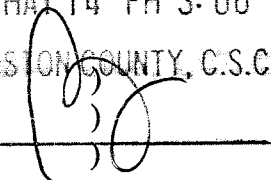


FILED  
09 MAY 14 PM 3:00

09-CVS-01402

CHARLES D. MAST, JOHNSTON COUNTY, C.S.C.  
Plaintiff,

BY 

vs.

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

**RESPONSE  
AND  
OPPOSITION  
TO NOTICE OF DESIGNATION  
AS MANDATORY COMPLEX  
BUSINESS CASE**

The plaintiff, CHARLES D. MAST (“Mast”), pursuant to N.C. Gen. Stat. § 7A-45.4(e), hereby responds to and opposes the defendants’ Notice of Designation as a Mandatory Complex Business Case as follows:

1. N.C. Gen. Stat. § 7A-45.4(a) states that a party may file a notice of designation of a mandatory complex business case in “an action that involves a material issue related to... securities law, including proxy disputes and tender offer disputes.” (emphasis added)

2. N.C. Gen. Stat. § 7A-45.4(c) states that the notice of designation “shall, in good faith and based on information reasonably available, succinctly state the basis of designation and include a certificate by or on behalf of the designating party that the civil action meets the criteria for designation as a mandatory complex business case pursuant to subsection (a) of this section.” (emphasis added)

3. The only certification and statements of the defendants’ basis for the designation filed by the defendants is defense counsel’s general statement in his Notice that “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” and “the undersigned, on behalf of EDJ, in good faith and based upon information reasonably available, certifies that this

action meets the criteria for designation as a mandatory complex business case.”

Therefore, there is no succinct statement of the basis of the designation.

4. This action involves the defendants’ conduct in replacing plaintiff’s prior variable life insurance policy with a Hartford variable life insurance policy, including but not limited to the defendants’ failure to (1) either transfer plaintiff’s debt from the prior policy to the subsequent policy or (2) notify the plaintiff of a \$110,040.31 taxable event if the debt was not going to be transferred.

5. Chapter 7A of the North Carolina General Statutes does not define “securities law.” However, Chapter 78A, the North Carolina Securities Act, provides the following definition:

"Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract including without limitation any investment contract taking the form of a whiskey warehouse receipt or other investment of money in whiskey or malt beverages; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; viatical settlement contract or any fractional or pooled interest in a viatical settlement contract; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy, funding agreement, as defined in G.S. 58-7-16, or annuity contract under which an insurance company promises to pay (i) a fixed sum of money either in a lump sum or periodically for life or for some other specified period, or (ii) benefits or payments or value that vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account or accounts in which amounts received or retained in connection with a contract have been placed if the delivering or issuing insurance company has currently satisfied the Commissioner of Insurance that it is in compliance with G.S. 58-7-95.

N.C. Gen. Stat. § 78A-2(11) (emphasis added).

6. To the best of plaintiff's knowledge, variable life insurance policies are insurance policies under which an insurance company promises to pay benefits or value that vary so as to reflect investment results of a segregated portfolio of investments, thereby falling into the second category of exclusions from the NC Securities Act's definition of "security."

7. The investment of the cash values of the relevant variable life insurance policies have nothing to do with breaches of care and relevant conduct alleged in this action, and certainly do not involve "a material issue related to securities law."

8. Plaintiff is not pursuing any claim relating to any breach of securities law and has not made any allegations related to the defendants' improper handling of securities that might have been purchased. Further, the purchase of securities through the defendant Hartford would have occurred subsequent to the breaches and violations alleged in the complaint (in other words, the conduct at issue relates to the replacement of the policies, not what occurred after the change was made).

9. Plaintiff has researched this matter and has not been able to identify any case or other authority which indicates that this matter should be designated as a mandatory complex business case.

**WHEREFORE**, plaintiff prays that the Business Court determine that this action should not be designated as a mandatory complex business case.

This the 14<sup>th</sup> day of May 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**

**CERTIFICATE OF SERVICE**

I, Charles D. Mast, hereby certify that a copy of the foregoing Response and Opposition to Notice of Designation as Mandatory Complex Business Case was served via first class mail as follows:

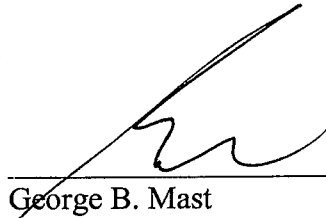
J. Anthony Penry  
Penry Riemann, PLLC  
510 Glenwood Avenue, Suite 319  
Raleigh, NC 27603

The Honorable Ben F. Tennille  
Special Superior Court Judge for Complex Business Cases  
North Carolina Business Court  
211 N. Greene Street  
Greensboro, NC 27401

The Honorable Sarah Parker  
Chief Justice, North Carolina Supreme Court  
Post Office Box 1841  
Raleigh, NC 27602

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

This the 14<sup>th</sup> day of May, 2009.

  
\_\_\_\_\_  
George B. Mast