

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

PRUCO LIFE INSURANCE COMPANY, :
Plaintiff, :
v. : CA 08-69 S
WILMINGTON TRUST COMPANY, :
Trustee under the Paul E. :
L'Archevesque Special Revocable :
Trust - 2006; JAY L'ARCHEVESQUE, :
Co-Trustee under the Paul E. :
L'Archevesque Special Revocable :
Trust - 2006, :
Defendants. :

MEMORANDUM AND ORDER
GRANTING IN PART
MOTION TO DEEM REQUESTS ADMITTED

Before the Court is Plaintiff Pruco Life Insurance Company's Motion to Deem Certain Requests for Admission Admitted or, in the Alternative, to Compel Appropriate Answers (Document ("Doc.") #123) ("Motion to Deem Requests Admitted" or "Motion"). A hearing was conducted on September 8, 2009.

Background

This is an action to rescind a \$15 million life insurance policy (the "Policy"), insuring the life of Paul E. L'Archevesque ("Paul").¹ Plaintiff Pruco Life Insurance Company ("Pruco")

¹ There is a related action by The Lincoln National Life Insurance Company to rescind a \$5 million life insurance policy which it issued. See Lincoln Nat'l Life Ins. Co. v. Paul E. L'Archevesque, et al., CA 08 74 S. The policies were issued at or about the same time.

alleges that Paul made material misrepresentations in the application for the Policy because he failed to disclose that he had been treated for memory loss. See Second Amended Complaint (Doc. #71) ¶¶ 30-33. Pruco further alleges that Paul obtained the Policy with the intent to sell it to a third-party investor in violation of Rhode Island's insurable interest statute, R.I. Gen. Laws ¶ 27-4-27. See id. ¶ 24.

On May 29, 2009, Pruco served on Jay L'Archevesque ("Jay") requests for admission (the "Requests") pursuant to Fed. R. Civ. P. 36. See Plaintiff Pruco Life Insurance Company's Memorandum of Law in Support of Motion to Deem Certain Requests for Admission Admitted or, in the Alternative, to Compel Appropriate Answers ("Pruco's Mem.") at 2. On June 29, 2009, Jay served his responses to the Requests. See id., Attachment ("Att.") (Certification of Laurie E. Foster) (Doc. #124) ("Foster Cert."), Exhibit ("Ex.") A (Responses of Defendant Jay L'Archevesque to Plaintiff's Request for Admissions ("Responses")). Jay refused to answer twenty-four of the Requests on the ground that they were compound. See id. For approximately twelve other Requests, Jay responded that after conducting reasonable inquiry he could not obtain sufficient information to admit or deny the Request. See id.

Pruco's counsel then wrote to Jay's counsel, stating that the compound objections were inappropriate based on Rule 36 and

questioning the basis for Jay's claim that he lacked sufficient information to respond to other Requests, including those which concerned his activities as Co-Trustee of the Revocable Trust and his father's medical condition. See Foster Cert. ¶ 4; see also id., Ex. B (Letter from Foster to Duffy of 7/17/09). On July 30, 2009, Jay served amended responses to the Requests, amending some responses but leaving most of those questioned by Pruco unaltered. See id. ¶ 5; see also id., Ex. C (Amended Responses of Defendant Jay L'Archevesque to Plaintiff's Request for Admissions). Pruco then filed the instant Motion, seeking an order deeming Request Nos. 14, 35-44, 49, 51, 56-65, 70-72, 80, 94²-96, 103, 104, 107, 112, 114, and 115 admitted. See Motion. In the alternative, Pruco moves for an order compelling appropriate responses. See id. Pruco also requests, pursuant to Fed. R. Civ. P. 36(a)(6) and 37(a)(5), that it be awarded its attorneys' fees and costs incurred in the bringing of the Motion. See Pruco's Mem. at 11.

Discussion

Fed. R. Civ. P. 36(a) provides, in part:

(1) Scope. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1)

² In a post hearing letter to the Court, Pruco advised that it was withdrawing the Motion with respect to Jay L'Archevesque's Response to Request No. 94. See Letter from Shindell to Martin, M.J., of 9/11/09.

....

(4) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and **when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest.** The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

Fed. R. Civ. P. 36(a) (bold added).

Bearing the wording of the Rule in mind, the Court considers the objections raised by Jay.

Compound

Jay has objected to twenty-four of the Requests on the ground that they are compound. Each of these Requests addresses a question on the Application which Pruco contends was a material misrepresentation and asks Jay to admit that the answer was not "complete and true" at the time he certified, both on the Application and at delivery of the Policy, that "[t]o the best of [his] knowledge and belief, the statements in [the] application ... are complete, true, and correctly recorded." Pruco's Mem., Ex. 1 (Response Nos. 35-44, 49, 51, 56-65, 70, 71). Twenty-one of these twenty-four Requests were framed as follows:

REQUEST FOR ADMISSION NO. 44:

On February 16, 2006, the answers to question 7 on page M00805 [of the Application] was not complete and

true.

Id., Ex. 1.

The remaining three Requests took the following form:

REQUEST FOR ADMISSION NO. 71:

Upon delivery of the Policy, Jay L'Archevesque did not inform Pruco of any changes in Paul E. L'Archevesque's health, mental or physical condition or of any changes to any answers in [the Application].

Id.

Jay responded to each of the twenty-four Requests by stating:

L'Archevesque objects to this Request as it does not separately state each matter it requests to be admitted and is compound.

Id. The apparent basis for Jay's contention that these Requests are compound is that "it is possible, for example, that the statements might be true but not complete" Amended Memorandum of Law in Support of Jay L'Archevesque's Opposition to Prudential [sic] Life Insurance Company's Motion to Deem Certain Requests Admitted, or in the Alternative to Compel Appropriate Answers³ (Doc. #133) ("Jay's Amended Mem.") at 2-3. The Court

³ On September 17, 2009, Jay filed an amended memorandum of law. See Amended Memorandum of Law in Support of Jay L'Archevesque's Opposition to Prudential [sic] Life Insurance Company's Motion to Deem Certain Requests Admitted, or in the Alternative, to Compel Appropriate Answers (Doc. #133) ("Jay's Amended Mem."). This amended memorandum altered the description of Paul's mental impairment. Jay's original memorandum stated that: "Paul ... suffers from a form of dementia that impairs his memory." Memorandum of Law in Support of Jay L'Archevesque's Opposition to Pruco Life Insurance Company's Motion to Deem Certain Requests Admitted, or in the Alternative, to Compel Appropriate Answers ("Jay's Mem.") at 3 4. The amended

fails to find that this theoretical possibility constitutes a valid basis for refusing to admit the requested facts. As Pruco validly points out, Jay "does not explain how he could certify that the answers on the application for the Policy were 'complete, [and] true' but be unable to do so now," Plaintiff Pruco Life Insurance Company's Reply Memorandum of Law in Support of Motion to Deem Certain Requests for Admission Admitted or, in the Alternative, to Compel Appropriate Answers (Doc. #130) ("Pruco's Reply") at 2 (alteration in original); "does not claim that any Request is complete but not true, or vice versa," id.; "does not offer any example in support of his theory that it would be possible for an answer to be complete but not true, or vice versa," id.; and "does not explain why he was able to admit Request No. 50 but not Nos. 49, 70, and 71, all of which contained the same allegedly compound language," id.

With the exception of Request No. 51,⁴ the Court finds that Jay's objection that the Requests are compound is not well founded. The caselaw cited by Jay is distinguishable as the

memorandum states that: "Paul ... suffers from PSP (progressive supranuclear palsy), a disorder that attacks the frontal lobe of the brain and causes symptoms including memory loss." Jay's Amended Mem. at 4.

⁴ Request No. 51 seeks an admission that "[t]he statements in Exhibit J were not all complete, true or correctly recorded." Foster Cert., Ex. A. The inclusion of a third element in this request, "correctly recorded," is confusing and provides substance to Jay's complaint that the request is compound. Accordingly, the Court declines to grant the Motion with respect to Request No. 51.

requests at issue in those cases were convoluted, complex, and contained cross-references and/or multiple disputed facts. Here, except for Request No. 51, the Requests are simple and direct. If Jay contends that any of the statements were true but not complete, Rule 36(a)(4) requires him to admit that they were not complete and to deny that they were not true. See Fed. R. Civ. P. 36(a)(4) (requiring the party to whom the request is directed to specify the part admitted and to qualify or deny the rest). Conversely, if Jay contends that any of the statements were complete but not true, Rule 36(a)(4) requires him to admit that they were not true and to deny that they were not complete.⁵ See id. Accordingly, with respect to Request Nos. 35-44, 49, 56-65, and 70-71, Jay's objection of "compound" is overruled. As to Request No. 51, the objection is sustained.

Jay also argues that, in addition to being compound, he would not be able to answer the Requests even after reasonable inquiry. By way of example, Jay's counsel noted at the hearing that Jay has no personal knowledge of whether, at the time the application was completed, his father was "taking prescription medication[.]" See Foster Cert., Ex. E (Application for Life

⁵ The Court frankly has difficulty envisioning how a statement could be "complete" and not "true." However, in order to avoid precluding Jay from making a possible response, the Court here rules only that Jay may not refuse to answer a Request which seeks to have him admit that a statement appearing in the application was not true and complete on the ground that such Request is compound. If it is not apparent from his response, Jay should explain how the statement was complete but not true.

Insurance or Policy Change) at M00794 (Question 3). Counsel argued that even if medical records reflect that such medication had been prescribed, Jay has no way of knowing whether Paul was actually taking the medication. Jay further suggests that because Paul suffers from progressive supranuclear palsy and is not confident in his memory of events that happened two or three years ago, Jay cannot obtain this information from Paul.

As to Request Nos. 39 and 60, which pertain to whether Paul was "currently taking prescription medication," this objection has merit. As to the remaining Requests it does not because the matters stated can be determined by consulting medical records and do not depend upon obtaining information from Paul.

Accordingly, with respect to Request Nos. 35-38, 40-44, 49, 56-59, 61-65, and 70-71, the Motion is granted to the extent that Jay is ordered to file appropriate answers to these Requests. To the extent that the Motion seeks to have these Requests be deemed admitted, such relief is denied as the Court finds this to be too harsh. With Respect to Request Nos. 39, 51, and 60 the Motion is denied.

Lack of Sufficient Information

As to eleven Requests (Request Nos. 14, 72, 80, 95, 96, 103, 104, 107, 112, 114, and 115), Jay has refused to admit the Requests (or has admitted only a portion of the Request) on the ground that after reasonable inquiry he is unable to admit or

deny the matter in question. Specifically, Jay claims that he is unable to readily obtain information sufficient to admit or deny the genuineness of the following documents:

- the Irrevocable Trust agreement, of which he is a Trustee, and which contains his notarized signature (Request No. 114);
- the Revocable Trust agreement, of which he is a Co-Trustee, and which he signed (Request No. 115);
- the Change of Ownership form he executed as Trustee of the Irrevocable Trust (Request No. 80); and
- the Settlor and Non-Recourse Security Agreement he executed as Trustee of the Irrevocable Trust (Request No. 112).

Pruco's Mem. at 8.

Jay also claims that, despite being co-trustee of the Revocable Trust and a participant in the Revocable Trust's borrowing to finance the Policy premiums, he is unable to obtain sufficient information to admit or deny whether:

- the Revocable Trust financed the Policy premiums through Coventry's PFP Program (Request No. 95);
- the Revocable Trust borrowed the funds for the premiums from LaSalle (Request No. 96);
- the Revocable Trust was created as part of the documentation for Coventry's PFP Program (Request No. 103);
- the Revocable Trust's loan was funded on March 31, 2006 (Request No. 104); and
- the amount of premiums the Revocable Trust financed (Request No. 107).

Id.

At the hearing, counsel for Jay appeared to argue that although Jay could and did admit to matters within his personal knowledge, he could not admit to matters within the knowledge of his co-trustee, Wilmington Trust Company ("Wilmington"). Given that the interests of Jay and Wilmington in this litigation do not appear to be adverse, the Court is unpersuaded by Jay's argument. See A. Farber & Partners, Inc. v. Garber, 237 F.R.D. 250, 254 (C.D. Cal. 2006) ("At a minimum, a party must make inquiry of a third party when there is some identity of interest manifested, such as by both being parties to the litigation, a present or prior relationship of mutual concerns, or their active cooperation in the litigation, and when there is no manifest or potential conflict between the party and the third party.") (internal quotation marks omitted).⁶

Accordingly, as to Request Nos. 80, 95, 96, 103, 104, 107, 112, 114,⁷ and 115, the Court rejects Jay's claim that he has

⁶ The Court did not receive the impression from Jay's counsel at the hearing that Jay had, in fact, made inquiry of Wilmington in an effort to obtain the information which prevented Jay from fully responding to the Requests at issue. If Jay did make such inquiry, the Court is unpersuaded by what Jay has presented that such inquiry rises to the level of being "reasonable." Fed. R. Civ. P. 36(a).

⁷ Request No. 114 states: "Attached hereto as Exhibit R is a true and correct copy of the Paul E. L'Archevesque Special Trust 2006 Trust Agreement executed on January 6, 2006." Foster Cert., Ex. B. The Court notes that Exhibit R appears to have been executed on January 5, 2006, as the notarization clauses reflect that date. If the date "January 6, 2006," appearing in Request No, 114 is a typographical error, Pruco is directed to so advise Jay immediately and propound an Amended Request for Admission No. 114 within five days of the date of this Memorandum and Order. Jay shall then respond to

made "reasonable inquiry." Given Jay's position as co-trustee, the Court believes that all of the information stated in these Requests should be within his knowledge or can be ascertained by making reasonable inquiry of his co-trustee or other third parties. Accordingly, the Motion is granted as to these Requests to the extent that Jay shall file appropriate responses within 15 days of the date of this Memorandum and Order. Pruco's request that these Requests be deemed admitted is again denied because it is too harsh.

Lastly, Jay maintains that he is unable to obtain information pertaining to his father, Paul, regarding:

- the genuineness of his father's medical records (Request No. 14); and
- the state of his father's health at the time the Policy issued (Request No. 72).

Pruco's Mem. at 9.

With regard to Request No. 14, to the extent that Jay claims that he is unable to admit that Exhibit E is a true and correct copy of Dr. Cahill's January 6, 2006, report, because the doctor has not been deposed in this litigation, see Amended Memorandum of Law in Support of Jay L'Archevesque's Opposition to Pruco Life Insurance Company's Motion to Deem Certain Requests Admitted, or in the Alternative, to Compel Appropriate Answers (Doc. #133)

the Amended Request. If Jay is not advised by Pruco that there is a typographical error, he shall respond to Request No. 114 as originally propounded.

("Jay's Amended Mem.") at 3, such argument is rejected. The utility of requests for admission would be drastically undercut if a party, with no reasonable basis for doubting the authenticity of a document and the ability to verify that the copy is true and correct, could refuse to admit to the genuineness of the document on the ground that the author of the report has not been deposed. Jay also asserts that he has no first-hand knowledge of the contents of the report. See id. However, Jay is not being asked to admit to the accuracy of the information contained in the report, but only that Exhibit E is a true and correct copy of that report. Accordingly, the Motion is granted with respect to Request No. 14 to the extent that Jay shall file an appropriate answer.

With respect to Request No. 72, Jay suggests that he has no personal knowledge of the state of his father's health at the time his father signed the application and that because his father is impaired and uncertain about matters occurring three years ago, Jay cannot obtain this information from him. The Court is not persuaded by this argument. Jay presumably has access to his father's medical records and by reviewing those records can answer this Request. Accordingly, as to Request No. 72, the Motion is granted to the extent that Jay is ordered to file an appropriate answer. Jay shall file appropriate responses to Request Nos. 14 and 72 within 15 days of the date of this

Memorandum and Order. Pruco's request to have these two Requests deemed admitted is denied for the reason previously stated.

Attorneys' Fees

Pruco's request for attorneys' fees is denied because there were some Requests for admission as to which the Court has declined to grant the Motion.

Conclusion

For the reasons stated above, the Motion is granted to the extent that Jay is ordered to file appropriate answers to Request for Admission Nos. 14, 35-38, 40-44, 49, 56-59, 61-65, 70-72, 80, 95, 96, 103, 104, 107, 112, 114, and 115 within fifteen days of the date of this Memorandum and Order. In all other respects, the Motion is denied.

So ordered.

ENTER:

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
September 21, 2009