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TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS AND APPELLATE REVERSALS IN CALIFORNIA IN 2022.

Kelpe et al. v. Unum Group et al.

Large evidence binders — not just the evidence within them — seemed to play a subtle but significant role in a jury’s verdict supporting an insurance company’s decision that a former Ernst & Young partner was not disabled.

The man claimed that since his August 2014 heart attack, he had recurrent chest pains, suffered from fatigue and couldn’t lift more than about 10 pounds. Yet when he was on the stand testifying in his trial against insurer Unum Group, he seemed to have no trouble lifting and switching among the binders, which lead defense attorney Theona Zhordania estimated weighed about 20 pounds each.

“Other witnesses needed help with them,” she said. “He was lifting them and maneuvering them with such ease.”

Zhordania made the strategic decision not to comment on

that fact to the jury. But when she interviewed jurors after the verdict, a couple said they had noticed the apparent discrepancy. “It shows you the type of details some of the jurors focused on to evaluate credibility of witnesses,” she said.

The plaintiff alleged that he was totally disabled since his heart attack and that Unum breached its contract and committed bad faith when it denied him benefits. He said that his health problems caused his job performance to deteriorate so that Ernst & Young fired him. He asked for \$4.5 million in compensatory damages and \$66 million in punitive damages. *Kelpe v. Unum Group*, 18CV326094 (Sta. Clara Super. Ct., filed April 4, 2018).

Zhordania never questioned his heart attack, but she did raise doubts during the trial about many of the aftereffects he claimed. “One of the things

I didn’t do is tell the jury what to think of his credibility,” she said about that strategic decision.

“We just summarized all the evidence and said, ‘He claims this, but does this make any sense?’ There were a lot of rhetorical questions during closing argument.”

For example, the plaintiff claimed to suffer from small vein disease but wouldn’t take the admittedly invasive test to diagnose it conclusively. He told the DMV that he was totally disabled and qualified for a disabled person’s placard, even as he was applying for full-time jobs with major companies like Facebook, she said.

When the plaintiff alleged emotional distress caused by financial hardship since his firing, the defense team noted he’d taken a number of vacations since his heart attack, including one to Italy for his wedding.



THEONA ZHORDANIA

He also said angina caused him emotional distress. “He said every time he had a chest pain, he would worry that he was having a heart attack,” Zhordania said. Yet even when the pain persisted for several hours, he didn’t call 911 or rush to an emergency room, she said.

“That’s one of the things that we asked the jury, ‘Is that consistent? What do you think?’”

After about two weeks of trial and less than a day of deliberations, the jury returned a unanimous defense verdict. It was Zhordania’s first jury trial as first chair.

Lead plaintiff’s counsel Terrence Coleman did not respond to a request seeking comment on the verdict.

— DON DEBENEDICTIS

Case Details

CASE NAME	Kelpe et al. v. Unum Group et al.
TYPE OF CASE	Bad faith and breach of contract
COURT	Santa Clara County
JUDGE(S)	Judge Roberta S. Hayashi
DEFENSE LAWYERS	Sheppard, Mullin, Richter & Hampton LLP, Theona Zhordania, Charles A. Danaher
PLAINTIFFS’ LAWYERS	Pillsbury & Coleman LLP, Terrence J. Coleman, Ryan H. Opgenorth