

STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO: 09-CVS-01402

CHARLES D. MAST, )  
)  
Plaintiff, )  
)  
vs. )  
)  
EDWARD D. JONES & CO., )  
A Limited Partnership, )  
BRIAN IVEY, and )  
HARTFORD EQUITY SALES )  
COMPANY, INC., )  
)  
Defendants. )

**NOTICE OF DESIGNATION  
AS A MANDATORY COMPLEX  
BUSINESS CASE**

Defendant Edward D. Jones & Co. ("EDJ"), pursuant to N.C. Gen. Stat. § 7A-45.4, and without waiving its right to arbitration of this dispute as set out in its motion to compel arbitration, submits this Notice of Designation. Defendants Ivey and Hartford have authorized EDJ to represent that they join in this designation.

EDJ is a securities broker-dealer licensed by the Securities and Exchange Commission and by the Securities Division of the Office of the North Carolina Secretary of State. Neal F. Haworth ("Haworth") is a licensed securities broker who is registered with EDJ. Plaintiff asserts claims against EDJ arising out of financial and investment advice allegedly provided by Haworth, including advice relating to variable life insurance policies, which encompass investments in securities. EDJ asserts that the claims against it, as well as its defenses to those claims, involve material issues relating to securities laws within the meaning of G.S. § 7A-45.4(a)(2).

As required by statute, a copy of this designation is filed in Johnston County Superior Court and served upon the senior Business Court Judge, the Chief Justice, and opposing counsel. G.S. § 7A-45.4(b).

The undersigned, on behalf of EDJ, in good faith and based on information reasonably available, certifies that this action meets the criteria for designation as a mandatory complex business case.

This 11<sup>th</sup> day of May, 2009.

**PENRY RIEMANN, PLLC**

A handwritten signature in dark ink, appearing to read 'J. Penry', is written over a horizontal line.

J. Anthony Penry  
NCSB # 8936  
510 Glenwood Avenue, Suite 319  
Raleigh, NC 27603  
(919) 833-9449  
(919) 833-9448 (fax)

**CERTIFICATE OF SERVICE**

I, J. Anthony Penry, hereby certify that a copy of the foregoing **NOTICE OF DESIGNATION AS A MANDATORY COMPLEX BUSINESS CASE** was served via first class mail as follows:

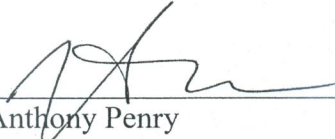
Mr. George B. Mast  
Mast, Schultz, Mast, Johnson, Wells & Trimyer, PA  
Post Office Box 119  
Smithfield, NC 27577

The Honorable Ben F. Tennille  
Special Superior Court Judge for Complex Business Cases  
North Carolina Business Court  
211 N. Greene St.  
Greensboro, NC 27401  
(with copies of documents served on EDJ)

The Honorable Sarah Parker  
Chief Justice, North Carolina Supreme Court  
Post Office Box 1841  
Raleigh, NC 27602  
Via Facsimile: 831-5720  
(with copies of documents served on EDJ)

Ms. Patricia P. Kerner  
Troutman Sanders, LLP  
Two Hannover Square  
434 Fayetteville St., Suite 1900  
Raleigh, NC 27601

This 11<sup>th</sup> day of May, 2009.

  
\_\_\_\_\_  
J. Anthony Penry

## STATE OF NORTH CAROLINA

Johnston County

COPY

File No.

01402

In The General Court Of Justice  
☐ District ☒ Superior Court Division

## Name Of Plaintiff

Charles D. Mast

## Address

PO Box 119

## City, State, Zip

Smithfield, NC 27577

VERSUS

## Name Of Defendant(s)

Edward D. Jones & Co., Limited Partnership; Brian Ivey; and  
Hartford Equity Sales Company, Inc.REQUEST FOR ADMISSIONS SERVED  
CIVIL SUMMONS w/ COMPLAINT☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

## To Each Of The Defendant(s) Named Below:

## Name And Address Of Defendant 1

Edward D. Jones & Co., Limited Partnership  
c/o CT Corporation System, Registered Agent  
150 Fayetteville Street, Box 1011  
Raleigh, NC 27601

## Name And Address Of Defendant 2

## A Civil Action Has Been Commenced Against You!

and Request For Admissions

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

## Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

Charles D. Mast  
Mast, Schulz, Mast, Johnson & Wells, PA  
PO Box 119  
Smithfield, NC 27577

## Date Issued

04.09.09

## Time

3:31

☐ AM ☒ PM

## Signature

Pamela R Keen

☒ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

## Date Of Endorsement

## Time

☐ AM ☐ PM

## Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

AOC-CV-100, Rev. 10/01

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(Over)

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# RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

## DEFENDANT 1

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

## DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason.

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (Type Or Print)
Date Of Return	County Of Sheriff

## STATE OF NORTH CAROLINA

Johnston County

File No.

01402

COPY

In The General Court Of Justice  
☐ District ☒ Superior Court Division

## Name Of Plaintiff

Charles D. Mast

## Address

PO Box 119

## City, State, Zip

Smithfield, NC 27577

REQUEST FOR ADMISSIONS SERVED  
CIVIL SUMMONS w/ COMPLAINT☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

## VERSUS

## Name Of Defendant(s)

Edward D. Jones & Co., Limited Partnership; Brian Ivey; and  
Hartford Equity Sales Company, Inc.

## Date Original Summons Issued

## Date(s) Subsequent Summons(es) Issued

## To Each Of The Defendant(s) Named Below:

## Name And Address Of Defendant 1

Edward D. Jones & Co., Limited Partnership  
c/o CT Corporation System, Registered Agent  
150 Fayetteville Street, Box 1011  
Raleigh, NC 27601

## Name And Address Of Defendant 2

## A Civil Action Has Been Commenced Against You!

and Request For Admissions  
You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

## Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

Charles D. Mast  
Mast, Schulz, Mast, Johnson & Wells, PA  
PO Box 119  
Smithfield, NC 27577

## Date Issued

04-09-09

## Time

3:31

☐ AM ☒ PM

## Signature

Prometha R. Ken

☒ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

## Date Of Endorsement

## Time

☐ AM ☐ PM

## Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

AOC-CV-100, Rev. 10/01

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STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

~~254~~ 01402

CHARLES D. MAST, )  
Plaintiff, )  
 )  
vs. )  
 )  
EDWARD D. JONES & CO., )  
A Limited Partnership, )  
BRIAN IVEY, and )  
HARTFORD EQUITY SALES )  
COMPANY, INC. )  
Defendants. )

COMPLAINT

FILED  
APR-9 PM 3:33  
JOHNSTON COUNTY, C.S.C.  
BY  
GK

The plaintiff, CHARLES D. MAST ("Mast"), complaining of the Defendants, alleges and says:

1. Plaintiff is a citizen and resident of Johnston County, North Carolina.
2. Upon information and belief, Defendant, Edward D. Jones & Company, a Limited Partnership ("Edward Jones"), is a limited partnership organized under the laws of the State of Missouri, but authorized to do business and doing business in North Carolina, with offices all throughout North Carolina, including Johnston County, North Carolina.
3. Upon information and belief, Defendant Brian Ivey ("Ivey") is a citizen and resident of Wake County, North Carolina
4. Upon information and belief, Defendant, Hartford Equity Sales Company, Inc., ("Hartford") is a corporation organized under the laws of the State of Connecticut, but authorized to do business and doing business in North Carolina, with offices all throughout North Carolina, including Wake County, North Carolina.
5. Upon information and belief and at all times relevant hereto, Neal F. Haworth ("Haworth") was an agent and financial advisor of Edward Jones, acting within the course and scope of his agency, employment and authority with Edward Jones regarding all matters relevant to this matter. Any actions and/or negligence of Haworth relevant hereto is imputed to Edward Jones.

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6. Upon information and belief and at all times relevant hereto, Defendant Brian Ivey ("Ivey") was an agent and senior account executive and financial advisor of Hartford, acting within the course and scope of his agency, employment and authority with Hartford regarding all matters relevant to this matter. Any actions and/or negligence of Ivey relevant hereto is imputed to Hartford.

7. Also at all times relevant hereto regarding the allegations herein, Haworth was acting as an agent of Hartford, and any actions and/or negligence of Haworth is imputed to Hartford.

8. Haworth and Edward Jones provide investment and insurance advice and services to their clients, including the Plaintiff, and advertise that they consider "individual needs before anything else."

9. Ivey and Hartford provide investment and insurance advice and services to their clients, including the Plaintiff.

10. Prior to and continuing through the acts complained of the Defendants herein, Edward Jones had served as financial advisors to Mast on several personal and business matters, including trust accounts for Mast's children and retirement accounts for Mast's business. Haworth and Edward Jones had a fiduciary relationship with Mast during all times relevant hereto.

11. Also prior to the acts complained of the defendant herein, Mast owned two flexible premium variable life insurance policies purchased from Western Reserve Life Assurance Co. of Ohio ("Western Reserve"): a \$250,000 insurance policy purchased in 1989 and a \$750,000 insurance policy purchased in 1991. From the dates of inception of those policies, Mast accumulated significant cash values in those policies.

12. The said Western Reserve policies also had provisions that allowed Mast to borrow money against the cash values of those policies. At the time of the acts complained of the defendant herein, Mast had an outstanding loan of approximately \$69,255.88 regarding the \$250,000 policy and an outstanding loan of approximately \$142,110.04 regarding the \$750,000 policy. According to the Western Reserve policy provisions, Mast was not required to repay these loans during his lifetime; and when Mast died, Western Reserve would reduce the life insurance payouts by the amount of the



loans, and neither Mast nor his beneficiaries would pay income tax on the life insurance proceeds or the loans against the Western Reserve policies.

13. As a result, Mast did not intend to repay the loans against the Western Reserve policies, but instead intended to have the proceeds reduced when he died.

14. In approximately June of 2007, Haworth contacted Mast to solicit additional business from Mast and requested copies of Mast's Western Reserve policies so that Edward Jones could determine if it could provide an alternative to the Western Reserve policies that would be more favorable to Mast.

15. Mast provided Haworth and Edward Jones all documentation that they requested regarding the Western Reserve policies and advised Haworth that he had outstanding loans against the Western Reserve policies.

16. After Mast provided Haworth and Edward Jones with the Western Reserve policies, Haworth called Mast and asked Mast to meet with Haworth and a representative from Hartford. Haworth informed Mast that the Hartford representative was a specialist and expert in the type of policies that Mast had with Western Reserve.

17. Shortly thereafter, Mast met with Haworth and Ivey of Hartford. Haworth and Ivey stated that they had reviewed Mast's Western Reserve policies and that it was in Mast's best interest to "roll over" the Western Reserve policies into a Hartford policy. Both Haworth and Ivey represented to Mast that "there would not be any taxable event" regarding the rollover of the funds in the Western Reserve policies.

18. Both Haworth and Ivey were aware that Mast had outstanding loans against the cash values of the Western Reserve policies, and that those loans needed to be rolled over into the Hartford policy to prevent any tax consequences.

19. Mast informed Haworth that he did not know what was in his best interest regarding this matter, as it was certainly outside his expertise, but that he trusted Haworth and if Haworth and Ivey recommended the change, then he would do so.

20. As a result of the interactions related to the solicitation and transfer of funds from the Western Reserve policies to the Hartford policy, as well as the assurance that they would do whatever was in the best interest of Mast, Ivey and Hartford created a fiduciary relationship with Mast.

21. Edward Jones, including but not limited to its agent Haworth, knew that Mast wanted his Western Reserve loans transferred to the new Hartford policy.

22. Edward Jones, including but not limited to its agent Haworth, knew that Mast would have additional taxable income of the amount of his Western Reserve loans if the loans were not transferred to the Hartford policy.

23. Ivey and Hartford knew that Mast wanted his Western Reserve loans transferred to the new Hartford policy.

24. Ivey and Hartford knew that Mast would have additional taxable income of the amount of his Western Reserve loans if the loans were not transferred to the Hartford policy.

25. Haworth and Ivey instructed Mast to sign several documents, including a blank "tax-free exchange" form, and Haworth and Ivey stated that they would later fill in the specifics of the Western Reserve policy.

26. Edward Jones and Hartford then cancelled Mast's Western Reserve policies and transferred the Western Reserve funds into Hartford policy number 102 VL9379685. However, the Defendants did not transfer or "roll over" the Western Reserve loans to the Hartford policy.

27. In 2008, Mast received IRS 1099 forms from Western Reserve, stating that he had additional taxable income in 2007 in the amount of \$110,040.31 as a result of the transfer from and cancellation of his Western Reserve policies. Mast forwarded those 1099 forms to his certified public accountant.

28. Mast's CPA called Haworth regarding those 1099 forms, and Haworth informed the CPA that there should not have been any taxable event regarding the transfer of the Western Reserve policies.

29. Mast also called Haworth after receiving the 1099 forms, and Haworth informed Mast that there was no taxable event regarding the transfer of the policies.

30. After Mast's CPA informed Mast that there was a taxable event, Mast called Haworth again regarding the transaction, and Haworth said to Mast that he "was not aware it was going to be a taxable event," that he knew that Mast wanted the new policy to absorb the loans, and that the new policy should have absorbed the loans.

Haworth also told Mast that if there were going to be any major tax problems, Mast should have been told so or the rollover should not have occurred.

31. After talking with Haworth, Mast and Haworth had a conference call with Ivey. During that conference call, Ivey stated that Edward Jones required any such transfers to be reviewed by Edward Jones' home office to make sure the transfer "made sense from a tax standpoint." Ivey stated that when similar tax consequences had arisen before, Edward Jones would reverse the transaction. Ivey further stated that if he and Haworth did not have the "in-force illustrations" with them when they were advising Mast, that they would not have mentioned the potential tax consequences to Mast. Lastly, Ivey stated, and Haworth agreed, that "I don't think we went into tax consequences, because we didn't have the in-forces" at the time.

32. The Defendants received compensation for the transfer of Mast's Western Reserve policies to the Hartford policy, and therefore had a pecuniary interest in the transaction.

33. As a result of the transaction, Mast was required to pay an additional \$46,978 in income taxes for 2007, has less life insurance coverage under the Hartford policy than he had under the Western Reserve policies, may be paying a higher premium for the types of insurance coverage he has under the Hartford policy than he would have paid for like-kind coverage under the Western Reserve policy, and has sustained such other damages that an appropriate expert can identify.

**FIRST CAUSE OF ACTION**  
**RELIEF PURSUANT TO 11 N.C.A.C. 12.0600 et seq.**

34. Plaintiff realleges and incorporates the preceding paragraphs by reference.

35. Haworth and Ivey violated the "Duties of Producers" according to the provisions of 11 N.C.A.C. 12.0605 (which is incorporated herein by reference), including but not limited to their failure to present and read to Mast a notice regarding replacements in the format required by 11 N.C.A.C. 12.0611.

36. Hartford violated the "Duties of Insurers that use Producers" according to the provisions of 11 N.C.A.C. 12.0607 (which is incorporated herein by reference), including but not limited to:

- a. Its failure to maintain a system of supervision and control to insure compliance with the requirements of the replacement regulations of rules of 11 N.C.A.C. 12.0600 *et seq.*; and
- b. Its failure to require a completed notice regarding replacements in the format required by 11 N.C.A.C. 12.0611.

37. The Defendants violated the provisions of 11 N.C.A.C. 12.0600 *et seq.* in other ways as will be identified through discovery and presented at trial.

38. As a result of Defendants' actions, the North Carolina Commissioner of Insurance should subject the Defendants to the penalties identified in 11 N.C.A.C. 12.0609.

**SECOND CAUSE OF ACTION**  
**NEGLIGENCE**

39. Plaintiff realleges and incorporates the preceding paragraphs by reference.

40. Defendants, their agents and employees were negligent in that they:

- a. Failed to transfer the debt of the Western Reserve policy to the Hartford policy;
- b. Failed to inform Mast of the tax consequences of the transfer from the Western Reserve policies to the Hartford policy without "rolling over" of the loans associated with said policies;
- c. Failed to notify Mast of the option of reversing the transaction once they learned of the tax consequences of the transaction;
- d. Failed to exercise reasonable care in obtaining information regarding the transaction or in handling the transaction;
- e. Misrepresented information and provided false information to Mast regarding the transaction;
- f. Failed to inform Mast of the benefits of keeping his 1988 and 1991 Western Reserve policies, including but not limited to the savings in premiums for like-kind coverage under the Western Reserve policy;

- g. Made oral statements that willfully misrepresents or willfully made incomplete comparisons as to the terms, conditions, or benefits contained in the relevant policies of insurance for the purpose of inducing or attempting to induce Mast to terminate or surrender, exchange, or convert his Western Reserve insurance policies;
- h. Violated the provisions of 11 N.C.A.C. 12.0600 *et seq.* (which is incorporated herein by reference); and
- i. In such other ways as discovery may reveal or as may be proven at trial.

41. The acts of the Defendants through their agents as hereinabove alleged were a proximate cause of the damages to the Plaintiff.

42. Mast has been damaged in an amount in excess of \$10,000 by reason of the negligence of the Defendants.

### **THIRD CAUSE OF ACTION** **NEGLIGENT MISREPRESENTATION**

43. Plaintiff realleges and incorporates the preceding paragraphs by reference.

44. The Defendants, their agents and employees created a relation of trust and confidence with Mast.

45. The Defendants, their agents and employees had a fiduciary duty to Mast, and a duty to act with reasonable care in preparing and providing Mast with information regarding the aforementioned transaction.

46. Defendants breached their duty to act with reasonable care by failing to exercise reasonable care or competence in obtaining or communication information to Mast, as well as by not transferring the debt from the Western Reserve policy to the Hartford policy and/or not advising Mast of the tax consequences of the exchange.

47. Mast justifiably relied upon the information provided by the Defendants to his detriment.

48. The acts of the Defendants through their agents as hereinabove alleged were a proximate cause of the damages to the Plaintiff.

49. Mast has been damaged in an amount in excess of \$10,000 by reason of the negligent misrepresentation of the Defendants.

**FOURTH CAUSE OF ACTION**  
**BREACH OF FIDUCIARY DUTY**

50. Plaintiff realleges and incorporates the preceding paragraphs by reference.

51. The Defendants, their agents and employees created a relation of trust and confidence with Mast.

52. The Defendants, their agents and employees had a confidential and fiduciary duty to Mast, and a duty to disclose all material facts regarding the transaction, including the tax consequences of the transaction.

53. The Defendants, their agents and employees breached their fiduciary duty and took advantage of their position of trust by, including but not limited to, making representations which they knew or should have known were false, failing to transfer the debt from the Western Reserve policy to the Hartford policy and/or failing to disclose the tax consequences to Mast, upon which Mast relied to his detriment and damage, and in other ways as will be shown through discovery in this matter.

54. Through the aforementioned acts, the Defendants through their agents and employees breached their fiduciary duties to Mast as a matter of law.

55. Mast has been damaged in excess of \$10,000 by reason of the Defendants' breach of fiduciary duties.

**FIFTH CAUSE OF ACTION**  
**CONSTRUCTIVE FRAUD**

56. Plaintiff realleges and incorporates the preceding paragraphs by reference.

57. The Defendants, their agents and employees created a relation of trust and confidence with Mast.

58. The Defendants, their agents and employees had a confidential and fiduciary duty to Mast, and a duty to disclose all material facts regarding the transaction, including the tax consequences of the transaction.

59. The Defendants, their agents and employees breached their duty and took advantage of their position of trust by making representations which they knew or should have known were false, by failing to transfer the debt from the Western Reserve policy to the Hartford policy and/or by failing to disclose the tax consequences to Mast, upon which Mast relied to his detriment and damage.

60. The Defendants, their agents and employees intended to benefit, did benefit and will continue to benefit from their misrepresentations. Edward Jones, Haworth, Hartford and Ivey received monetary compensation for the exchange of the Hartford policy for the Western Reserve policy. Upon information and belief, the Defendants, their agents and employees will continue to receive monetary compensation every time future premiums are paid on the Hartford policy.

61. Through the aforementioned acts, the Defendants through their agents and employees breached their fiduciary duties to Mast resulting in constructive fraud as a matter of law.

62. Mast has been damaged in excess of \$10,000 by reason of the constructive fraud of the Defendants.

**SIXTH CAUSE OF ACTION**  
**UNFAIR OR DECEPTIVE TRADE PRACTICES**

63. Plaintiff realleges and incorporates the preceding paragraphs by reference.

64. The conduct of the Defendants described herein and to be proven at trial constitutes an unfair or deceptive trade practice and/or an unfair method of competition affecting commerce within the meaning of N.C.G.S. § 75-1.1 *et seq.*

65. The Defendants failure to comply with the rules provided in 11 N.C.A.C. 12.0600 *et seq.* is a violation of N.C.G.S. § 58-63-15(1) as a matter of law.

66. The conduct of the Defendants described herein and to be proven at trial is in or affecting commerce.

67. The conduct of the Defendants is a proximate cause of the damages herein alleged.

68. Plaintiff has been damaged by the Defendants' conduct in an amount in excess of \$10,000.00, with the exact amount to be proved at a trial of this matter.

69. Plaintiff is entitled to have his damages trebled and have the court costs of this action, including reasonable attorneys' fees, taxed against Defendants pursuant to N.C.G.S. § 75-1.1 and § 75-16.1.

**VIOLATION OF N.C. GEN. STAT. § 58-3-70**  
**"TWISTING WITH RESPECT TO INSURANCE POLICIES"**

70. Plaintiff realleges and incorporates the preceding paragraphs by reference.

71. Defendants made oral statements that willfully misrepresents or willfully made incomplete comparisons as to the terms, conditions, or benefits contained in the relevant policies of insurance for the purpose of inducing or attempting to induce Mast to terminate or surrender, exchange, or convert his Western Reserve insurance policies, in violation of N.C. Gen. Stat. § 58-3-115.

72. As a result of Defendants' actions, the North Carolina Commissioner of Insurance should petition the Superior Court of Wake County for an order directing payment of restitution in an amount that would make Mast whole, pursuant to N.C. Gen. Stat. § 58-2-70.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court that:

1. The plaintiff have and recover damages from the Defendants in an amount in excess of Ten Thousand Dollars (\$10,000.00);
2. That Plaintiff's damages be trebled pursuant to N.C.G.S. § 75-16;
3. That the costs of this action be taxed against the Defendants, including a reasonable attorney's fee, to the extent allowed by law and by N.C.G.S. § 75-16.1;
4. That Plaintiff be afforded a trial by jury on all issues;
5. That at the appropriate time, this file should be forwarded to the North Carolina Commissioner of Insurance for such further action as is appropriate under N.C. Gen. Stat. § 58-2-70 and 11 N.C.A.C. 12.0600 *et seq.*



6. That Plaintiff have and recover such other and further relief as the Court may deem just and proper.

This the 9<sup>th</sup> day of April 2009.

**MAST, SCHULZ, MAST, JOHNSON, WELLS & TRIMYER, P.A.**  
Attorneys at Law  
P. O. Box 119  
One Courthouse Square  
Smithfield, North Carolina 27577  
Telephone (919) 934-6187

BY: \_\_\_\_\_

**GEORGE B. MAST**

STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

SCV 01402

CHARLES D. MAST,

Plaintiff,

vs.

EDWARD D. JONES & CO.,  
A Limited Partnership;  
BRIAN IVEY; and  
HARTFORD EQUITY SALES  
COMPANY, INC.  
Defendants.

PLAINTIFF'S FIRST REQUEST  
FOR ADMISSIONS

FILED  
09 APR -9 PM 3:33  
JOHNSTON COUNTY, C.S.C.  
BY [Signature]

TO: Defendant, Edward D. Jones & Co.

Pursuant to Rule 36 of the North Carolina Rules of Civil Procedure, Plaintiff serves upon the Defendant the following requests for admissions. With respect to each of the requests below, the Defendant is requested to admit the truth of the following matters within the scope of Rule 26(b) of the North Carolina Rules of Civil Procedure as they relate to the statement or opinions of fact or of the application of law to fact, including the genuineness of any documents described below.

Each response to a matter for which an admission is requested shall be separately set forth. Each matter is considered admitted unless, within sixty (60) days after service of these requests, Defendant serves upon the Plaintiff a written answer addressed to the matter, signed by the Defendant or its attorney. Each answer shall specifically admit or deny the matter or set forth in detail why the Defendant cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the request for admission and when good faith requires that the Defendant qualify its answer or deny only a part of the matter for which an admission is requested, the Defendant shall specify so much of it as is true and qualify or deny the remainder. The Defendant may not give lack of information or knowledge as a reason for failure to admit or deny unless it states it has made a reasonable inquiry and the information known or readily obtainable by it is insufficient to enable it to admit or deny. Any matter admitted hereunder shall be

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conclusively established unless the Court on motion permits withdrawal or amendment of the admission.

### **DEFINITIONS**

The following words have the following meanings:

(A) "You" and "yours" shall mean and refer to the party responding to this Request, plus the party's agents, employees and attorneys;

(B) "Parties" shall mean and refer to any combination or all of the Plaintiff and Defendant;

(C) "Document" and "documents" shall mean all written, recorded or graphic matters whatsoever and all nonidentical copies thereof, including but not limited to papers, books, records, letters, photographs, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports, recordings of telephone or other conversations, statements, summaries, opinions, studies, analyses, evaluations, contracts, agreements, jotting, agendas, bulletins, notices, announcements, advertisements, guidelines, charts, manuals, brochures, publications, schedules, price lists, subscription lists, customer lists, journals, statistical reports, desk calendars, appointment books, diaries, lists, tabulations, newsletters, drafts, proofs, galleys, or other prepublication forms of materials, telephone lists or indexes, rolodexes, computer printouts, data processing program libraries, data processing input and outputs, microfilm, microfiches, cd roms, books of account, records or invoices reflecting business operations, all records kept by electronic, photographic or mechanical means, any notes or drafts relating to any of the foregoing, and any other documents as defined in Rule 34 of the North Carolina Rules of Procedure of any kind in your possession, custody or control or to which you have access or know to exist.

**WHEREFORE**, you are requested to admit the truth of the following statements:

1. Defendant, Edward D. Jones & Company, a Limited Partnership ("Edward Jones"), is a limited partnership organized under the laws of the State of Missouri, but authorized to do business and doing business in North Carolina, with offices all throughout North Carolina, including Johnston County, North Carolina.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied: \_\_\_\_\_

2. At all times relevant hereto, Neal F. Haworth ("Haworth") was an agent and financial advisor of Edward Jones, acting within the course and scope of his agency, employment and authority with Edward Jones regarding all matters relevant to this matter.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied: \_\_\_\_\_

3. Any actions of Haworth relevant to the matters alleged in the complaint in this action are imputed to Edward Jones.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied: \_\_\_\_\_

4. Also at all times relevant hereto regarding the allegations in the complaint in this action, Haworth was acting as an agent of Hartford.

ADMITTED: \_\_\_\_\_

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DENIED: \_\_\_\_\_

REASON if Denied:

5. Any actions of Haworth relevant to the matters alleged in the complaint in this action are imputed to Hartford.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

6. Haworth and Edward Jones provide investment and insurance advice and services to their clients, including the Plaintiff, and advertise that they consider "individual needs before anything else."

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

7. Prior to and continuing through the acts alleged in the complaint in this matter, Edward Jones had served as financial advisors to Mast on several personal and business matters, including trust accounts for Mast's children and retirement accounts for Mast's business.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

8. Haworth and Edward Jones had a fiduciary relationship with Mast during all times relevant hereto.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

9. Prior to the acts complained of the defendant herein, Mast owned two flexible premium variable life insurance policies purchased from Western Reserve Life Assurance Co. of Ohio ("Western Reserve"): a \$250,000 insurance policy purchased in 1989 and a \$750,000 insurance policy purchased in 1991. From the dates of inception of those policies, Mast accumulated significant cash values in those policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

10. The said Western Reserve policies also had provisions that allowed Mast to borrow money against the cash values of those policies. At the time of the acts complained of the defendant herein, Mast had an outstanding loan of approximately

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\$69,255.88 regarding the \$250,000 policy and an outstanding loan of approximately \$142,110.04 regarding the \$750,000 policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

11. According to the Western Reserve policy provisions, Mast was not required to repay these loans during his lifetime; and when Mast died, Western Reserve would reduce the life insurance payouts by the amount of the loans, and neither Mast nor his beneficiaries would pay income tax on the life insurance proceeds or the loans against the Western Reserve policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

12. A reasonable person could decide not to repay the loans against the Western Reserve policies, but instead to have the life insurance proceeds reduced when that reasonable person died.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

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13. In approximately June of 2007, Haworth contacted Mast to solicit additional business from Mast and requested copies of Mast's Western Reserve policies so that Edward Jones could determine if it could provide an alternative to the Western Reserve policies that would be more favorable to Mast.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

14. Mast provided Haworth and Edward Jones all documentation that they requested regarding the Western Reserve policies and advised Haworth that he had outstanding loans against the Western Reserve policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

15. After Mast provided Haworth and Edward Jones with the Western Reserve policies, Haworth called Mast and asked Mast to meet with Haworth and a representative from Hartford. Haworth informed Mast that the Hartford representative was a specialist and expert in the type of policies that Mast had with Western Reserve.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

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16. Shortly thereafter, Mast met with Haworth and Ivey of Hartford. Haworth and Ivey stated that they had reviewed Mast's Western Reserve policies and that it was in Mast's best interest to "roll over" the Western Reserve policies into a Hartford policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

17. At the meeting referenced in #17 above, both Haworth and Ivey represented to Mast that "there would not be any taxable event" regarding the rollover of the funds in the Western Reserve policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

18. Haworth and Edward Jones were aware that Mast had outstanding loans against the cash values of the Western Reserve policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

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19. Haworth and Edward Jones knew that Mast's loans needed to be rolled over into the Hartford policy to prevent any tax consequences to Mast.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

20. Mast informed Haworth that he did not know what was in his best interest regarding this matter, as it was certainly outside his expertise, but that he trusted Haworth and if Haworth and Ivey recommended the change, then he would do so.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

21. As a result of the interactions related to the solicitation and transfer of funds from the Western Reserve policies to the Hartford policy, as well as the assurance that they would do whatever was in the best interest of Mast, Haworth and Edward Jones created a fiduciary relationship with Mast.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

22. Edward Jones, including but not limited to its agent Haworth, knew that Mast wanted his Western Reserve loans transferred to the new Hartford policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

23. Edward Jones, including but not limited to its agent Haworth, knew that Mast would have additional taxable income of the amount of his Western Reserve loans if the loans were not transferred to the Hartford policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

24. Haworth and Ivey instructed Mast to sign several documents, including a blank "tax-free exchange" form, and Haworth and Ivey stated that they would later fill in the specifics of the Western Reserve policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

25. Haworth did not present or read to Mast a notice regarding replacements in the format required by 11 N.C.A.C. 12.0611.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

26. Edward Jones and Hartford then cancelled Mast's Western Reserve policies and transferred the Western Reserve funds into Hartford policy number 102 VL9379685.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

27. However, the Defendants did not transfer or "roll over" the Western Reserve loans to the Hartford policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

28. In 2008, Mast received IRS 1099 forms from Western Reserve, stating that he had additional taxable income in 2007 in the amount of \$110,040.31 as a result of the transfer from and cancellation of his Western Reserve policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

29. Mast's CPA called Haworth regarding those 1099 forms, and Haworth informed the CPA that there should not have been any taxable event regarding the transfer of the Western Reserve policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

30. Mast also called Haworth after receiving the 1099 forms, and Haworth informed Mast that there was no taxable event regarding the transfer of the policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

31. After Mast's CPA informed Mast that there was a taxable event, Mast called Haworth again regarding the transaction, and Haworth said to Mast that

a. he "was not aware it was going to be a taxable event,"

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

b. he knew that Mast wanted the new policy to absorb the loans,

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

c. the new policy should have absorbed the loans, and

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

d. if there were going to be any major tax problems, Mast should have been told so or the rollover should not have occurred.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

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REASON if Denied:

32. After talking with Haworth, Mast and Haworth had a conference call with Ivey. During that conference call, Ivey stated that

- a. Edward Jones required any such transfers to be reviewed by Edward Jones' home office to make sure the transfer "made sense from a tax standpoint,"

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

- b. when similar tax consequences had arisen before, Edward Jones would reverse the transaction,

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

- c. if he and Haworth did not have the "in-force illustrations" with them when they were advising Mast, that they would not have mentioned the potential tax consequences to Mast,

ADMITTED: \_\_\_\_\_

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DENIED: \_\_\_\_\_

REASON if Denied:

d. "I don't think we went into tax consequences, because we didn't  
have the in-forces" at the time.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

33. Haworth and Edward Jones received compensation for the transfer of  
Mast's Western Reserve policies to the Hartford policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

34. Haworth and Edward Jones had a pecuniary interest in the transaction.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

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35. As a result of this transaction, Mast was required to pay an additional \$46,978 in income taxes for 2007.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

36. As a result of this transaction, Mast has less life insurance coverage under the Hartford policy than he had under the Western Reserve policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

37. As a result of this transaction, Mast may be paying a higher premium for the types of insurance coverage he has under the Hartford policy than he would have paid for like-kind coverage under the Western Reserve policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

38. Haworth and Edward Jones failed to exercise reasonable care in handling Mast's transaction.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

39. Haworth and Edward Jones failed to inform Mast of the benefits of keeping his 1988 and 1991 Western Reserve policies, including but not limited to the savings in premiums for like-kind coverage under the Western Reserve policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

40. Haworth and Edward Jones made statements that misrepresented or made incomplete comparisons as to the terms, conditions, or benefits contained in the relevant policies of insurance for the purpose of inducing or attempting to induce Mast to terminate or surrender, exchange, or convert his Western Reserve insurance policies.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

41. Haworth and Edward Jones created a relation of trust and confidence with Mast.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

42. Haworth and Edward Jones had a duty to disclose all material facts regarding the transaction, including the tax consequences of the transaction.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

43. Haworth and Edward Jones did benefit and will continue to benefit from this transaction.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

44. Haworth and Edward Jones received monetary compensation for the exchange of the Hartford policy for the Western Reserve policy.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_  
REASON if Denied:

45. Haworth and Edward Jones will continue to receive monetary compensation every time future premiums are paid on the Hartford policy.

ADMITTED: \_\_\_\_\_  
DENIED: \_\_\_\_\_  
REASON if Denied:

46. The conduct of Haworth and Edward Jones described herein is in or affecting commerce.

ADMITTED: \_\_\_\_\_  
DENIED: \_\_\_\_\_  
REASON if Denied:

47. Haworth and/or Edward Jones were subject to the rules of 11 N.C.A.C. 12.0600 *et seq.* as it relates to Mast's transaction.

ADMITTED: \_\_\_\_\_  
DENIED: \_\_\_\_\_  
REASON if Denied:

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48. Haworth and/or Edward Jones violated one or more of the provisions of 11  
N.C.A.C. 12.0600 *et seq.*

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

49. Violations of 11 N.C.A.C. 12.0600 *et seq.* are considered a violation of  
N.C.G.S. § 58-63-15(1) as a matter of law.

ADMITTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

REASON if Denied:

This the 9th day of April 2009.

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BY: \_\_\_\_\_

**GEORGE B. MAST**