

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,

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE A
MOTION FOR RECONSIDERATION**

v.

NORTHWESTERN MUTUAL, *et al.*,

Defendants.

In an order filed September 26, 2014, the Court granted in part defendants' motion for summary judgment and granted defendants' motion to strike. The Court held that defendants did not breach the implied covenant of good faith and fair dealing because there was a genuine dispute as to coverage; that plaintiff was not entitled to seek punitive damages because plaintiff failed to raise a triable issue of fact as to whether defendants' actions were oppressive, fraudulent or malicious; and that Dr. Martin Williams' July 16, 2014 expert report was an untimely rebuttal expert report. The Court denied summary judgment with regard to plaintiff's breach of contract claim.¹

Plaintiff has not shown that any of the grounds for seeking reconsideration are met. A party seeking leave to file a motion for reconsideration "must specifically show" the following:

¹ Contrary to plaintiff's assertion in the motion for leave to file a motion for reconsideration, the Court's summary judgment ruling was not based on any "calculation" regarding the likelihood of settlement, but rather upon an assessment of the parties' arguments and the extensive record before the Court.

1 (1) That at the time of the motion for leave, a material difference in fact or law exists
2 from that which was presented to the Court before entry of the interlocutory order for
3 which reconsideration is sought. The party also must show that in the exercise of
reasonable diligence the party applying for reconsideration did not know such fact or law
at the time of the interlocutory order; or

4 (2) The emergence of new material facts or a change of law occurring after the time of
5 such order; or

6 (3) A manifest failure by the Court to consider material facts or dispositive legal
arguments which were presented to the Court before such interlocutory order.

7 Civil Local Rule 7-9(b).

8 Plaintiff contends that the Court failed to consider material facts or dispositive arguments which
9 plaintiff presented in her opposition to defendant’s motion for summary judgment. In fact, however,
10 plaintiff’s motion for leave to file a motion for reconsideration presents arguments that were not
11 articulated in her opposition. In her opposition to defendant’s motion for summary judgment, plaintiff
12 argued that she was disabled as a result of anxiety and depression, and that defendant breached the
13 covenant of good faith and fair dealing by selecting biased experts and by terminating plaintiff’s benefits
14 without any of those experts meeting plaintiff and administering objective tests for malingering. In the
15 motion for leave to file a motion for reconsideration, plaintiff presents the new argument that defendants
16 breached the covenant of good faith and fair dealing by never retaining an expert who specialized in
17 mild brain injury cases. Plaintiff did not make that argument in opposition to summary judgment, and
18 plaintiff cannot seek reconsideration based upon a ground that was not presented on summary judgment.

19 In any event, the record before the Court shows that defendants conducted a reasonable and
20 comprehensive investigation of plaintiff’s claim, including the review of multiple MRIs that did not
21 show any brain injury. *Cf. Hangarter v. Paul Revere Life Ins. Co.*, 236 F. Supp. 2d 1069 (N.D. Cal.
22 2002) (upholding jury verdict finding insurance company acted in bad faith where, *inter alia*, company
23 “deliberately set out to terminate [plaintiff’s] claim,” company’s employees “testified repeatedly that
24 they neither knew nor used the California definition of total disability” and “[t]hey attempted to apply
25 an artificial standard to avoid the requirements of California law in their efforts to find plaintiff not
26 disabled,” and company “chose an examiner, Dr. Swartz, with a record of finding claimants not disabled
27 and instructed him through Dr. Bianchi in how he should find that Plaintiff’s condition with
conservative treatment would improve over time.”). The evidence in this case showed that there was,

1 at a minimum, a genuine dispute as to whether plaintiff was disabled, thereby barring plaintiff's bad
2 faith claims.² Further, plaintiff did not present any evidence in opposition to summary judgment
3 showing that defendants' experts were biased. Finally, plaintiff repeats the argument – that she made
4 on summary judgment and that was considered and discussed by this Court in the summary judgment
5 order – that plaintiff did not have any financial incentive to fake her disability.

6 With regard to striking Dr. Williams' report, plaintiff simply reiterates her arguments that the
7 July 16, 2014 report is a supplemental report rather than an untimely rebuttal report. The Court
8 concluded that the report was a rebuttal report not simply based on the fact that Dr. Williams' July 16,
9 2014 report discussed new test results (testing that was performed directly in response to the testing
10 discussed by defendants' experts), but also because Dr. Williams' July 16, 2014 report did not simply
11 supplement his earlier report, but rather it responded to the points made in defendants' experts' reports.

12 This order resolves Docket No. 77.

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14 **IT IS SO ORDERED.**

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16 Dated: October 20, 2014



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18 SUSAN ILLSTON
United States District Judge

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26 _____
27 ² Contrary to plaintiff's assertions, the fact that there were differing opinions as to the precise
diagnosis for plaintiff does not mean that defendant engaged in bad faith where, as here, the record
shows that numerous doctors evaluated plaintiff, no doctor opined that plaintiff suffered from mild
traumatic brain injury, and multiple doctors concluded based upon objective testing that plaintiff was
malingering and/or exaggerating her symptoms.