

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 Jeffrey L. Wissot, DDS,) CV 11-10040 RSWL (JCGx)
12 Plaintiff,)
13 v.) **Statement of**
14) **Uncontroverted Facts and**
15 Great-West Life and Annuity) **Conclusions of Law Re:**
16 Insurance Co. and American) **Defendant's Motion for**
17 Dental Association,) **Summary Judgment [18]**
Defendants.)

18 After consideration of the papers and arguments in
19 support of and in opposition to Defendant Great-West
20 Life and Annuity Insurance Company's ("Defendant")
21 Motion for Summary Judgment Regarding Choice of Law
22 Issue [18], the Court makes the following findings of
23 fact and conclusions of law.

24 **UNCONTROVERTED FACTS**

25 1. The American Dental Association ("ADA") sponsors
26 group insurance plans for the benefit of its members.
27 Goodreau Decl. ¶ 1.

28 2. In 1992, the ADA contracted with Defendant to

1 administer and insure a group disability income
2 protection plan in order to insure qualifying ADA
3 members. Id. at ¶¶ 5-6.

4 3. In relevant part, the 1992 version of the group
5 policy stated that the policy was "subject to the laws
6 of the State of Illinois" (Id. at Ex. 2, p. 28) and,
7 under the heading "Conformity With Statutes," that it
8 was "amended to comply at all times with the minimum
9 requirements of the State of Illinois which apply to
10 Group Long Term Disability Insurance" (Id. at Ex. 2, p.
11 51).

12 3. An essentially identical version of the
13 "Conformity With Statutes" provision was included in
14 corresponding individual certificates issued to insured
15 members. Id. at Ex. 3, p. 69.

16 4. On July 27, 1996, Plaintiff, a member of the
17 ADA, became insured with Defendant under the group
18 policy. Wissot Decl. ¶ 1.

19 5. The ADA and Defendant subsequently changed some
20 of the features of the group policy, effective May 1,
21 1997. Goodreau Decl. ¶ 7. A replacement policy
22 document and replacement individual certificates were
23 issued to all covered members. Id. at ¶¶ 7-8, Exhs. 4,
24 5.

25 6. In relevant part, the 1997 version of the group
26 policy stated that the group policy was "subject to the
27 laws of the State of Illinois." Id. at Ex. 4, p. 89.
28 Furthermore, the 1997 version of the policy provided

1 that "[t]his [group] policy and any dispute between a
2 **Member** and the Company arising in connection therewith
3 are subject to and governed by and shall be construed
4 in accordance with Illinois law." Id. at Ex. 4, p. 116
5 (emphasis in original).

6 7. An essentially identical version of the latter
7 provision was included under the heading "Conformity
8 With Statutes" in the individual replacement
9 certificates issued to covered members, including
10 Plaintiff. Id. at ¶ 7, Ex. 5, p. 140.

11 8. In 2003, Plaintiff filed a claim with Defendant
12 for total disability benefits, which was approved.
13 However, in August 2012, upon Plaintiff reaching age
14 sixty-five, Defendant ceased paying him certain
15 benefits. Id. at ¶ 2.

16 CONCLUSIONS OF LAW

17 1. In adjudicating state law claims, a federal
18 court applies the choice of law principles of the state
19 in which it sits. Abat v. Chase Bank USA, N.A., 738 F.
20 Supp. 2d 1093, 1095 (C.D. Cal. 2010).

21 2. California law provides that in determining
22 whether a choice-of-law provision is enforceable, the
23 Court must apply Restatement (Second) of Conflict of
24 Laws ("Restatement") § 187(2). Nedlloyd Lines B.V. v.
25 Superior Court, 3 Cal. 4th 459 (1992).

26 3. Pursuant to Restatement § 187(2), the Court's
27 first step is to determine whether the chosen state, in
28 this case Illinois, has a substantial relationship to

1 the Parties or to their transaction, or whether there
2 is any other reasonable basis for applying the law of
3 the chosen state. Nedlloyd, 3 Cal. 4th at 466. If
4 this initial test is satisfied, California law dictates
5 that the Illinois choice-of-law provisions be enforced,
6 unless Plaintiff establishes that Illinois law is
7 contrary to a fundamental public policy of California
8 and California has a materially greater interest in the
9 determination of the particular issues at hand. Wash.
10 Mut. Bank, FA v. Superior Court, 24 Cal. 4th 906, 917
11 (2001).

12 4. The initial test is satisfied in this case, as
13 reflected by Defendant's assertion that Illinois has a
14 substantial relationship with the Parties (Def.'s Mot.
15 7:13-22) and Plaintiff's acknowledgment that, for
16 purposes of the Nedlloyd test, Illinois has a
17 "sufficient" relationship to the Parties' transactions
18 (Pl.'s Opp'n 8:22-24).

19 5. Accordingly, the Illinois choice-of-law
20 provisions are enforceable, for even if their
21 enforcement contravenes a fundamental public policy of
22 California, Plaintiff has not shown that California has
23 a "materially greater interest" than Illinois in having
24 its law applied in this Action. See Abat, 738 F. Supp.
25 2d at 1096.

26 6. With regard to whether Plaintiff's claims are
27 covered by the Illinois choice-of-law provisions, the
28 California Supreme Court has noted that "the scope of a

1 choice-of-law clause in a contract is a matter that
2 ordinarily should be determined under the law
3 designated therein." Wash. Mutual, 24 Cal. 4th at 916
4 n.3. See also Nedlloyd, 3 Cal. 4th at 469 n.7. Thus,
5 the Court looks to Illinois law in determining whether
6 Plaintiff's claims are subject to the Illinois choice-
7 of-law provisions.

8 7. Claims two through seven are subject to the
9 Illinois choice-of-law provisions because they each
10 "depend upon" the group policy contract in various
11 ways, including the fact that they could not exist were
12 it not for the existence of the group policy contract.
13 See Amakua Dev. LLC v. Warner, 411 F. Supp. 2d 941, 955
14 (N.D. Ill. 2006).

15 8. Given Plaintiff's concession that if his claims
16 are subject to the Illinois choice-of-law provisions,
17 claims three and four should be dismissed pursuant to
18 215 Illinois Compiled Statute 5/155 (Pl.'s Opp'n 21:5-
19 7, 22:13-14), Plaintiff's third and fourth claims are
20 accordingly dismissed.

21 9. Based on the foregoing, Defendant is entitled to
22 summary judgment on the issues of (1) whether the
23 Illinois choice-of-law provisions are enforceable, (2)
24 whether the Illinois choice-of-law provisions cover

25 ///

26 ///

27 ///

28 ///

1 Plaintiff's claims two through seven, and (3) dismissal
2 of claims three and four.

3
4 **IT IS SO ORDERED.**

5 DATED: December 12 , 2012.

6
7 RONALD S.W. LEW
8 **HONORABLE RONALD S.W. LEW**
9 Senior, U.S. District Court Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28