

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-17-559431

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ORDER

ERIC B. WALL DDS VS. THE CANADA LIFE ASSURANCE COMPANY ET AL

001C06671506

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FILED
 San Francisco County Superior Court

FEB 01 2019

CLERK OF THE COURT
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11 Attorneys for Plaintiff,
 12 ERIC B. WALL, D.D.S.

8 SUPERIOR COURT OF CALIFORNIA
 9 COUNTY OF SAN FRANCISCO

11 ERIC B. WALL, D.D.S.,)
 12)
 13 Plaintiff,)
 14)
 15 v.)
 16)
 17 THE CANADA LIFE ASSURANCE)
 18 COMPANY; COMPUTER SCIENCES)
 19 CORPORATION; SWISS RE LIFE &)
 20 HEALTH AMERICA, INC.; DAVE JONES)
 21 AS COMMISSIONER OF INSURANCE;)
 22 and DOES 1-20, inclusive,)
 23)
 24 Defendants.)
 25)
 26)
 27)
 28)

Case No. CGC-17-559431

[PROPOSED] ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS THE CANADA LIFE ASSURANCE COMPANY, COMPUTER SCIENCES CORPORATION, AND SWISS RE LIFE & HEALTH AMERICA, INC.'S MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION OF ISSUES

Date: February 1, 2019
 Time: 9:30 a.m.
 Dept. 302
 Judge: Hon. Richard B. Ulmer, Jr.
 Reservation No. 06271011-10

Action Filed: June 8, 2017
 Trial Date: February 25, 2019

1 Defendants The Canada Life Assurance Company, Computer Sciences Corporation, and
2 Swiss Re Life & Health America, Inc.'s Motion for Summary Judgment or in the Alternative
3 Summary Adjudication of Issues came on regularly for hearing before this Court on February 1, 2019
4 at 9:30 a.m. in Department 302. Plaintiff and Defendants were represented by their respective
5 counsel of record. After reviewing the moving, opposition and reply papers, and considering the
6 arguments of counsel, this Court hereby DENIES IN PART and GRANTS IN PART Defendants'
7 motion as follows:


8 Defendant Canada Life Assurance Company's motion for summary adjudication is denied as
9 to issues 1, 2, and 3. There are triable issues of material fact regarding whether Canada Life breached
10 the contract, breached the implied covenant of good faith and fair dealing, and whether plaintiff is
11 entitled to punitive damages. (See Fletcher v. Western National Life Ins. Co. (1970) 10 Cal.App.3d
12 376.) "It is well established that a breach of the implied covenant of good faith is a breach of the
13 contract." (Schwartz v. State Farm Fire and Cas. Co. (2001) 88 Cal.App.4th 1329, 1339.) "[E]ven an
14 insurer that pays the full limits of its policy may be liable for breach of the implied covenant, if
15 improper claims handling causes detriment to the insured." (Id.) In addition, the insurer's
16 unreasonable classification of a disability as caused by "sickness" rather than "injury" (so as to deny
17 or limit benefits) may breach its implied covenant of good faith and fair dealing with the insured. In
18 this case, plaintiff presents substantial evidence that the accident "triggered" the injury, he is entitled
19 to lifetime benefits, and Canada Life ignored this information in an attempt to limit plaintiff's
20 benefits. (Opgenorth Dec., Ex. 3, 839, 1155, 1464, 2603, 2855, 2862, 5293, 3142, 5719-5721, 4566-
21 4569. Claims manager McLeod admitted that prior to the boating accident, plaintiff did not have
22 functional limitations. (Opgenorth Dec., Ex. 4, McLeod Depo., 160:3-22.) McLeod further admitted
23 that Canada Life did not speak with plaintiff's physicians and it learned that Mass Mutual treated the
24 disability as a result of an accident. (Id. at 57:5-7; 90:3-91:14.) Dr. Morton's testimony also suggests
25 that the boating accident caused the disability. (Opgenorth Dec., Ex. 5, Morton Depo., 39:4-10;
26 47:18-24; 71:23-72:5.) The federal action can be further evidence of bad faith given this record. "It is
27 at least arguable that pursuing a declaratory relief action regarding coverage could be done for
28 reasons indicating bad faith may be present: e.g., if there were no proper cause to dispute coverage,

1 and if more than an erroneous interpretation of a policy (e.g., a willfully misguided one) were
2 concerned." (Dalrymple v. USAA (1995) 40 Cal.App.4th 497, 515.) Plaintiff incurred financial loss
3 by having to defend the alleged bad faith federal action. Bad faith damages exist whether an insured
4 hires an attorney to obtain benefits due or defend benefits that an insurer is attempting to wrongfully
5 remove or withhold.

6 Defendants Computer Sciences Corporation and Swiss Re Life & Health America, Inc.'s
7 motions for summary judgment (or adjudication on issues 4-11) are granted. Plaintiff admits that
8 these entities are not parties to the disability policy at undisputed facts 3 and 4. This admission shows
9 that there is no basis to sue them. In opposition, plaintiff's adduced evidence does not show that they
10 are "Managing General Agents" that are liable for Canada Life's conduct per Insurance Code §
11 769.81. (See McLeod Depo., 7:4-14; 17:13-18:11; 29:22-24; Millar Depo., 10:9-11:22.)

12 IT IS SO ORDERED.

13 Dated: 2/1/19

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16 Hon. Richard B. Ulmer, Jr.
17 Judge of San Francisco Superior Court
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