

FILED

JUN 29 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOANNE CEIMO,

Plaintiff - Appellee,

v.

GENERAL AMERICAN LIFE
INSURANCE COMPANY; et al.,

Defendants - Appellants.

No. 03-16882

D.C. No. CV-00-01386-FJM

MEMORANDUM*

JOANNE CEIMO,

Plaintiff - Appellant,

v.

GENERAL AMERICAN LIFE
INSURANCE COMPANY; et al.,

Defendants - Appellees.

No. 03-16930

D.C. No. CV-00-01386-FJM

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted June 13, 2005
San Francisco, California

Before: GOODWIN, REAVLEY **, and RAWLINSON, Circuit Judges.

1. Assuming Defendants preserved the specific objection they raise on appeal, the district court's formulation of the jury instruction defining "total disability" was a correct statement of Arizona law. *See Nystrom v. Mass. Cas. Ins. Co.*, 713 P.2d 1266, 1270 (Ariz. Ct. App. 1986); *see also Hangarter v. Provident Life and Acc. Ins. Co.*, 373 F.3d 998, 1007 (9th Cir. 2004).

2. The district court did not abuse its discretion in making its evidentiary rulings. The expert testimony, lay testimony and documentary evidence were all relevant and helpful to the jury. *See Sementilli v. Trinidad Corp.*, 155 F.3d 1130, 1134 (9th Cir. 1998); *see also Hangarter*, 373 F.3d at 1018-20.

3. Provident Life and Accident Insurance Company is a proper defendant. A company may be liable to an insured based on its direct involvement in the

** The Honorable Thomas M. Reavley, Senior United States Circuit Judge for the Fifth Circuit, sitting by designation.

insured's claim, regardless of its status as a non-party to the contract. *See Gatecliff v. Great Rep. Life Ins. Co.*, 821 P.2d 725, 730 (Ariz. 1991) (In Banc).

4. The district court did not abuse its discretion in denying Defendants' motion for judgment as a matter of law on the bad faith claim. Substantial evidence supports the jury's conclusion that Defendants acted in bad faith in handling Plaintiff's claim. *See Zilisch v. State Farm Mut. Auto. Ins. Co.*, 995 P.2d 276, 279 (Ariz. 2000). The district court properly instructed the jury on bad faith damages, and the jury is presumed to have followed the judge's instruction. *See Caudle v. Bristow Op. Co.*, 224 F.3d 1014, 1023 (9th Cir. 2000).

5. In view of the district court's observations about the evidence presented, the jury award of \$5,470,000 for bad faith is not so unreasonable that it shocks the conscience of this court. *See Sheppard v. Crow-Barker Paul No. 1 Ltd. P'ship*, 968 P.2d 612, 622 (Ariz. Ct. App. 1998).

6. Considering the factors articulated in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), a punitive damages award of seven million dollars

is not unconstitutionally excessive. We agree with the district court's analysis and uphold its remittitur.

AFFIRMED.