

EXHIBIT A

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

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

JOYCE WALKER, ET AL.,)	
)	
)	
)	
PLAINTIFFS,)	
)	
VS.)	CASE NO. CV 10-9198-JVS (RNBX)
)	SANTA ANA, CALIFORNIA
)	MARCH 20, 2012
LIFE INSURANCE COMPANY OF THE)	
SOUTHWEST,)	(9:50 A.M. TO 11:58 A.M.)
)	(1:47 P.M. TO 2:13 P.M.)
DEFENDANT.)	(3:26 P.M. TO 3:39 P.M.)
_____)	

DISCOVERY CONFERENCE
BEFORE THE HONORABLE ROBERT N. BLOCK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:	SEE NEXT PAGE
COURT REPORTER:	RECORDED; COURT SMART
COURTROOM DEPUTY:	KERRI HAYS
TRANSCRIBER:	DOROTHY BABYKIN COURTHOUSE SERVICES 1218 VALEBROOK PLACE GLEN DORA, CALIFORNIA 91740 (626) 963-0566

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 APPEARANCES: (CONTINUED)
2 FOR THE PLAINTIFFS:

KASOWITZ BENSON TORRES & FRIEDMAN
BY: BRIAN P. BROSNAHAN
JEANETTE T. BARZELAY
ATTORNEYS AT LAW
101 CALIFORNIA STREET
SUITE 2300
SAN FRANCISCO, CALIFORNIA 94111

6 FOR THE DEFENDANT:

WILMER CUTLER PICKERING
HALE & DOOR
BY: JONATHAN A. SHAPIRO
JOEL FLEMING
ATTORNEYS AT LAW
950 PAGE MILL ROAD
PALO ALTO, CALIFORNIA 94304

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

I N D E X

CASE NO. CV 10-9198-JVS (RNBX) MARCH 20, 2012

PROCEEDINGS: PLAINTIFFS' MOTION TO COMPEL; LSW'S MOTION FOR PROTECTIVE ORDER

1 SANTA ANA, CALIFORNIA; TUESDAY, MARCH 20, 2012

2 9:50 A.M.

3 THE CLERK: PLEASE REMAIN SEATED AND COME TO ORDER.

4 THIS UNITED STATES DISTRICT COURT IS NOW IN SESSION.

5 THE HONORABLE MAGISTRATE JUDGE ROBERT N. BLOCK

6 PRESIDING.

7 CALLING CASE NUMBER CV 10-9198, JOYCE WALKER, ET

8 AL. VERSUS LIFE INSURANCE COMPANY OF THE SOUTHWEST.

9 COUNSEL, PLEASE STATE YOUR APPEARANCES.

10 MR. BROSNAHAN: GOOD MORNING, YOUR HONOR.

11 BRIAN BROSNAHAN FOR THE PLAINTIFFS.

12 MS. BARZELAY: JEANETTE BARZELAY FOR THE

13 PLAINTIFFS.

14 MR. SHAPIRO: GOOD MORNING, JUDGE BLOCK.

15 IT'S JONATHAN SHAPIRO FOR THE DEFENDANT LIFE

16 INSURANCE OF THE SOUTHWEST.

17 MR. FLEMING: AND JOEL FLEMING ALSO FOR LIFE

18 INSURANCE COMPANY OF THE SOUTHWEST.

19 THE COURT: ALL RIGHT. ALL RIGHT. COUNSEL, GOOD

20 MORNING.

21 LET'S START WITH MY TENTATIVE RULING. I'LL HEAR

22 FROM PLAINTIFFS' COUNSEL FIRST.

23 MR. BROSNAHAN: THANK YOU, YOUR HONOR.

24 WE APPRECIATE THE OPPORTUNITY TO ADDRESS THE

25 COURT'S CONCERNS.

1 I THINK THE QUICKEST WAY TO GET TO THE HEART OF THE
2 MATTER MIGHT BE IF I MAY ASK THE COURT A QUESTION ABOUT THE
3 TENTATIVE.

4 THE COURT: OKAY. I MAY NOT ANSWER, BUT YOU CAN
5 ASK.

6 MR. BROSNAN: I JUST -- I DON'T UNDERSTAND HOW
7 THE TENTATIVE REQUIRES DENIAL OF THE MOTION UNLESS THE
8 COURT'S CONCERN TURNS ON THE WORD "RESOLD" IN THE QUOTE THAT
9 THE COURT PUT IN THE -- IN THE TENTATIVE, WHERE IT SAYS,

10 "IN DECEIT CASES THE VALUE OF AN ARTICLE IS
11 NORMALLY DETERMINED BY THE PRICE AT WHICH
12 IT COULD BE RESOLD IN AN OPEN MARKET OR BY
13 PRIVATE SALE IF ITS QUALITY OR OTHER
14 CHARACTERISTICS WHICH AFFECT ITS VALUE WERE
15 KNOWN."

16 OBVIOUSLY, IN A CASE LIKE THIS THE PLAINTIFFS CAN'T
17 RESELL THE INSURANCE POLICY.

18 THE COURT: BUT THE QUESTION -- IT'S NOT A MATTER
19 OF RESELL. NO, THAT WASN'T IT. IT WAS WHAT WOULD THE VALUE
20 OF THE POLICY BE IF THESE ALLEGED NON-DISCLOSURES HAD BEEN
21 DISCLOSED.

22 NOW, IT SEEMS TO ME BASED ON THE CASES -- AND I'VE
23 READ EVERY SINGLE ONE OF YOUR CASES. AND NOT ONE OF THEM IS
24 EVEN CLOSE TO BEING ON POINT -- THAT IN ORDER TO ESTABLISH
25 THAT, IF THAT'S YOUR THEORY OF DAMAGES, YOU'RE GOING TO NEED

1 AN EXPERT TO TESTIFY WHAT HE THINKS THESE POLICIES WOULD HAVE
2 BEEN WORTH TO A PURCHASER IF THESE DISCLOSURES HAD BEEN MADE.

3 LET ME GIVE YOU THIS EXAMPLE. I THOUGHT OF A MORE
4 CONCRETE EXAMPLE BECAUSE, LIKE I SAID, YOU CITED A BUNCH OF
5 CASES THAT DON'T REALLY HELP ME FIND IN YOUR FAVOR. YOU
6 KNOW, IN THE LAST COUPLE OF WEEKS APPLE RELEASED THE IPAD 3
7 OR CALLS IT "THE NEW IPAD," RIGHT?

8 MR. BROSNAHAN: YES.

9 THE COURT: AND THEY TOUTED A LOT OF ITS FEATURES.
10 AND ONE OF ITS MOST TOUTED FEATURES IS IT'S THE FIRST APPLE
11 PRODUCT THAT HAS THE CAPABILITY TO RECEIVE DATA VIA THE 4G
12 NETWORK, RIGHT?

13 MR. BROSNAHAN: YES.

14 THE COURT: SUPPOSE SOMEONE DISCOVERED THAT THAT
15 WASN'T TRUE, THE NEW IPAD DOESN'T ACTUALLY DOWNLOAD DATA AT
16 4G SPEEDS. IT REALLY DOWNLOADS THEM AT 3G SPEEDS LIKE THE
17 IPAD 2. AND, SO, THERE WAS SOME ACTION BROUGHT. AND THE
18 ISSUE BECAME WHAT WAS -- YOU KNOW, THEORY OF DAMAGES WAS THE
19 ACTUAL VALUE. YOU KNOW, THAT IF APPLE HAD DISCLOSED THAT,
20 NO, IT REALLY DOESN'T DO 4G SPEED, IT'S 3G SPEED.

21 WELL, THE ANSWER TO THAT QUESTION HAS NOTHING
22 WHATSOEVER TO DO WITH HOW MUCH PROFIT APPLE MADE ON ITS
23 PRODUCT, WHETHER IT WAS \$5 PER UNIT, A HUNDRED DOLLARS PER
24 UNIT, \$350 PER UNIT. IT HAS NOTHING WHATSOEVER TO DO WITH
25 THE ACTUAL VALUE OF THAT PRODUCT IF THE ACCURATE

1 REPRESENTATIONS HAVE BEEN MADE.

2 SO, I TOTALLY REJECT YOUR THEORY OF RELEVANCE WITH
3 RESPECT TO ALL OF THESE AREAS OF THE DISCOVERY REQUEST THAT
4 YOU SAY ARE RELEVANT TO YOUR ACTUAL VALUE DAMAGES THEORY.

5 AND IF YOU WANT THAT DISCOVERY, YOU'RE GOING TO
6 HAVE TO GET IT FROM JUDGE SELNA BECAUSE YOU'RE NOT GETTING IT
7 FROM ME.

8 DO YOU HAVE ANY OTHER QUESTIONS?

9 MR. BROSNAHAN: I'D BE HAPPY TO ADDRESS THE COURT'S
10 ISSUE. I THINK THAT IN YOUR APPLE HYPOTHETICAL THE QUESTION
11 IS WHAT WOULD THAT PRODUCT HAVE SOLD FOR ON AN OPEN MARKET IF
12 IT'S -- IF THE FACT THAT IT WAS REALLY ONLY 3G WERE
13 DISCLOSED.

14 THE COURT: CORRECT.

15 MR. BROSNAHAN: IF IT SOLD FOR \$400 WHEN NOBODY
16 KNEW THAT IT WAS ONLY 3G SPEED, THE QUESTION WOULD BE IF
17 EVERYONE KNEW THAT, WHAT WOULD IT SELL FOR. AND YOU WOULD
18 HAVE EXPERTS COME IN. AND THE EXPERTS WOULD ANALYZE
19 COMPETITIVE PRODUCTS. THEY WOULD ANALYZE THE COSTS. THEY
20 WOULD ANALYZE AN ENTIRE BUT/FOR WORLD AS WE HAVE IN ANTITRUST
21 CASES ALL THE TIME WHERE EXPERTS ANALYZE BUT/FOR WORLDS OF
22 WHAT A PRODUCT WOULD HAVE SOLD FOR UNDER DIFFERENT
23 CONDITIONS. AND THEY LOOK AT FINANCIAL DATA. THEY LOOK AT
24 COSTS. THEY LOOK AT COMPETITIVE PRODUCTS --

25 THE COURT: I DISAGREE. WHAT DIFFERENCE DOES IT

1 MAKE TO WHETHER APPLE MADE A LOT OF MONEY OR A LITTLE MONEY
2 ON ITS PRODUCT TO WHAT A PURCHASER WOULD BE WILLING TO PAY
3 FOR THAT PRODUCT.

4 MR. BROSNAHAN: WELL, THE QUESTION ISN'T WHAT A
5 PURCHASER WOULD BE WILLING TO PAY --

6 THE COURT: WELL, ACCORDING TO THE CALIFORNIA
7 SUPREME COURT IT IS.

8 MR. BROSNAHAN: THE QUESTION IS WHAT THE MARKET --

9 THE COURT: THE MARKET VALUE AT THE TIME OF
10 PURCHASE.

11 MARKET VALUE -- YOU KNOW, I WAS AN ECON MAJOR. SO,
12 MARKET VALUE IS WHAT A WILLING PURCHASER IS WILLING TO PAY.

13 MR. BROSNAHAN: WELL, IT'S ALSO WHAT A WILLING
14 SELLER IS WILLING TO SELL. AND --

15 THE COURT: I DON'T AGREE WITH THAT THEORY. LET'S
16 NOT WASTE ANY TIME BECAUSE, LIKE I SAID, YOU'RE NOT GOING TO
17 TALK ME OUT OF THAT PART OF MY TENTATIVE.

18 MR. BROSNAHAN: THAT'S FINE, YOUR HONOR.

19 IF I MAY, THOUGH, I'D LIKE TO POINT TO A COUPLE OF
20 THE REQUESTS THAT ARE WITHIN THE SCOPE OF THIS PART OF THE
21 TENTATIVE THAT HAVE BASES IN ADDITION TO JUST A PURE "ACTUAL
22 VALUE" THEORY.

23 ONE OF THEM HAS TO DO WITH THE OFFSET. WE'VE
24 REQUESTED --

25 THE COURT: WHICH REQUEST ARE WE TALKING ABOUT?

1 MR. BROSNAN: WELL, THIS WOULD BE TOPIC NUMBER
2 33. AND THE DOCUMENT REQUESTS THAT GO ALONG WITH THAT WOULD
3 BE NUMBER 100 AND NUMBER 110.

4 THE COURT: OKAY. LET'S START WITH 100.

5 MR. BROSNAN: NOW, ONE -- THIS DOCUMENT REQUEST
6 SEEKS DOCUMENTS SUFFICIENT TO SHOW THE CURRENT AND GUARANTEED
7 COST OF INSURANCE RATES FOR TERM PRODUCTS.

8 THE COURT: HANG ON A SECOND.

9 (PAUSE IN PROCEEDINGS.)

10 THE COURT: IN YOUR PLAINTIFFS' CONTENTION SECTION,
11 MEET AND CONFER DISCUSSIONS, YOU EXPLAINED THAT THESE
12 DOCUMENTS ARE RELEVANT TO YOUR ACTUAL VALUE OF DEATH BENEFIT
13 THEORY. AND YOU ARGUED ACTUAL VALUE ON PAGE 77 -- THAT WAS
14 IN YOUR MEET AND CONFER SESSION.

15 SO, WHERE IN YOUR ARGUMENT DID YOU SAY THEY WERE
16 RELEVANT TO SOMETHING OTHER THAN ACTUAL VALUE?

17 MR. BROSNAN: CERTAINLY ON PAGE 77 WE SAY ON LINE
18 19 LINE 18:

19 "MOREOVER, IN THE EVENT THAT PLAINTIFFS ARE
20 SUCCESSFUL IN SEEKING RESCISSION OF THE POLICIES
21 AND A FULL REFUND OF WHAT THEY PAID LSW, LSW MAY
22 SEEK TO ARGUE THAT BECAUSE IT PROVIDED DEATH
23 BENEFIT PROTECTION TO CLASS MEMBERS WHILE THEIR
24 POLICIES WERE IN FORCE, IT SHOULD BE ENTITLED TO
25 A CREDIT OR OFFSET FOR THE VALUE OF THE DEATH

1 BENEFIT PROTECTION IT PROVIDED TO ITS
2 POLICYHOLDERS.

3 "LSW'S CHARGES FOR DEATH BENEFIT PROTECTION ON
4 ITS TERM LIFE INSURANCE POLICIES MAY BE PROBATIVE
5 OF THE AMOUNT OF ANY SUCH CREDIT OR OFFSET THAT
6 LSW MAY SEEK."

7 THE COURT: WELL, I MUST SAY I OVERLOOKED THAT AS A
8 DISTINCTION BECAUSE THEN YOU CONCLUDE THE PARAGRAPH WITH
9 "THUS, DOCUMENTS ARE DIRECTLY RELEVANT TO THE
10 CLAIMS ALLEGED IN THE FAC AND PREMIUMS PROOF
11 OF ACTUAL VALUE."

12 WHAT'S LSW'S RESPONSE TO THAT POINT.

13 MR. SHAPIRO: YOUR HONOR, A FEW RESPONSES.

14 FIRST, OUR UNDERSTANDING WAS THIS WAS ACTUAL VALUE.

15 BUT IN ANY EVENT, TO THE EXTENT THAT PLAINTIFFS ARE
16 ARGUING THAT THIS DISCOVERY IS NECESSARY FOR THEM TO DEAL
17 WITH AN ARGUMENT THAT WE HAVEN'T RAISED, WE WOULD SAY IT'S
18 PREMATURE.

19 AND IN ANY EVENT, THE COST OF --

20 THE COURT: WELL, BUT IT'S NOT GOING TO DO THEM ANY
21 GOOD IF YOU RAISE IT PAST THE DISCOVERY CUT-OFF DATE.

22 MR. SHAPIRO: WELL, FAIR ENOUGH, YOUR HONOR. AND
23 THAT WOULD BE AT OUR TREMENDOUS PERIL.

24 THE COURT: NO, NO. MAYBE I SHOULD ASK YOU NOW,
25 ARE YOU WILLING TO STIPULATE YOU'RE NOT GOING TO RAISE THAT

1 ARGUMENT. AND IF YOU SAY NO, THEN THAT PUTS THIS --

2 MR. SHAPIRO: I WILL BE -- I'LL BE VERY CLEAR ON
3 THE RECORD. WE ARE NOT GOING TO ARGUE THAT THERE'S AN OFFSET
4 BASED ON THE COST OF TERM INSURANCE. THIS IS ABOUT A
5 DIFFERENT PRODUCT, YOUR HONOR. THERE IS A COST OF INSURANCE
6 COMPONENT FOR THE PERMANENT PRODUCT DISCLOSED IN THE POLICY
7 --

8 THE COURT: ARE YOU GOING TO ARGUE -- AS I
9 UNDERSTAND IT -- AND I DIDN'T -- IT DIDN'T JUMP OUT AT ME.
10 AND WE CAN DO -- I WANT TO DO THESE ONE AT A TIME, THAT THEY
11 ARE SAYING THAT IF THEY SEEK -- YOU KNOW, ONE REMEDY HERE
12 WOULD BE RESCISSION, RIGHT?

13 MR. SHAPIRO: YES, YOUR HONOR.

14 THE COURT: AND THEY'RE SAYING AND IF YOU'RE GOING
15 TO ARGUE THAT THE RESCISSION REMEDY SHOULD -- YOU SHOULD
16 RECEIVE A CREDIT, YOU KNOW, UNDER WHATEVER THEORY, EXPERT
17 TESTIMONY OR WHATEVER, FOR THE DEATH BENEFIT PROTECTION THAT
18 THE PLAINTIFFS RECEIVED DURING THE PERIOD OF TIME THE POLICY
19 WAS IN FORCE, THAT SOMEHOW THEY SHOULDN'T GET A HUNDRED
20 PERCENT BACK OF WHAT THEY PAID FOR THE POLICY BECAUSE IF THEY
21 HAD DIED THEY WOULD HAVE GOTTEN THE BENEFIT OF THE DEATH.

22 MR. SHAPIRO: OH, ABSOLUTELY.

23 THE COURT: AND, SO, IF YOU'RE GOING -- IF YOU'RE
24 GOING TO MAKE --

25 MR. SHAPIRO: IN FACT, WE WOULD MAKE THAT ARGUMENT.

1 THE COURT: OKAY. SO, YOU ARE GOING TO MAKE THAT
2 ARGUMENT.

3 SO, THE QUESTION BECOMES THEN DOES DOCUMENT REQUEST
4 100 SEEK INFORMATION RELEVANT TO THAT ARGUMENT OR NOT.
5 BECAUSE THE ANSWER MIGHT BE YOU ARE GOING TO MAKE THAT
6 ARGUMENT, BUT IT'S STILL NOT RELEVANT.

7 MR. SHAPIRO: IT'S STILL NOT RELEVANT, YOUR HONOR,
8 BECAUSE WE'RE TALKING HERE -- AS I READ THIS. AND, YOU KNOW,
9 I'M AT SOME RISK OF GETTING LOST IN THE DOCUMENT. BUT TO THE
10 EXTENT IT HAS TO DO WITH TERM LIFE INSURANCE, IT'S A
11 FUNDAMENTALLY DIFFERENT PRODUCT IN PART BECAUSE IT'S
12 UNDERWRITTEN ON THE BASIS THAT IT EXPIRES AS OPPOSED TO A
13 PERMANENT PRODUCT WHICH IS WITH YOU, YOU KNOW, UNDER AGE 95
14 OR, YOU KNOW, GOD WILLING YOU LIVE BEYOND THAT.

15 SO, THERE'S NO PART OF ANY ARGUMENT THAT WE WOULD
16 MAKE THAT AN OFFSET HAS ANYTHING TO DO WITH AN ENTIRELY
17 DIFFERENT PRODUCT. IT WOULD BE LIKE MATCHING APPLES AND
18 ORANGES. THERE IS CERTAINLY A MORTALITY COMPONENT, A COST OF
19 INSURANCE, THAT IS OBVIOUSLY PART OF THE PERMANENT LIFE
20 INSURANCE PRODUCT. AND THERE IS, IN FACT, YOU KNOW, A FIXED
21 COST OF INSURANCE THAT GOES UP OVER THE YEARS. AND THAT'S
22 ALL SET AT THE TIME OF PURCHASE. IT DOESN'T CHANGE AROUND.
23 BUT THAT'S NOT TERM LIFE INSURANCE. THAT'S THE MORTALITY
24 COMPONENT HERE.

25 AND CERTAINLY ACTUARIES -- AND THIS WOULD BE A

1 PRIME EXAMPLE OF SOMETHING THAT BASED ON PUBLISHED
2 COMMISSIONER'S DATA ON WHEN PEOPLE DIE IN AMERICA -- PUBLIC
3 STUFF, THAT ACTUARIES COULD GO BACK AND FORTH ON WHAT THE
4 TRUE VALUE OF INSURANCE COVERAGE WAS IN THE CASE OF ONE OF
5 THE PLAINTIFFS --

6 THE COURT: BUT SUPPOSE YOU HAVE DOCUMENTS -- I
7 MEAN, THAT YOU'VE ALREADY GET THOSE CALCULATIONS.

8 MR. SHAPIRO: WE DO.

9 THE COURT: SO, WHY SHOULDN'T YOU PRODUCE THEM.

10 MR. SHAPIRO: JUST NOT WITH RESPECT TO THE TERM
11 PRODUCT. WE WOULD PRODUCE THEM WITH RESPECT TO THE PERMANENT
12 LIFE INSURANCE, WHICH IS AN ENTIRELY DIFFERENT PRODUCT.
13 BECAUSE PERMANENT LIFE INSURANCE HAS TO BE UNDERWRITTEN FOR
14 SOMEONE WHO, LIKE MYSELF, PERSONALLY I'VE GOT A 20-YEAR
15 POLICY. AND MY INSURANCE COSTS ARE LOWER ON THE 20-YEAR
16 POLICY BECAUSE, YOU KNOW, ALL THINGS BEING EQUAL, I'M
17 PROBABLY GOING TO OUTLIVE THAT 20 YEARS.

18 THE COURT: WELL, LET'S BACK UP. YOU JUST TOLD ME
19 THAT IF PLAINTIFFS SUCCEED IN OBTAINING RESCISSION OF THE
20 POLICIES, YOU ARE GOING TO ARGUE THAT THERE SHOULD BE SOME
21 CREDIT --

22 MR. SHAPIRO: YES, SIR.

23 THE COURT: -- AFFORDED.

24 MR. SHAPIRO: YES, SIR. JUST LIKE, FOR EXAMPLE --

25 THE COURT: AND WHAT POLICIES ARE WE TALKING --

1 WHEN YOU SAY RESCISSION OF THE POLICIES, WHAT POLICIES ARE WE
2 REFERRING TO?

3 MR. SHAPIRO: ONLY PERMANENT POLICIES ARE THE ONLY
4 ONES IN THE CASE -- PERMANENT LIFE INSURANCE.

5 THE COURT: IS THAT RIGHT?

6 MR. BROSNAHAN: YES. PROVIDER AND PARAGON.

7 THE COURT: PROVIDER AND PARAGON. LET'S BE
8 SPECIFIC.

9 SO, IF PLAINTIFFS -- IF PLAINTIFFS OBTAIN
10 RESCISSION OF PROVIDER AND PARAGON POLICIES, LSW WILL SEEK A
11 CREDIT -- WHAT? -- FOR THE VALUE OF THE DEATH PROTECTION
12 PROVIDED DURING THE PERIOD OF TIME THE POLICIES WERE IN
13 FORCE?

14 MR. SHAPIRO: YES. YOU SAID IT NOW PERFECTLY TWICE
15 IN THE SENSE THAT THERE IS ECONOMIC VALUE, YOUR HONOR, TO BE
16 --

17 THE COURT: NO. I UNDERSTAND.

18 AND THAT'S WHAT YOU WERE REFERRING TO IN THOSE
19 LINES THAT YOU MENTIONED --

20 MR. BROSNAHAN: YES, YOUR HONOR.

21 THE COURT: -- TO ME. OKAY.

22 SO, THE QUESTION PRESENTED IS DOCUMENT REQUEST
23 NUMBER 100 -- SO, FORGET ABOUT ACTUAL VALUE, PLAINTIFFS'
24 DAMAGES THEORY, BECAUSE I REJECT IT -- NOT THAT I REJECT THE
25 THEORY. I REJECT THEIR ARGUMENTS THAT HOW WE -- YOU KNOW, I

1 WON'T REPEAT MYSELF.

2 BUT NUMBER 100 SAYS,

3 "DOCUMENTS SUFFICIENT TO SHOW YOUR CURRENT

4 AND GUARANTEED COST OF INSURANCE RATES,

5 INCLUDED, BUT NOT LIMITED TO, YOUR COSTS OF

6 INSURABLE TABLES FOR ANY AND ALL TERM LIFE

7 INSURANCE PRODUCTS THAT YOU SELL."

8 NOW, WE WERE JUST REFERRING TO PERMANENT POLICIES,

9 WHICH ARE NOT THE SAME AS TERM POLICIES.

10 MR. SHAPIRO: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: SO, HOW DOES -- SINCE THIS REQUEST ASKS

12 FOR INFORMATION REGARDING TERM INSURANCE PRODUCTS, NOT

13 PERMANENT INSURANCE PRODUCTS, HOW IS THIS INFORMATION

14 RELEVANT TO THIS CREDIT THEORY?

15 MR. BROSNAHAN: YOUR HONOR, THIS IS RELEVANT

16 BECAUSE THE COST OF INSURANCE PER TERM IS A MORE FAIR -- OR

17 THE COURT WOULD BE CERTAINLY FREE TO CONCLUDE THAT IT WAS A

18 MORE FAIR AND REASONABLE MEASURE OF OFFSET THAN THE COST OF

19 INSURANCE THAT'S BUILT INTO THE FRAUDULENT PRODUCTS.

20 BY ASSUMPTION, IF RESCISSION IS BEING GRANTED, THE

21 COURT HAS CONCLUDED THAT THE PLAINTIFFS WERE DEFRAUDED IN

22 PURCHASING THE POLICIES.

23 WE KNOW THAT THE COST OF INSURANCE IS NOT DISCLOSED

24 IN THE ILLUSTRATIONS. THAT'S ONE OF THE CHARGES THAT WE ARE

25 COMPLAINING ABOUT.

1 WE ALSO KNOW FROM VARIOUS DOCUMENTS THAT THEY LOAD
2 MARGINS INTO THEIR COST-OF-INSURANCE CHARGES SO THAT THOSE
3 CHARGES ARE INFLATED. THEY'RE NOT A TRUE MEASURE OF --

4 THE COURT: ALL RIGHT. JUST -- YOU KNOW, YOU'RE
5 STARTING TO WANDER ON ME NOW. I WANTED TO UNDERSTAND --
6 WE'RE FOCUSING ON NOW THESE LINES YOU POINTED OUT, THE OFFSET
7 FOR THE VALUE OF DEATH BENEFIT PROTECTION. OKAY.

8 SO, MY QUESTION IS -- WHICH WAS SORT OF BURIED IN
9 THAT PARAGRAPH I THOUGHT YOU WERE TALKING ABOUT YOUR ACTUAL
10 VALUE DAMAGES THEORY. BUT NOW YOU'VE GOTTEN ME FOCUSED ON
11 IT. AND I STATED THE ISSUE PRECISELY ACCORDING TO MR.
12 SHAPIRO.

13 SO, THE QUESTION IS, ARE THE DOCUMENTS SOUGHT BY
14 NUMBER 100 OR SOME SUBSET OF THOSE DOCUMENTS IF IT WAS
15 NARROWED RELEVANT TO THIS CREDIT ISSUE? THAT'S THE ONLY
16 QUESTION.

17 MR. BROSNAHAN: YES. SO, THE QUESTION IS HOW IS
18 THE COURT GOING TO DETERMINE THE AMOUNT OF THE OFFSET.

19 THE COURT: RIGHT.

20 MR. BROSNAHAN: AND THEY WILL ARGUE -- AND I THINK
21 MR. SHAPIRO HAS ALREADY INDICATED -- THAT THEY WOULD ARGUE
22 THAT THE CORRECT AMOUNT OF THE CREDIT IS THE
23 COST-OF-INSURANCE CHARGE THAT IS FOUND IN THE PROVIDER AND
24 PARAGON POLICIES.

25 AND WE WILL SAY, NO, YOUR HONOR. THAT IS NOT A

1 CORRECT MEASURE OF THE OFFSET BECAUSE THOSE CHARGES ARE
2 INFLATED BY THE FRAUD.

3 AND TO FIND THE CORRECT AMOUNT OF THE CREDIT, YOU
4 HAVE TO LOOK AT OTHER SOURCES. ONE WOULD BE THE COST OF TERM
5 INSURANCE WHICH IS NOT INFLATED BY THE FRAUD.

6 ANOTHER WOULD BE REQUEST NUMBER 110, WHICH LOOKS TO
7 THE ACTUARY -- IT'S THE MORTALITY TABLES THAT THEY USE WHICH
8 ESTABLISH THE ACTUARIALLY FAIR COST OF THE DEATH BENEFIT
9 COMPONENT. BUT THAT DOESN'T BUILD IN THEIR EXPENSES OR ANY
10 AMOUNT OF PROFIT IN IT.

11 BUT I THINK THE COURT SHOULD BE ABLE TO LOOK AT
12 BOTH OF THOSE ALTERNATIVE MEASURES TO CONSIDER WHAT IT
13 BELIEVES IS THE CORRECT AMOUNT OF THE OFFSET. BECAUSE THE
14 COST-OF-INSURANCE CHARGE IN THE PROVIDER AND PARAGON ARE
15 INFLATED BY THE FRAUD.

16 (PAUSE IN PROCEEDINGS.)

17 THE COURT: SO, 110 IS THE MORTALITY TABLES USED IN
18 PRICING IUL.

19 MR. BROSNAHAN: YES. THAT WOULD BE PARAGON AND
20 PROVIDER.

21 THE COURT: THAT IS PARAGON AND PROVIDER.

22 MR. BROSNAHAN: YES. THOSE ARE THE MORTALITY
23 TABLES.

24 THE COURT: AS OPPOSED TO 100 WHICH TALKS ABOUT
25 TERM.

1 MR. BROSNAHAN: RIGHT. WE BELIEVE WE SHOULD BE
2 ABLE TO ADDUCE EVIDENCE OF BOTH OF THOSE BECAUSE THE
3 MORTALITY TABLES DON'T HAVE ANY EXPENSE OR PROFIT LOAD IN
4 THEM. TERM DOES. IT HAS EXPENSE AND PROFIT LOADS IN IT, BUT
5 THEY'RE DIFFERENT FROM PROVIDER AND PARAGON BECAUSE PROVIDER
6 AND PARAGON'S ARE INFLATED BY THE FRAUD.

7 WE THINK THE COURT SHOULD BE ABLE TO SEE BOTH OF
8 THOSE SETS OF NUMBERS IN DECIDING WHAT IS THE APPROPRIATE
9 AMOUNT OF THE OFFSET.

10 THE COURT: AND IN YOUR ARGUMENT SECTION ON 110,
11 "BECAUSE PARAGON PROVIDED A BUNDLE OF DIFFERENT
12 ATTRIBUTES INCLUDING THE PURE INSURANCE
13 PROTECTION PROVIDED BY THE DEATH BENEFIT,
14 PLAINTIFFS ARE ENTITLED TO SELL AT THE ACTUAL
15 VALUE OF THIS ATTRIBUTE OF THE POLICIES BY
16 REFERENCE TO THE MORTALITY TABLES."
17 AND YOU DID ARGUE ABOUT THE OFFSETS.

18 SO, BEFORE WE COME BACK TO 101, JUST FOCUSING ON
19 110, WHY ISN'T THAT INFORMATION RELEVANT TO THIS OFFSET
20 ISSUE?

21 MR. SHAPIRO: IT'S FOCUSING ON 110 --

22 THE COURT: YES.

23 MR. SHAPIRO: -- WHICH IS NOT THE TERM.

24 THE COURT: RIGHT.

25 MR. SHAPIRO: WE HAVE A WEAKER ARGUMENT.

1 THE COURT: OKAY.

2 MR. SHAPIRO: BECAUSE IT'S NOT TERM. THEY ARE HERE
3 -- THIS REQUEST IS DIRECTED -- IT IS DIRECTED TO THE
4 PRODUCTS AT ISSUE, OR IT COULD BE NARROWED, AT LEAST TO
5 PARAGON AND PROVIDER, THE PRODUCTS AT ISSUE.

6 WE UNDERSTOOD THIS TO BE UNDER ACTUAL VALUE
7 REQUEST.

8 THE COURT: SO DID I BASED ON WHAT --

9 MR. SHAPIRO: YES.

10 THE COURT: -- WHEN YOU MET AND CONFERRED, YOU KNOW
11 --

12 MR. SHAPIRO: SO, IF I MAY, YOUR HONOR, TAKE MY
13 SHOT AT WHY IT'S NOT RELEVANT.

14 THE COURT: YES.

15 MR. SHAPIRO: THE IRRELEVANCE OF THIS ONE -- CARVED
16 OUT-- IS NOT LIKE IRRELEVANT FROM SPACE, WHICH IS
17 EFFECTIVELY, YOUR HONOR, OUR ARGUMENT WITH THE TERM.

18 HERE, THIS CASE HAS BEEN SUSTAINED ON THE BASIS OF
19 FOUR ALLEGED LIES IN THE PRODUCT LITERATURE. NONE --

20 THE COURT: BUT THOSE FOUR LIES MIGHT STILL BE
21 SUFFICIENT TO -- I MEAN, I'M NOT GOING TO SPECULATE. AT THE
22 END OF THE DAY IF THEY GET RESCISSION, RIGHT? SO, IT DOESN'T
23 REALLY MATTER TO ME -- IT DOESN'T HAVE TO RELATE TO THE FOUR
24 ALLEGED LIES. IF AT THE END OF THE DAY THE REMEDY IS
25 RESCISSION, THEN, THE ISSUE BECOMES WHAT OFFSET, IF ANY, IS

1 LSW ENTITLED TO FOR THE DEATH BENEFIT PROTECTION IT PROVIDED
2 DURING THE PERIOD OF TIME THE POLICIES WERE IN FORCE.

3 IF NUMBER 110 WERE LIMITED TO THE PROVIDER AND
4 PARAGON POLICIES, WHY WOULDN'T THOSE MORTALITY TABLES BE AT
5 LEAST ARGUABLY RELEVANT TO THAT ISSUE.

6 MR. SHAPIRO: THEY WOULDN'T.

7 THE COURT: THEY WOULD.

8 MR. SHAPIRO: NO. AND WE'VE BEEN THINKING ABOUT IT
9 THAT IN TERMS OF THE ACTUAL VALUES, CALL IT THE --

10 THE COURT: SO, 110 THEN I WOULD GRANT WITH RESPECT
11 TO THE PROVIDER AND PARAGON POLICIES, RIGHT?

12 SO, NOW, LET'S GO BACK TO 101, WHICH WASN'T
13 DIRECTED TO THE PARAGON AND PROVIDER POLICIES. IT'S DIRECTED
14 TO TERM INSURANCE.

15 PLAINTIFFS HAVE ARTICULATED A THEORY. IT'S NOT MY
16 FUNCTION IN RULING ON A DISCOVERY MOTION TO MAKE IT AN IN
17 LIMINE RULING. YOU KNOW, THIS IS NOT THE SAME AS MY SAYING,
18 YOU KNOW, YOUR COSTS ARE NOT RELEVANT TO THEIR ACTUAL VALUE
19 BECAUSE I LOOKED AT THEIR CASES. AND THOSE CASES DON'T
20 SUPPORT THEM AT ALL.

21 BUT NOW THEY'VE ARTICULATED A THEORY THAT THEY SAY
22 THEY WOULD ARGUE THAT THE VALUE OF THE DEATH BENEFIT
23 PROTECTION IS -- SHOULD BE MEASURED, YOU KNOW, IF THAT'S AN
24 ATTRIBUTE OF THE POLICY THAT THE EVIDENCE OF THE COST OF
25 PROVIDING IT IN A TERM POLICY IS RELEVANT. IT'S NOT APPLIES