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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE JAMES V. SELNA, JUDGE PRESIDING

JOYCE WALKER, ET AL.,)
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Plaintiffs,)
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Vs.) No. CV 10-09198-JVS
)
)
LIFE INSURANCE COMPANY OF)
SOUTHWEST, ET AL.,)
)
)
Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, CALIFORNIA

FRIDAY, APRIL 18, 2014

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1 the fact that on Mr. Howlett's policy, LSW paid the agents a
2 \$67,000 commission; correct?

3 A. Yes.

4 Q. And that doesn't surprise you, does it, for a policy
5 like his?

6 A. No.

7 Q. Now, do you believe that a commission of that size,
8 could create an incentive for an agent not to provide the
9 optional report to the policyholder?

10 MR. MARTENS: Your Honor, calls for speculation
11 about agent's intent.

12 MR. BROSNAHAN: I'm asking if she believes that
13 that could create an incentive.

14 THE COURT: Sustained.

15 BY MR. BROSNAHAN:

16 Q. Is it true that LSW has the ability to require agents to
17 provide the optional report?

18 A. We -- I suppose we could include it as a part of the
19 basic illustration.

20 Q. Thank you.

21 Now, you heard Ms. Spooner testify -- well, let me
22 ask you this: Is it true that if LSW has to pay commissions
23 of that size to agents, then it has to provide less value to
24 policyholders in order to make its own level of profitability
25 constant as compared to a situation where it paid smaller

1 commissions?

2 A. Yes. You said that if in one case commissions were
3 higher than in another case, that that would impact policy
4 values. Yes.

5 Q. And you heard the testimony from Ms. Spooner and
6 Mr. Howlett that when they learned what they thought was the
7 size of the commission, which in fact turned out to be
8 significantly lower than the actual commission, that made
9 them concerned that perhaps the policy was not a good
10 product. Did you hear that testimony?

11 A. Yes, I heard that.

12 Q. And has LSW been concerned that if a consumer knew how
13 big the commissions were, consumers might ask a lot more
14 questions about the policy before buying? Has that been a
15 concern of LSW's?

16 A. I don't know.

17 Q. Now, commissions are calculated with reference to a
18 number called the target premium; correct?

19 A. Correct.

20 Q. And would you please take a look at Mr. Howlett's
21 illustration which is in the white binder. It's Exhibit 30
22 on page 10.

23 A. Yes.

24 Q. Now, in the lower right-hand corner underneath where it
25 says page 10 of 21, do you see there's a very, very small

1 number down there that says 51,274? Do you see that?

2 A. Yes.

3 Q. That the target premium; correct?

4 A. Correct.

5 Q. But it's not labeled target premium; right?

6 A. No.

7 Q. There's no way that a consumer could look at this and
8 know that this relates to the commission; correct?

9 A. Not unless their agent told them.

10 Q. Can you think of any reason why the agent would tell
11 them that this 51,274 relates to -- withdrawn.

12 Now, Michael Richardson reports to you; correct?

13 A. Correct.

14 Q. And he manages the ICS illustration system for you;
15 correct?

16 A. Yes. He manages the team that works on that.

17 Q. Okay. And Mr. Richardson -- I'd like you to take a look
18 at Exhibit 73 in your black binder.

19 A. Okay.

20 Q. Well, first of all, did Mr. Richardson or anyone at LSW
21 ever tell you that agents had requested that the target
22 premium information be included in the illustration in a way
23 such that the agent with training would be able to find it
24 but the client would have a tough time in order that the
25 agent would not have to explain what the premium represented?

1 Did he ever tell you that?

2 A. I'm sorry. You'll have to repeat the question. I
3 didn't hear it.

4 Q. Did Mr. Richardson ever tell you that the reason the
5 51,274 target premium that we see in Exhibit 4 appears in
6 small type with no label is because agents requested that LSW
7 put the information in the illustration in a form so that
8 with training an agent could find it but the client would
9 have a tough time? Did he ever tell you that?

10 MR. MARTENS: Objection. Irrelevance, Your Honor.
11 This case isn't about commissions.

12 MR. BROSNAHAN: It's highly relevant to the fact
13 that if consumers knew the commissions, they would ask more
14 questions.

15 MR. MARTENS: That's not this case.

16 MR. BROSNAHAN: It's relevant to intent.

17 THE COURT: Sustained.

18 MR. BROSNAHAN: For the record, Your Honor, we
19 would move Exhibit 73 into evidence.

20 MR. MARTENS: Same objection.

21 THE COURT: 73 will be received.

22 **(Exhibit 73 received.)**

23 BY MR. BROSNAHAN:

24 Q. Now, let's move briefly to -- well, let's just put
25 Exhibit 73 up on the screen, then.

1 MR. MARTENS: Your Honor, this witness isn't even
2 on this e-mail.

3 MR. BROSNAHAN: Well, I can publish the exhibit.
4 Please highlight the first paragraph.

5 BY MR. BROSNAHAN:

6 Q. First of all, do you see this is from Mike Richardson,
7 this e-mail?

8 A. Yes.

9 Q. I just want to know, it's to Bruno Lacroix. He works on
10 the ICS staff; is that true?

11 A. Yes.

12 Q. And Larry Mack, he's a regional vice president; right?

13 A. I don't think so, but he does work in sales.

14 Q. Okay. And Matt Dunn is cc'd. He works in sales; right?

15 A. Matt's had a lot of roles at the company. I'm not sure
16 what his role was in 2009. Sorry.

17 Q. That's fair.

18 So Mr. Richardson writes: Hi, Larry. I will offer
19 what I know as well. The ICS team pushed to have the target
20 premium on LSW illustrations like we do with NL but received
21 pushback to include the information on the illustration so
22 with training the agent could find it but the client would
23 have a tough time, so the agent would not have to explain
24 what that premium represented.

25 Now I want to move to Exhibit 441, which you saw