

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

ANAREGHINA WONG LAI,

No. C 13-5183 SI

Plaintiff,

**FINAL PRETRIAL SCHEDULING  
ORDER**

v.

NORTHWESTERN MUTUAL AND  
NORTHWESTERN MUTUAL LIFE  
INSURANCE COMPANY,

Defendants.

On November 3, 2014, the Court held a final pretrial conference in the above captioned matter, which is set for jury trial beginning November 17, 2014. All parties were represented by counsel. The following matters were resolved:

1. **Number of jurors and challenges:** There shall be a jury of 7 members. Each side shall have up to three peremptory challenges.
2. **Voir dire:** The Court will conduct general voir dire, and counsel for each side shall have up to 15 minutes total to question the panel. Counsel shall prepare a joint statement regarding the case that the Court will read to the jury during voir dire. Counsel shall submit the joint statement to the Court by noon on November 14, 2014.
3. **Jury instructions:** Counsel have submitted joint proposed jury instructions.
4. **Trial exhibits:** No later than November 14, 2014, the parties shall submit their trial

1 exhibits, in binders with numbered tabs separating and identifying each exhibit. The Court shall be  
2 provided with three sets (for the court, the file and the witness) and each side shall provide one set for  
3 the other side. To the extent that original documents are to be used as exhibits in the case, they should  
4 be included in the set of exhibits for the Court.

5 5. **Timing of trial:** The parties estimated that the trial should take between 3 and 5 days.  
6 Based on a five-day estimate, each side shall have 45 minutes for opening statements; each side shall  
7 have 8 hours total for presentation of evidence, which includes direct and cross-examination and  
8 presentation of all exhibits; and each side shall have up to 60 minutes for closing argument.

9 6. **Trial schedule:** Jury trials are generally conducted Monday through Thursday; jury  
10 trials are generally not conducted on Fridays, although deliberating juries are free to deliberate on  
11 Fridays. The trial day runs from 8:30 a.m. until 3:30 p.m., with a 15 minute break at 10:00 a.m., a 45  
12 minute break at 12:00 noon and a 15 minute break at 2:00 p.m., all times approximate. Jury selection  
13 will occur on Monday November 17, 2014, and counsel will proceed with opening statements on  
14 Tuesday November 18, 2014. Thursday, November 27, 2014 and Friday, November 29, 2014 are court  
15 holidays.

16 7. **Motions in limine:** The parties filed motions in limine, as follows:

17 **Plaintiff's motion #1 - "attorneys' fees" and motion #2 - leave to amend complaint**  
18 **at trial:** Plaintiff has stated that she will seek to amend the complaint to conform to proof, to resurrect  
19 the bad faith and other tort claims which were adjudicated against her in the summary judgment  
20 proceedings. After having done so, she will apparently seek attorneys fees under *Brandt v. Superior*  
21 *Court.*, 37 Cal.3d 813 (1985). However, this action will be tried on the breach of contract claims only,  
22 and only such evidence and testimony as are relevant to the breach of contract claims will be allowed.  
23 Under these circumstances, it is unlikely that the tort claims – as to which plaintiff was unable to  
24 demonstrate a triable issue of material fact during the summary judgment process – will come back to  
25 life. To the extent that these motions in limine seek approval to amend the complaint, or to seek tort-  
26 related attorneys fees, they are DENIED at this time.

27 **Plaintiff's motion #3 - to exclude experts from testifying on topics outside the scope**  
28 **of their expertise and motion #4 - to allow voir dire of every witness expressing opinion on**

1 **traumatic brain injury:** No experts will be allowed to opine on topics outside their areas of expertise,  
2 and each expert may be queried on that expertise. However, to the extent plaintiff's motions suggest  
3 that only experts on "mild traumatic brain injury" may testify about plaintiff's condition, it is DENIED.  
4 The physicians and experts who have treated plaintiff, examined plaintiff and been deposed in this case  
5 – neuropsychologists and psychiatrists primarily – may testify about her condition, including any mild  
6 traumatic brain injury issues.

7 **Plaintiff's #5 - to allow plaintiff to include both Dr. Williams' initial and**  
8 **supplemental reports at trial:** Expert reports, which are hearsay, are not generally admitted into  
9 evidence. However, Dr. Williams may testify about the subject matter of both his initial and his  
10 supplemental reports, and may express the opinions contained therein and expressed at his deposition,  
11 based on the materials he had reviewed at that time. If he has since reviewed other materials or records,  
12 he may not testify about new opinions related to his later review, nor may he bolster his old opinions  
13 by relying on the later-reviewed materials. **Moreover, plaintiff is ordered to PRODUCE the written**  
14 **MFAST testing performed by Dr. Williams on plaintiff to defendant by 10:00 a.m. on Tuesday,**  
15 **November 4, 2014.**

16 **Plaintiff's motion #6 - to define factitious disorder, clinical depression, debilitating**  
17 **anxiety, and conversion disorder as "sicknesses" within the policy and motion #7 - to define**  
18 **comorbidity in the context of a disability claim:** DENIED. These are areas of medical and other  
19 expertise, or subjects of stipulation.

20 **Plaintiff's motion #8 - to exclude plaintiff's wedding video and evidence of children**  
21 **discovered after the termination of benefits:** DENIED. This is relevant evidence as to plaintiff's  
22 condition.

23 **Plaintiff's motion #9 - to define intent required to constitute malingering:** DENIED.  
24 This is an area of medical and other expertise, or the subject of stipulation.

25 **Defendant's motion #1 - to exclude Dr. Nataliya Belfor:** This motion was based on  
26 plaintiff's failure to disclose Dr. Belfor in a timely manner prior to trial. Plaintiff now states that she  
27 does not intend to call Dr. Belfor in her case in chief. Accordingly, the motion is GRANTED.

28 **Defendant's motion #2 - to exclude expert opinion of and reports prepared by Dr.**

1 **Martin Williams**: DENIED. See plaintiff's motion #5.

2 **Defendant's motion #3 - to exclude testimony of Pablo Wong, Mimi Alvarez and**  
3 **Joyce Freeman [sic - Foreman]**: The motion was withdrawn as to Joyce Foreman. The motion is  
4 DENIED as to Pablo Wong and Mimi Alvarez, provided that plaintiff make each of them available to  
5 defendant for deposition, at a time convenient to defense counsel, prior to trial.

6 **Defendant's motion #4 - to exclude speculative and baseless testimony on plaintiff's**  
7 **potential earnings as a dentist**: In general, the Court will not allow speculative or baseless testimony  
8 by any witness. The plaintiff may testify about her prior plans to practice dentistry and her expectations  
9 about the practice, and will be subject to cross examination about them. Plaintiff may not testify that  
10 she "would have" made any particular salary or income, as that would be speculative. The Court  
11 DENIES plaintiff's request to take judicial notice of data from the Bureau of Labor Statistics regarding  
12 the annual mean wage of a dentist.

13 **Defendant's motion #5 - to exclude claim for emotional distress damages in breach**  
14 **of contract claim**: GRANTED.

15 **Defendant's motion #6 - to exclude testimony from lay witnesses regarding**  
16 **plaintiff's alleged traumatic brain injury**: Lay witnesses with personal knowledge of plaintiff may  
17 testify about their observations of her conduct and their interactions with her. No such witnesses may  
18 testify about causation, illness or medical diagnosis.

19 **Defendant's motion #7 - to exclude evidence of plaintiff's award of Social Security**  
20 **Disability Benefits**: GRANTED. The SSA finding is based on an entirely different standard for  
21 "disability" that is not relevant in a private insurance disability suit. Moreover, any slight probative  
22 value it might have is outweighed by the risks of confusing the issues and creating undue delay, because  
23 the parties would also be required to put on evidence regarding SSA's methodology and findings.  
24 Neither party may mention the SSA disability finding or the fact that plaintiff receives disability  
25 payments from SSA.

26 **Defendant's motion #8 - to exclude any testimony on defendant's alleged bad faith**  
27 **conduct**: GRANTED; only breach of contract claims remain in this action. However, plaintiff is free  
28 to produce evidence concerning defendant's conduct as related to the breach of contract claims.

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**Defendant's motion #9 - to exclude any testimony on plaintiff's alleged physical impairments that were never certified in disability claim:** the motion is unopposed and therefore it is GRANTED.

**IT IS SO ORDERED.**

Dated: November 5, 2014



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SUSAN ILLSTON  
United States District Judge