

Sheppard Mullin Recognized Among *Daily Journal's* "Top Verdicts" of 2022

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Kelp et al. v. Unum Group et al. was named one of the "Top Verdicts in 2022" by the *Daily Journal*. Partner Theona Zhordania served as lead trial counsel to Unum Group and was assisted by partner Charles Danaher.

The profile highlights that after almost two weeks of trial in Santa Clara Superior Court, Sheppard Mullin secured a victory for Unum Group and Provident Life & Accident Insurance Company. After one day of deliberations, the jury returned a unanimous verdict (12-0) in favor of the defendants on all claims. The plaintiff Nicolas Kelp asserted claims against Unum Group and Provident Life & Accident Insurance Company for breach of contract, bad faith and punitive damages arising out of the denial of his disability claim. Kelp claimed that he was totally disabled as a result of a heart attack he suffered in August 2014. At the time of the heart attack, Kelp was a partner at Ernst & Young. He contended that following his heart attack, he continued to experience severe chest pain and fatigue and could not lift more than about 10 pounds, symptoms which were typically triggered by stress and precluded him from performing his job requirements. At trial, Kelp sought approximately \$4.5 million in compensatory damages and \$66 million in punitive damages.

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 large evidence binders, which Zhordania estimated weighed about 20 pounds each.

The *Daily Journal* quotes Zhordania that "Other witnesses needed help with them. 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.

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.

After less than a day of deliberations, the jury returned a unanimous defense verdict. It was Zhordania's first jury trial as first chair.

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