

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANAREGHINA WONG LAI,
Plaintiff,

v.

NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY, et al.,
Defendants.

Case No. [13-cv-05183-SI](#)

JURY INSTRUCTIONS

Re: Dkt. No. 153

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DUTY OF JURY

Members of the Jury: Now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you as to the law of the case.

A copy of these instructions will be sent with you to the jury room when you deliberate.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

INSTRUCTIONS TO BE CONSIDERED AS A WHOLE

If any matter is repeated or stated in different ways in my instructions, no emphasis is intended. Do not draw any inference because of a repetition.

Do not single out any individual rule or instruction and ignore the others. Consider all the instructions as a whole and each in the light of the others.

The order in which the instructions are given has no significance as to their relative importance.

CLAIMS AND DEFENSES

In this trial, the plaintiff is AnaReghina Wong Lai ("Plaintiff" or "Wong Lai"), and the defendant is The Northwestern Mutual Life Insurance Company ("Defendant" or "Northwestern Mutual").

Plaintiff is seeking to recover compensatory damages against defendant based on a claim of breach of contract.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENTITY NOT TO BE PREJUDICED AS SUCH

The fact that The Northwestern Mutual Life Insurance Company is a corporation, and is a party must not prejudice you in your deliberations or in your verdict.

Do not discriminate between a corporation and natural individuals. Each is a person in the eyes of the law and entitled to the same fair and impartial consideration and to justice by the same legal standards.

**PRONOUN FORM INCLUDES CORPORATION,
PUBLIC ENTITY, OR BUSINESS ASSOCIATION**

The pronoun form as used in these instructions, if applicable as shown by the text of the instruction and the evidence, applies to a corporation or public entity or business association.

BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

When a party has the burden of proof on any claim or defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

- 1. the sworn testimony of any witness;
- 2. the exhibits which are received into evidence; and
- 3. any facts to which the lawyers have agreed.

WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into

1 evidence. Certain things are not evidence, and you may not consider them in deciding what the
2 facts are. I will list them for you:

3 (1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses.
4 What they have said in their opening statements, what they will say in their closing arguments,
5 and what they say at other times is intended to help you interpret the evidence, but it is not
6 evidence. If the facts as you remember them differ from the way the lawyers have stated them,
7 your memory of them controls.

8 (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their
9 clients to object when they believe a question is improper under the rules of evidence. You should
10 not be influenced by the objection or by the court's ruling on it.

11 (3) Testimony that has been excluded or stricken, or that you have been instructed to
12 disregard, is not evidence and must not be considered. In addition, sometimes testimony and
13 exhibits are received only for a limited purpose; when I give a limiting instruction, you must
14 follow it.

15 (4) Anything you may have seen or heard when the court was not in session is not
16 evidence. You are to decide the case solely on the evidence received at the trial.

17

18 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

19 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as
20 testimony by a witness about what that witness personally saw or heard or did. Circumstantial
21 evidence is proof of one or more facts from which you could find another fact. You should
22 consider both kinds of evidence. The law makes no distinction between the weight to be given to
23 either direct or circumstantial evidence. It is for you to decide how much weight to give to any
24 evidence.

25

26 **STATEMENTS OF COUNSEL -- STIPULATION TO A FACT --**

27 **EVIDENCE STRICKEN OUT -- INSINUATIONS OF QUESTIONS**

28 Statements of counsel are not evidence; however, if counsel have stipulated to a fact, or a

1 fact has been admitted by counsel, you must accept that fact as having been conclusively proved.

2 Do not speculate as to the answers to questions to which objections were sustained or the
3 reasons for the objections.

4 Do not consider any evidence that was stricken; stricken evidence must be treated as
5 though you had never known of it.

6 A suggestion in a question is not evidence unless it is adopted by the answer. A question
7 by itself is not evidence. Consider it only to the extent it is adopted by the answer.

8

9

RULING ON OBJECTIONS

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;

- 1 (5) whether other evidence contradicted the witness's testimony;
- 2 (6) the reasonableness of the witness's testimony in light of all the evidence; and
- 3 (7) any other factors that bear on believability.

4 The weight of the evidence as to a fact does not necessarily depend on the number of
5 witnesses who testify about it.

6

7

WEIGHING CONFLICTING TESTIMONY

8 You are not required to decide any issue according to the testimony of a number of
9 witnesses, which does not convince you, as against the testimony of a smaller number or other
10 evidence, which is more convincing to you. The testimony of one witness worthy of belief is
11 sufficient to prove any fact. This does not mean that you are free to disregard the testimony of any
12 witness merely from caprice or prejudice, or from a desire to favor either side. It does mean that
13 you must not decide anything by simply counting the number of witnesses who have testified on
14 the opposing sides. The test is not the number of witnesses, but the convincing force of the
15 evidence.

16

17

FAILURE TO PRODUCE AVAILABLE STRONGER EVIDENCE

18

19

20

21

22

23

24

25

FAILURE TO DENY OR EXPLAIN ADVERSE EVIDENCE

26

27

28

In determining what inferences to draw from the evidence you may consider, among other things, a party's failure to explain or to deny such evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPONSES TO REQUESTS FOR ADMISSIONS AS EVIDENCE

In this case, as permitted by law, Northwestern Mutual served on the Plaintiff written requests for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the Plaintiff, but not those objected to by Plaintiff in answering.

USE OF INTERROGATORIES OF A PARTY

Evidence was presented to you in the form of answers by Plaintiff to written interrogatories by Defendant. These answers were given in writing and under oath, before the actual trial, in response to questions that were submitted in writing under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

WITNESS WILLFULLY FALSE

A witness false in one part of his or her testimony is to be distrusted in others. You may reject the entire testimony of a witness who willfully has testified falsely on a material point, unless, from all the evidence, you believe that the probability of truth favors his or her testimony in other particulars.

EXTRAJUDICIAL ADMISSIONS/CAUTIONARY INSTRUCTION

A statement made by a party before trial which tends to prove or disprove any material fact in this action and which is against such party's interest is an admission.

NO UNFAVORABLE INFERENCE FROM EXERCISE OF A PRIVILEGE

If, at a deposition or in answers to interrogatories a privilege not to testify with respect to any matter has been exercised, no assumption of fact is to be made by you because of the exercise of such privilege, and you must not draw any inference therefrom as to the believability of the witness or as to any matter in issue in this trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXPERTS

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness’s education and experience, the reasons given for the opinion, and all the other evidence in the case.

WEIGHING CONFLICTING EXPERT TESTIMONY

In resolving the conflict in the testimony of expert witnesses, you should weigh the opinion of one expert against that of another. In doing this, you should consider the qualifications and believability of each witness, the reasons for each opinion and the matter upon which it is based.

HYPOTHETICAL QUESTIONS

A hypothetical question is a question in which an expert witness is asked to assume that certain facts are true and to give an opinion based upon that assumption. If any fact assumed in such a question has not been established by the evidence, you should determine the effect of that omission upon the value of an opinion based on that fact.

STATEMENTS MADE BY PATIENT TO PHYSICIAN

Evidence has been received that plaintiff made statements to a physician for the purpose of diagnosis or treatment. That evidence may not be considered as proof of the truth of the facts stated; you may consider it only to the extent it does show the information upon which the physician's opinions are based. However, you may consider the plaintiff’s statements about her existing state of mind, emotion, or physical sensation and any statements made constituting an admission of fact adverse to the plaintiff’s interest as proof of the truth of the matter so stated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**LIABILITY OF CORPORATIONS—SCOPE OF
AUTHORITY NOT IN ISSUE**

Under the law, a corporation is a person. It can only act through its employees, agents, directors, or officers. Therefore a corporation is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

CONTRACT – A DEFINITION

A contract is an agreement to do or not to do a certain thing. It gives rise to obligations and/or legal duties. It may be oral or written.

CONTRACT- INSURANCE POLICY DEFINED

The written instrument in which a contract of insurance is set forth is an insurance policy.

BREACH OF CONTRACT – INTRODUCTION

Plaintiff AnaReghina Wong Lai seeks to recover damages against Northwestern Mutual for breach of contract. Plaintiff contends that Northwestern Mutual breached the insurance contract by terminating her claim for disability benefits on November 11, 2011. She claims to be totally disabled by Mild Traumatic Brain Injury, Depression, and Anxiety, and/or a combination of these conditions.

Northwestern Mutual denies it breached the contract based on her failure to meet three policy requirements. First, as of November 11, 2011, Plaintiff did not have a sickness or injury that caused her to be unable to perform the duties of her occupation as a dentist. Second, Plaintiff did not submit satisfactory proof of loss as she omitted to provide an accurate description of her true functioning to Northwestern Mutual and Plaintiff’s treating physicians from 2010 and 2011 have retracted their certification. Third, Plaintiff has not been under the regular care and treatment of a licensed physician for her alleged disabling sickness from at least May 2011 through July 2014, thus disqualifying her for total disability benefits.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BREACH OF CONTRACT– POLICY TERMS GOVERN

You may find that benefits are due under the Northwestern Mutual disability insurance policy (“Policy”) only if Plaintiff’s claim for total disability is covered under the terms of the Policy.

The Policy includes the following provisions:

2.1 DISABILITIES COVERED BY THE POLICY

Benefits are provided for the Insured’s total or partial disability only if:

- ◆ the Insured becomes disabled while this policy is in force;
- ◆ the Insured is under the Regular Care of a Licensed Physician during disability;
- ◆ the disability results from an accident that occurs or a sickness that first appears while this policy is in force; ...

1.4 TOTAL DISABILITY

Until the end of the Initial Period, the Insured is totally disabled when unable to perform the principal duties of the regular occupation. After the Initial Period, the Insured is totally disabled when both unable to perform the principal duties of the regular occupation and not gainfully employed in any occupation.

If the Insured can perform one or more of the principal duties of the regular occupation, the Insured is not totally disabled; however, the Insured may qualify as partially disabled.

1.6 LICENSED PHYSICIAN

Licensed Physician means a physician, other than the Insured, who is acting within the scope of his or her license. If disability is due to a mental or nervous condition, Licensed Physician means psychiatrist or licensed doctoral level psychologist other than the Insured.

1.7 REGULAR CARE OF A LICENSED PHYSICIAN

Regular Care of a Licensed Physician means personal care and attention appropriate to the condition causing disability. This care must be at such intervals and frequency as will lead to the Insured returning to the principal duties of the regular occupation. ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5.1 CLAIM FOR POLICY BENEFITS

PROOF OF LOSS

For a claim to be payable, the Company must be provided with satisfactory written proof of loss. This is information that the Company deems necessary to determine whether benefits are payable, and if so, the amount of the benefits. The proof of loss will include information about the Insured’s health, occupational duties, income....

BREACH OF CONTRACTCONTRACT-

BURDEN OF PROOF AND CONTRACT DAMAGES

To establish a claim for breach of contract, plaintiff AnaReghina Wong Lai has the burden of proving by a preponderance of the evidence the following essential elements:

1. That plaintiff and Northwestern Mutual mutually agreed to enter into a contract and the terms of the contract.
2. That plaintiff either performed what she was required to do under the contract, or was excused from doing any more under the contract.
3. That Northwestern Mutual breached the contract.
4. That Northwestern Mutual’s failure to perform caused the damages that plaintiff complains of.
5. The nature and extent of the damages.

PLAINTIFF’S REQUIRED PROOF UNDER THE POLICY

To establish a claim for total disability benefits under the Policy, Plaintiff has the burden of proving by a preponderance of the evidence the following essential elements:

1. That she has a disabling sickness or injury under the terms of the contract caused by Mild Traumatic Brain Injury, Depression, Anxiety, or a combination of these conditions.
2. That she provided satisfactory proof of loss to Northwestern Mutual; and
3. That she has been under the regular care and treatment of a licensed physician for her disabling sickness or injury at all times at issue in this lawsuit.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXCUSE OF PERFORMANCE

When a party’s failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract.

If the jury finds that Defendant breached the contract in November 2011, Plaintiff is excused from further performance after November 2011 as a result of that breach.

BREACH OF CONTRACT -- DAMAGES

**INTRODUCTORY INSTRUCTION: RIGHT TO RECOVER DAMAGES
AND DETERMINATION OF DAMAGES FOR A BREACH OF CONTRACT**

Every person who suffers a loss or harm as a result of another person's breach of contract is entitled to be compensated in money for that loss or harm by the person who breached the contract. This compensation is called "damages."

If you find that Northwestern Mutual breached its contract with plaintiff, you must award damages for that breach. You must determine the amount of the damages to be awarded to plaintiff according to the evidence, the rules of law on which I instruct you, and the other instructions that I will give you on the subject of damages.

CONTRACT--DAMAGES

If you find that Northwestern Mutual breached the contract, you must award Wong Lai damages that total the past monthly benefits from November 11, 2011 to the present.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DUTY TO DELIBERATE

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

RETURN OF VERDICT

A verdict form has been prepared for you. You must complete the entire verdict form after you have reached unanimous agreement on a verdict. Your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.