

INSURANCE
BAD FAITH
Denial of Disability Benefits

VERDICT: \$1,210,000 (with costs and interest - judgment has been paid)

CASE/NUMBER: Suzanne Valente, D.D.S. v. UnumProvident Corporation, Paul Revere Life
Insurance Company / CGC 03419321

COURT/DATE: San Francisco Superior Court/December 22, 2004/Dept. 503

JUDGE: James Robertson, II

ATTORNEYS: Plaintiff - Michael H. Whitehill (Kussman & Whitehill, Los Angeles)

Defendants - Thomas M. Herlihy, John T. Burnite (Kelly, Herlihy & Klein, San
Francisco)

TECHNICAL EXPERTS: Plaintiff - Mary Fuller, insurance claims, Yarmouth, Maine; Frank
Caliri, underwriting, Whittier, California; Dr. Robert Harrison,
occupational disability, San Francisco, California; Dr. Mark
Anderson, treating physician, San Jose, California
Defendants - Dr. Earl Fogelberg, orthopedics, San Francisco,
California; Dr. Leonard Gordon, hand surgeon, San Francisco,
California; Dr. Nabil Malek, in-house orthopedist, Worcester,
Massachusetts

FACTS: Plaintiff Dr. Suzanne Valente is a 49 year old dentist who began her dental practice in 1984. In 1985 she purchased an “own occupation” disability insurance policy from Paul Revere Life Insurance Co. In 1992 Dr. Valente began to complain of hand pain. In 1995 she had a cyst removed from her right hand. Dr. Valente continued to complain of bilateral hand pain after her surgery and in November of 1998 sold her practice and retired from dentistry. From 1992 through 1998 Dr. Valente made over \$100,000 a year annually from her practice.

In January 1999 Dr. Valente submitted a claim to Paul Revere contending her hand condition precluded her from practicing dentistry in a normal and continuous fashion. Paul Revere began paying the claim but its in-house physician, Dr. Malek, concluded that Dr. Valente was not disabled and recommended an IME. The first IME doctor, orthopedist Dr. Earl Fogelberg, concluded Dr. Valente was not disabled but he was not a hand specialist. Dr. Valente was then seen by world renowned hand specialist, Dr. Leonard Gordon, who concluded that Dr. Valente was not disabled. Thereafter, UnumProvident, which had acquired Paul Revere in 1999, terminated Dr. Valente’s claim.

PLAINTIFF’S CONTENTIONS: Plaintiff contended her hand injuries prevented her from performing the substantial and material duties of a dentist, a position which was supported by her treating physician. Plaintiff contended UnumProvident denied her claim

unreasonable and misled her during the course of its investigation. Plaintiff also contended UnumProvident improperly denied her request for a Future Income Option (FIO) while she was on claim. Plaintiff contended the denial of her claim was part of a pattern and practice by Defendants to deny all “own occupation” disability claims because of their high cost to the company.

DEFENDANTS’ CONTENTIONS: Defendants’ contended Plaintiff was not disabled as her earnings from 1992 through 1998 remained essentially the same and her practice was not limited in any aspect during that time frame. Defendants contended Plaintiff’s retirement was a lifestyle choice rather than caused by a physical impairment. Defendants had three physicians, all board certified specialists, two of them in the San Francisco area who contended Plaintiff could return to work as a dentist. Defendants contended that under the “Genuine Issue Doctrine” they could not be liable for a breach of the covenant of good faith and fair dealing. Defendant contended Plaintiff did not qualify for the FIO under its underwriting guidelines.

DAMAGES: Plaintiff’s past contractual damages were approximately \$150,000 and her

claimed future contractual damages were approximately \$650,000.

SETTLEMENT DISCUSSIONS: Prior to trial, Plaintiff's last settlement demand was \$1,200,000 and Defendant's last settlement offer was \$600,000.

JURY TRIAL:Length 4 weeks. Deliberation, 1 day. The jury found Defendants breached the contract as well as breached the covenant of good faith and fair dealing.

