling and Planning**
20 **Conference with the Court.**

21 A scheduling conference with the Court is not needed.

22 **18. Whether the Parties Consent to Trial by a Magistrate.**

23 The parties do not consent to a trial by a Magistrate.

24 DATED this 26th day of June, 2007.

1 THE SLEPIAN LAW FIRM

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3 By s/Eric G. Slepian
4 Eric G. Slepian
5 3737 N. 7th Street, Suite 106
6 Phoenix, Arizona 85014
7 Attorney for Plaintiff

8 LEWIS AND ROCA, LLP

9 By s/Ann-Martha Andrews
10 Ann-Martha Andrews
11 40 North Central Avenue
12 Phoenix, AZ 85004-4429
13 Attorney for UNUM Life Insurance Co.

14 CERTIFICATE OF SERVICE

15 I hereby certify that on June 26, 2007, I electronically transmitted the attached
16 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
17 Notice of Electronic Filing to the following CM/ECF Registrants:

18 Ann-Martha Andrews, Esq.
19 Lewis & Roca, LLP
20 40 North Central Avenue
21 Phoenix, AZ 85004-4429
22 Attorney for Defendant UNUM Life Insurance Co.

23 s/ Genesia Conover
24 SLEPIAN LAW OFFICE
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27
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