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14 VICKI CAPRIO and DUANE A. BARBAROTTO

15
16 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Elan Microelectronics Corporation v. Apple, Inc.

Doc. 160

17
18 VICKI CAPRIO and DUANE A.
BARBAROTTO as decedent Nicholas J.
19 Barbarotto's Successors in Interest,

20 Plaintiffs,

21 v.

22 HARTFORD LIFE INSURANCE
COMPANY, a corporation doing business
23 as THE HARTFORD and HARTFORD
LIFE AND ACCIDENT INSURANCE
24 COMPANY, and DOES 1 through 20,
inclusive,

25 Defendants.

CASE NO. C 08-0338 CW

**JOINT CASE MANAGEMENT
STATEMENT AND PROPOSED ORDER**

JUDGE: Hon. Claudia Wilken
COURTROOM: 2, (4th Floor)
DATE:
TIME:

26
27 Plaintiffs Vicki Caprio and Duane Barbarotto and Defendant Hartford Life Insurance
28 Company ("Hartford") and, in accordance with Federal Rule 26 and Civil Local Rule 16-9

1 submit this Joint Case Management Statement.

2 1. Jurisdiction and Service

3 Jurisdiction is based on diversity. Alternatively, jurisdiction is based on federal question,
4 as plaintiffs' allege that their claims are governed by the Employee Retirement Income Security
5 Act ("ERISA").

6 All parties have been served.

7 2. Facts

8 This is an action for benefits under two accidental death and dismemberment group
9 insurance policies, issued to the State Bar of California and Attorneys Group Insurance Trust
10 ("the Policies") by Hartford Life Insurance Company, under which Nicholas Barbarotto
11 participated. Mr. Barbarotto was the husband of the decedent Tamara Barbarotto. Tamara
12 Barbarotto died on October 18, 2002, at age 79. Mrs. Barbarotto had terminal lung cancer, and
13 her death certificate states that her immediate cause of death was lung cancer with a two month
14 interval between the onset of the condition and death. No autopsy was performed.

15 Mr. Barbarotto submitted claims for benefits under both Policies asserting that his wife
16 died as a result of injuries she sustained following an accidental fall on July 2, 2002, in which she
17 fractured her right fibula and tibia. Mr. Barbarotto claimed that the injuries his wife suffered on
18 July 2, 2002, resulted in her sudden death on October 18, 2002.

19 Hartford denied both claims on grounds that the Policies only covered losses caused by
20 accidents, and not sickness or disease. Hartford stated that there was no evidence to support Mr.
21 Barbarotto's claims that Mrs. Barbarotto's death was the result of an accident.

22 Plaintiffs allege in their complaint that Mr. Barbarotto is deceased, and have brought this
23 action to recover under the Policies as Mr. Barbarotto's successors-in-interest. Plaintiffs' claims
24 for relief include breach of contract, breach of the duty of good faith and fair dealing, and ERISA
25 violation.

26 3. Legal Issues

- 27 a. Whether the Policies and this action are governed by ERISA;
28 b. Whether plaintiffs' state law claims are preempted by ERISA;

1 c. Whether Hartford's claim determinations were reasonable as a matter of law; and
2 d. Whether plaintiffs' claims for breach of the implied covenant of good faith and fair
3 dealing are barred by the statute of limitations.

4 4. Motions

5 Prior - Hartford filed a motion to dismiss plaintiffs' complaint on the ground of *res*
6 *judicata*, which was granted with relief for plaintiffs to move to void a prior judgment, and if
7 successful, amend their complaint. Plaintiffs successfully moved to void the prior action brought
8 by Nicholas Barbarotto, on grounds that he predeceased the filing of the action and therefore the
9 action was void from its inception.

10 Anticipated - Plaintiffs may bring a motion to establish that ERISA applies. Hartford
11 anticipates bringing a motion for summary judgment on all claims.

12 5. Amendment of Pleadings

13 Plaintiffs may amend their complaint once the issue of whether ERISA governs this
14 action has been resolved.

15 6. Evidence Preservation

16 Hartford has preserved all documents related to Mr. Barbarotto's insurance claims.

17 7. Disclosures

18 The parties will exchange initial disclosures by September 5, 2008.

19 8. Discovery

20 Hartford intends to conduct discovery into Tamara Barbarotto's medical condition
21 leading up to her death. Hartford intends to take the depositions of Tamara Barbarotto's treating
22 physicians.

23 Plaintiffs intend to take the depositions of the following individuals:

24 Edna Golych, Hartford Appeal Specialist, Tyrell Sampson, Examiner, Hartford Life
25 Insurance Co, Annette Graczewski, BMS Appeal Specialist, Hartford Life Insurance Co, Susan
26 Killeen, Hartford Life Insurance Co., Edmond Schmulbach, M.D., Oncology Dept. Kaiser
27 Permanente Medical Center,

28 The parties do not propose any modifications or limitations of the federal discovery rules.

1 9. Class Actions

2 This is not a class action.

3 10. Related Cases

4 Northern District of California Case No. C 06-1278 was a related case in that it was
5 brought by Nicholas Barbarotto. However, this Court has found that the action was void, as it
6 was filed only after Mr. Barbarotto's death.

7 11. Relief Sought

8 Plaintiff is seeking special damages in the amount of \$175,000 for failure to pay benefits
9 under two death and dismemberment policies, plus interest. Plaintiff is also seeking punitive
10 damages for failure to adjust Mr. Barbarotto's claim in good faith.

11 12. Settlement and ADR

12 The parties agree to participate in an ADR Process, namely, mediation pursuant to the
13 program instituted by the Northern District of California.

14 13. Consent To Magistrate

15 The parties do not consent to a magistrate.

16 14. Other References

17 The parties do not believe the case is suitable for other references.

18 15. Narrowing of Issues

19 The issue regarding whether ERISA applies may be decided by motion.

20 16. Expedited Schedule

21 The parties do not believe that the case can be handled on an expedited basis.

22 17. Scheduling

23 The parties propose the following dates:

24 Discovery cut-off: March 27, 2009

25 Disclosures of experts: April 3, 2009

26 Supplemental expert disclosures: April 17, 2009

27 Expert discovery cut-off: June 5, 2009

28 Hearing of dispositive motions: July 17 2009

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Pre-trial conference: August 14, 2009

Trial: September 14, 2009

18. Trial

If ERISA applies, there is no right to a jury, and a trial, if any, would last one day.


If ERISA does not apply, the parties expect a 5-7 day jury trial.

19. Disclosure Of Non-Party Interested Entities Or Persons

Hartford Life, Inc. is the parent corporation of Hartford Life and Accident Insurance Company. Hartford Holdings, Inc. is the parent corporation of Hartford Life, Inc.; and The Hartford Financial Services Group, Inc. is the parent corporation of Hartford Holdings, Inc.

DATED: September 22, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: 
BRUCE D. CELEBREZZE
MICHELLE Y. MCISAAC
LISA G. ROWE
Attorneys for Defendants
HARTFORD LIFE INSURANCE COMPANY
and HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY

Dated: September ____, 2008

DYKMAN & WESTER LLP

By: _____
MATTHEW D. BREKHUS
Attorney for Plaintiffs
VICKI CAPRIO and DUANE A.
BARBAROTTO

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CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this order. In addition, the Court orders:

- A. The last day to file non-dispositive motions shall be: _____.
- B. The last day to file dispositive motions shall be: _____.
- C. The last day to hear non-dispositive motions shall be: _____.
- D. The last day to hear dispositive motions shall be: _____.
- E. Each party shall file its opening trial brief on or before _____.
- F. Each party shall file its reply trial brief on or before _____.
- G. Trial shall be on _____ at _____ in Courtroom 2.

Dated: _____

HONORABLE CLAUDIA WILKIN
UNITED STATES DISTRICT JUDGE