

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CASSAUNdra ELLENA,)	Case No. 12-5401 SC
)	
Plaintiff,)	ORDER RE: TESTIMONY OF STEVEN
)	<u>PRATER</u>
v.)	
)	
STANDARD INSURANCE COMPANY,)	
)	
Defendant.)	
)	
)	
)	

The Court held a pretrial conference in this matter on January 10, 2014. At the hearing, the Court ordered that the case be referred to a magistrate judge for a report and recommendation as to specific testimony of the Plaintiff's expert, Steven Prater. The Court hereby VACATES that Order. Consistent with the Court's Order on Defendant's motion in limine, ECF No. 163, Prater may offer testimony that embraces the issue of bad faith, but he may not give opinions as to legal conclusion on the issue. The Court provides additional guidance on Prater's testimony below.

Pursuant to Federal Rule of Evidence 702, "[e]xpert testimony is properly admissible when it serves to assist the trier of fact in understanding the evidence or determine a fact in issue." United States v. Kuiken, 198 F. App'x 643, 646 (9th Cir. 2006). An

1 expert's opinion "is not objectionable just because it embraces an
2 ultimate issue." Fed. R. Evid. 702(a). However, "[e]xpert
3 testimony is not proper for issues of law. Experts interpret and
4 analyze factual evidence. They do not testify about the law . . .
5 ." Crow Tribe of Indians v. Racicot, 87 F.3d 1039, 1045 (9th Cir.
6 1996).

7 Plaintiff offers Prater's testimony to assist the jury in
8 determining whether Defendant violated established insurance
9 standards when it evaluated Plaintiff's disability claim.
10 Defendant moves to preclude Prater from testifying because his
11 opinions constitute legal conclusions and cross the line between
12 expert and advocate. Having reviewed Prater's expert report, the
13 Court agrees that some of Prater's intended testimony crosses the
14 line. However, the Court declines to exclude Prater from
15 testifying altogether, since some of his testimony may assist the
16 jury.

17 Many passages from Prater's expert report read like a summary
18 judgment brief. At one point, Prater argues: "There's an abundance
19 of evidence from which a reasonable jury could conclude that
20 punitive damages are warranted in this case in order to punish,
21 deter, and change [Defendant's conduct]." ECF No. 67-2 ("Prater
22 Rep.") at 6. These statements are legal conclusions and the Court
23 will preclude Prater from making such statements at trial.
24 Prater's job is to provide the jury with information that will help
25 them arrive at a verdict, not to tell them what that verdict should
26 be. Prater's report also contains a number of paragraphs that
27 analyze disability case law. It is the Court's duty, not the
28 expert's, to instruct the jury on the law of the case.

1 Further, Prater's report addresses a number of issues that do
2 not require scientific, technical, or other specialized knowledge
3 to understand. He opines that Plaintiff "is a conscientious, hard-
4 working person who used her best efforts to do her job in a
5 professional manner." Id. at 8. He states that the fact that
6 disability benefits have been approved by the State of California,
7 the County of Sonoma, and the federal government should weigh in
8 favor of a finding that Plaintiff was disabled; however, he does
9 not opine that this is industry practice. While these facts may be
10 relevant, it is unclear why Prater needs to explain them to the
11 jury. Accordingly, Prater may not offer such testimony at trial.

12 In short, the Court intends to limit Prater's testimony to
13 insurance standards, practices, and procedures. Prater may testify
14 about whether Defendant's conduct was inconsistent with those
15 standard practices. However, he may not argue to the jury
16 concerning factual matters that do not require specialized
17 knowledge to understand. Nor may he offer opinions concerning the
18 law. Each of Prater's opinions should be tethered to the specific
19 practices of Defendant and his specialized knowledge of the
20 insurance industry. He may not weigh the evidence for the jury or
21 provide a general opinion on whether all of Defendants practices,
22 taken together, rise to the level of bad faith conduct.

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IT IS SO ORDERED.

January 16, 2014



UNITED STATES DISTRICT JUDGE