

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-09198-JVS (RNBx) Date April 12, 2013
Title Joyce Walker, et al. v. Life Insurance Co. Of the Southwest, et al.

Present: The James V. Selna
Honorable

Dwayne Roberts
Deputy Clerk

Not Present

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) Order to Show Cause Re Reconsideration

Before the Court are separate motions to approve a form of notice to class members and a motion to appoint a special master to review Life Insurance Company of the Southwest (“LSW”) files to determine membership in the Illustration Subclass. (Docket Nos. 403, 408.) The factual showing with regard to the contemplated file review causes the Court to consider whether it should take a fresh look at certification of the Illustration Subclass.

I. Preliminary Certification and Subsequent Developments.

In its Order Granting in Part and Denying in Part Plaintiffs’ Motion to Certify Class (“Class Certification Order”) (Docket No. 353), the Court addressed the problem of identifying the members of a subclass who were allegedly presented misleading policy illustrations. The Court observed:

[A] review of the Policy file by a court-appointed special master or a class administrator could identify approximately two-thirds of the members of the class as subclass members. (Cf. Dinglasan Supp’l Decl. Ex. C (Docket No. 339-2).) Of Plaintiffs’ review of the files, approximately 250 of 400 of the sample fell into one or more of these categories described by the Court.

(Class Certification Order, p. 33; footnote deleted.) The Court went on to note: “Of the remaining approximately one-third of the members of the class, their subclass membership could be ascertained by the use of a questionnaire.” (*Id.*, p. 34; footnote deleted.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-09198-JVS (RNBx) Date April 12, 2013

Title Joyce Walker, et al. v. Life Insurance Co. Of the Southwest, et al.

The Court made those observation in the abstract without benefit of a detailed record of what those efforts would actually entail. The Court now has that information.

LSW estimates that approximately 42,000 insureds' files would need to be reviewed. (Memorandum in Support of Motion Appoint Special Master, p. 21.) LSW further indicates that it has produced 8.8 million pages representing the content of these files. (Perla Decl., ¶ 3.) In its proposal for special master review, LSW believes that a special master should devote no more than 15 minutes to a file to ascertain the facts with regard that insured's exposure to an illustration. The Court realizes that there may a margin of error in these figures, but analysis of this information leads to the conclusion that the file review would be an overwhelming task. The Court draws the following conclusions:

- There would be approximately 210 pages, on average, in each insured's file.
- Fifteen minutes for the review of each file would seem to be an optimistic minimum for the special master to determine whether an illustration or other indicia of use of an illustration is in the file, analyze the relevant pages, and record the results.
- The review task would take approximately 10,000 hours. Using a 2,000 hour work year, this translates to 5 work years.
- Assuming the special master billed at the modest rate of \$200 per hour, the result would be a fee in excess of \$2 million.

Even if the overall analysis is off one way or the other by a factor of 2, the necessity for such an effort—either before trial as LSW urges¹ or after—raises doubts whether common issues predominate with regard to an Illustration Subclass and doubts whether such a subclass is a superior method of proceeding. See Fed. R. Civ. P. 23(a)(2), (b)(3). Other than the belief that these issues should be revisited, the Court has reached no final conclusion.

¹Memorandum in Support of Motion Appoint Special Master, pp. 1, 5-11.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-09198-JVS (RNBx) Date April 12, 2013

Title Joyce Walker, et al. v. Life Insurance Co. Of the Southwest, et al.

II. Order to Show Cause.

Within 15 days, each party is ordered to show cause in writing why the Court should not decertify the Illustration Subclass. There will be no replies. The Court will hold oral argument at 1:30 p.m. on May 6, 2013. The Court will adjust the outstanding dates in light of the results of the hearing.

Initials of Preparer 0 : 00
dr