

1 2. The parties have met and conferred on this issue, and agree that this
2 matter is probably not amenable to summary judgment, as there are likely to be
3 matters of disputed fact regarding the alleged conflict of interest;

4 3. As such, the parties respectfully request that the Summary Judgment
5 Hearing set in this matter be taken off calendar;

6 4. Instead of a summary judgment hearing, the parties respectfully request
7 that the Court set this matter for a bench trial, which will be conducted on the paper
8 record with whatever additional documentary evidence that the Court determines is
9 appropriate under the applicable standard. The parties estimate that this bench trial
10 will last approximately 2 hours;

11 5. As to the date of the bench trial, as the Court is aware, in its Order of
12 March 6, 2009, it stayed discovery pending resolution of plaintiff's Motion for
13 Discovery. This stay was lifted by the Court in its Order of July 15, 2009, permitting
14 plaintiff to serve discovery;

15 6. Plaintiff served discovery on July 16, 2009, to which Met Life timely
16 responded. However a dispute has arisen as to the nature of the response, which the
17 parties agree should be resolved prior to the commencement of the trial briefing
18 schedule;

19 7. As such, the parties respectfully request that the trial of this matter be set
20 for February 12, 2010, so that the parties can resolve the pending discovery dispute
21 prior to the commencement of the briefing schedule.

22 8. The parties contemplate that the pretrial process and the trial of this
23 matter will consist of the following:

24 a. The filing of the written administrative record. The parties stipulate that
25 this should be served and filed on January 8, 2010;

26 b. The filing of a Memoranda of Fact and Law by each party, which the
27 parties also stipulate should be served and filed on January 8, 2010;

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- c. The filing of a Trial Brief (Opposition) by each party, which the parties stipulate should be served and filed on January 22, 2010;
- d. The filing of a Reply Brief by each party, which the parties stipulate should be served and filed on January 29, 2010; and
- e. A trial on February 12, 2010, which will consist of a two hour hearing before the Court for oral argument (or as much time as the Court deems appropriate).

It is So Stipulated

DATED: September 3, 2009

DATED: September 3, 2009

THE LAW OFFICES OF RUSSELL G. PETTI

SEDGWICK, DETERT, MORAN & ARNOLD, LLP

/S/

/S/

 RUSSELL G. PETTI
 Attorneys for Plaintiff
 Kerilei Oldoerp

 ERIN CORNELL
 Attorneys for Defendants
 Metropolitan Life Insurance Company
 and the Wells Fargo and Company
 Long Term Disability Plan

ORDER

Based on the Stipulation of the Parties, and for Good Cause shown, the following is hereby Ordered:

- a. That the Summary Judgment hearing set in this matter for November 6, 2009 be removed from the calender;
- b. ~~That, in its place, the Court will set a bench trial on the record, for February 12, 2010;~~
- c. That the written administrative record will be served and filed on January 8, 2010;

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Plaintiff

d. ~~That each party~~ shall file and serve a Memoranda of Fact and Law by on

January 8, 2010; Defendant shall file its memoranda of fact and law and opposition to Plaintiff's brief by January 22, 2010; Plaintiff shall file its reply and opposition to

e. ~~That each party shall file and serve a Trial Brief (Opposition) on January~~ Defendant's brief by February 5, 2010; and Defendant shall file its reply by February ~~22, 2010;~~ 12, 2010.

f. ~~That each party shall file and serve a Reply Brief on January 29, 2010.~~

The Court FURTHER ORDERS that pursuant to Civil Local Rule 72-1 and ADR Local Rule 7-2, this matter is referred to a randomly-assigned magistrate judge to conduct a settlement conference to be conducted within ninety days anytime after February 12, 2010. The Court will set a bench trial, if necessary, after the settlement conference. **It is So Ordered**

IT IS SO ORDERED.

Dated: September ~~8~~, 2009


The Honorable Jeffrey S. White
United States District Judge

cc: Wings Hom