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**MARLENE SHAW**

9 UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA - FRESNO

12 MARLENE SHAW,	}	CASE NO: 1:07-CV-01026-AWI-SMS
13 Plaintiff,		<b><u>Discovery Matter</u></b>
14 VS.		ORDER GRANTING IN PART
15 UNUM LIFE INSURANCE		PLAINTIFF'S MOTION TO COMPEL
16 COMPANY OF AMERICA;		[26]
17 WALLACE THOMPSON HOSPITAL	}	
LONG TERM DISABILITY PLAN,		
18 Defendants.	}	

19 This matter came on for hearing upon the Motion of Plaintiff, Marlene Shaw to  
 20 compel further discovery in the above entitled matter. The hearing was conducted  
 21 telephonically on January 16, 2009 and resumed on January 21, 2009. At said hearings,  
 22 plaintiff was represented by Corinne Chandler, Esq. and defendant Unum Life Insurance  
 23 Company of America ("Unum") was represented by Francis Torrence, Esq. The Court  
 24 having read and considered all of the papers and pleadings submitted in support of and  
 25 in opposition to said Motion and after hearing argument of the parties, hereby rules as  
 26 follows:

27 1. Plaintiff's Motion is granted with respect to Interrogatories Nos. 5, 7, 9 and  
 28 14.

1           2.     Plaintiff's Motion as to Interrogatories Nos. 6, 8 and 15 is denied, without  
2 prejudice. Plaintiff may renew her request for the information requested in said  
3 Interrogatories, depending upon the information provided by defendant in response to  
4 Interrogatories Nos. 5, 7, 9 and 14.

5           3.     Plaintiff's Motion as to Requests for Production Nos. 6, 44, 46, 47 and 50  
6 is granted with the following modifications. Defendant is to produce its Claim Manual.  
7 To the extent plaintiff's counsel identifies places in the Claims Manual which contain  
8 hyperlinks to materials that refer to Fibromyalgia or the Self Reported Symptoms  
9 Limitation, plaintiff's counsel is to identify such hyperlinks to defense counsel.  
10 Defendant will produce the materials connected by hyperlink to the extent they connect  
11 to defendant's documents, but reserves the right to object if any such hyperlink is to  
12 public or subscription service resources.

13           Defendant is to produce its Underwriting File (called a Contract file), including  
14 the application for the Policy. However, defendant need not produce those pages which  
15 refer exclusively to other insureds or contain individuals' confidential information.

16           If, after diligent search and inquiry, defendant does not otherwise have responsive  
17 documents within its possession, custody and control, it is to provide a supplemental  
18 response to plaintiff, within ten (10) days of the date of this Order, stating that it has  
19 conducted such a search and inquiry and has not located responsive documents.

20           4.     Plaintiff's Motion with respect to Request for Production No. 38 is denied  
21 in part. In lieu of requiring production of documents "available for use" by Unum  
22 personnel, plaintiff may submit additional Interrogatories directed to Unum medical  
23 personnel involved in Ms. Shaw's claim, inquiring about medical resources which they  
24 consulted during the administration of the claim.

25           5.     Plaintiff has also sought to compel production of training materials received  
26 by Kenneth Maxwell and Dr. Greenhood (Requests for Production Nos. 51 to 56,  
27 inclusive). At hearing on said Motion, defendant represented that following an initial  
28 investigation, it is his understanding that the training materials as testified to by Mr.

1 Maxwell as being stored on his computer, were in fact only access to the Claim Manual.  
2 Plaintiff is permitted to re-depose Mr. Maxwell on this subject to ascertain whether the  
3 requested documents exist. Defendant is ordered to produce any training documents  
4 received by Dr. Greenhood from Unum which are actually stored on the hard drive of his  
5 computer.

6 Defendant is ordered to serve supplemental discovery responses and produce the  
7 documents as outlined above within ten (10) days from entry of this Order.

8  
9 Approved as to form.

10  
11 */s/ Francis J. Torrence*

12 Francis J. Torrence

13 IT IS SO ORDERED.

14 **Dated: January 29, 2009** /s/ Sandra M. Snyder  
15 UNITED STATES MAGISTRATE JUDGE