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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Kelly Ann Tyler,

10 Plaintiff,

11 v.

12 United States Life Insurance Company in
13 the City of New York, et al.,

14 Defendants.

No. CV-16-00939-PHX-GMS

ORDER

15 Pending before the Court is Defendant United States Life Insurance Company in
16 the City of New York's Motion for Partial Summary Judgment (Doc. 172). For the
17 following reasons the motion is denied.¹

18 **BACKGROUND**

19 At the summary judgment stage, Plaintiff Kelly Ann Tyler's evidence "is to be
20 believed, and all justifiable inferences are to be drawn in [her] favor." *See Anderson v.*
21 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Disputed facts are "viewed in the light
22 most favorable to" Tyler, the non-moving party. *See Scott v. Harris*, 550 U.S. 372, 380
23 (2007).

24 Tyler filed this action against United States Life Insurance Company and
25 American General Life Insurance Company (together, "American General"). Tyler

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27 ¹ Both parties have requested oral argument. The requests are denied. The parties
28 have thoroughly discussed the law and the evidence, and oral argument will not aid the
Court's decision. *See Lake at Las Vegas Investors Group, Inc. v. Pac. Malibu Dev.*, 933
F.2d 724, 729 (9th Cir. 1991).

1 alleges breach of a disability insurance contract with American General to provide
2 monthly payments to Tyler in the event that she became “totally disabled.” She also
3 alleges a breach of the covenant of good faith and fair dealing by American General, and
4 seeks punitive damages.

5 Tyler applied for a group long-term disability insurance policy underwritten by
6 American General. The agreement defines “total disability” as “your complete inability
7 to perform the substantial and material duties of your Current Occupation beyond the end
8 of the Elimination Period, and you are not engaged in any other occupation.” (Doc. 172
9 at 3). “Current Occupation” means “[t]he duties of the medical specialty then being
10 practiced or of the occupation being performed immediately prior to the disability.” (*Id.*)
11 Tyler practiced as a psychiatrist for the VA in Phoenix.

12 In March 2012, Tyler submitted a claim to American General for total disability
13 because of chronic pain, fatigue, post-herpetic neuralgia, Mollarets meningitis, and
14 chronic migraines. American General approved the claim after receiving additional
15 information from Tyler. American General notified Tyler that it would periodically
16 request updated medical records in order to reevaluate the ongoing nature of Tyler’s
17 disability.

18 In July 2014, Tyler’s case was transferred to Linda Donahue, a case manager at
19 American General. Donahue reviewed the case file and notified Tyler that her claim was
20 still medically supported. Donahue also requested updated records. In those records,
21 Donahue received an updated report from Tyler’s primary physician, Dr. Crever, which
22 stated that Tyler was currently physically unable to work because it was hard to predict
23 the flare-ups that caused her headaches. (Doc. 183-3 at 105–06).

24 After reviewing the updated records and noting apparent inconsistencies
25 (including the fact that Tyler had stopped preventative therapy for migraines while
26 attempting to become pregnant), Donahue sent the case file to Health Direct, Inc.
27 (“HDI”)—a third-party medical services provider—for evaluation. During its review of
28 Tyler’s records, HDI unsuccessfully attempted to contact some of Tyler’s treating

1 physicians.

2 HDI's report noted that Tyler continued to suffer from frequent severe headaches,
3 but concluded that "[Tyler's] inability to [return to work] . . . [f]ull [t]ime does not appear
4 supported based on the most recent medical exam findings" from Tyler's rheumatologist
5 and neurologist. (Doc. 173-11 at 2). HDI recommended to Donahue that Tyler's case be
6 referred to an independent medical provider for peer review. Donahue agreed. HDI then
7 sent Tyler's case to CompPartners, Inc., a company that facilitates independent medical
8 reviews. CompPartners sent Tyler's case to Dr. Alberto Ramos, a board-certified
9 neurologist.

10 Ramos reviewed Tyler's records and concluded that the extent to which Tyler's
11 migraines were disabling was unclear because she had discontinued preventative therapy
12 while trying to become pregnant. He noted that the medications she was still taking,
13 however, had side effects which prevented Tyler from being able to drive. Ramos further
14 noted that the frequency of Tyler's migraines had decreased since she initially filed the
15 claim. Finally, Ramos noted that—according to the medical records—Tyler had “no
16 gross motor or fine motor abnormalities that would limit [Tyler's] ability to work” and
17 that there were also “no side effects from medications that would impair the claimant,”
18 (Doc. 173-22 at 3). Ramos concluded that although Tyler was “limited by her chronic
19 migraines,” they had improved with some medications and so there were no cognitive or
20 physical limitations affecting Tyler's ability to return to work.

21 After reviewing the reports from HDI and Dr. Ramos, Donahue concluded that
22 Tyler's claim was no longer medically supported. She sent Tyler a letter informing her
23 that American General had “determined that there is no medical evidence to support any
24 ongoing restrictions or limitations to your activity which would prevent you from
25 performing the material and substantial duties of your regular occupation.” (Doc. 173-23
26 at 3). The letter explained the grounds for the decision and informed Tyler of her right to
27 appeal.

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1 In response, Tyler’s attorney sent a letter to American General informing them
2 that Tyler’s condition had recently worsened, resulting in Tyler’s hospitalization.
3 Donahue responded that the termination decision had been based on records received
4 prior to January 1, 2015, and requested any additional medical records after that date.
5 Tyler sent updated records. Donahue sent them back to HDI for further review. HDI
6 reviewed the records and again recommended third-party review, and the updated records
7 were sent back to Dr. Ramos for a second evaluation. This time, Ramos concluded that
8 while Tyler continued to suffer from severe migraines that functionally impaired her
9 work, she could return to former job if given flexible leave when experiencing a migraine
10 (up to two hours at a time, up to four times per month) and a dark, private place to rest
11 when experiencing a migraine at work. Ramos also recommended that Tyler avoid
12 severe work-related stress that could trigger the headaches.

13 Donahue reviewed the report from Ramos and sent the file to an in-house
14 vocational rehabilitation counselor. The counselor concluded, based on the Ramos
15 reports, that “Dr. Tyler currently does have the physical capacity to perform her Current
16 Occupation” if given the accommodations noted by Ramos. (Doc. 173-33 at 5). Based
17 on the second Ramos report and the report from the vocational counselor, Donahue
18 concluded that Tyler could perform the essential functions of her regular occupation if
19 given the stated accommodations. Donahue sent Tyler a letter to this effect, again
20 informing her of right to appeal. Tyler filed this action instead, and American General
21 now moves for summary judgment on the bad faith and punitive damages claims.

22 DISCUSSION

23 I. Legal Standard

24 A principal purpose of summary judgment is “to isolate and dispose of factually
25 unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). Summary
26 judgment is appropriate if the evidence, viewed in the light most favorable to the
27 nonmoving party, shows “that there is no genuine issue as to any material fact and that
28 the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). Only

1 disputes over facts that might affect the outcome of the suit will preclude the entry of
2 summary judgment, and the disputed evidence must be “such that a reasonable jury could
3 return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248.

4 “[A] party seeking summary judgment always bears the initial responsibility of
5 informing the district court of the basis for its motion, and identifying those portions of
6 [the record] which it believes demonstrate the absence of a genuine issue of material
7 fact.” *Celotex*, 477 U.S. at 323. Parties opposing summary judgment are required to
8 “cit[e] to particular parts of materials in the record” establishing a genuine dispute or
9 “show[] that the materials cited do not establish the absence . . . of a genuine dispute.”
10 FED. R. CIV. PRO. 56(c)(1).

11 American General is not entitled to summary judgment on either the bad faith or
12 punitive damages claims.

13 **II. Bad Faith Claim**

14 **A. Standard**

15 Because of the nature of insurance contracts, insurance companies are required to
16 “play fairly with [their] insured[s].” *Zilisch v. State Farm Mutual Auto Ins. Co.*, 196
17 Ariz. 234, 237, 995 P.2d 276, 279 (2000) (en banc) (citations and internal quotation
18 marks omitted). Insureds are “entitled to receive the additional security of knowing that
19 [they] will be dealt with fairly and in good faith.” *Id.* at 238 (citations and internal
20 quotation marks omitted).

21 The bad faith inquiry has two parts: (1) did the insurer act unreasonably and (2)
22 did it know, or was it conscious of the fact that it was acting unreasonably? *Deese v.*
23 *State Farm Mut. Auto. Ins. Co.*, 172 Ariz. 504, 507, 838 P.2d 1265, 1268 (1992) (en
24 banc). This reasonableness test is then applied to two questions. *Bronick v. State Farm*
25 *Mut. Auto Ins. Co.*, 2013 WL 3716600, *5 (D. Ariz. July 15, 2013). First, the court must
26 determine whether the claim itself was “fairly debatable.” *Id.* See also *Milhone v.*
27 *Allstate Ins. Co.*, 289 F. Supp. 2d 1089, 1094 (D. Ariz. 2003).

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1 Second, courts determine whether the insurer was unreasonable in its claims-
2 handling process. *Bronick*, 2013 WL at *5. If that process was unreasonable, an insurer
3 can be liable for bad faith even if the claim is fairly debatable. *See Zilisch*, 196 Ariz. at
4 237. If “there is sufficient evidence from which reasonable jurors could conclude that in
5 the investigation, evaluation, and processing of the claim, the insurer acted unreasonably
6 and either knew or was conscious of the fact that its conduct was unreasonable,” the bad
7 faith claim will survive a summary judgment motion. *Id.*

8 **B. Analysis**

9 Summary judgment is not appropriate on Tyler’s bad faith claim.

10 In *Saffle v. Sierra Pacific Power Co.*, 85 F.3d 455 (9th Cir. 1996), the Ninth
11 Circuit concluded that an ERISA plan administrator abused its discretion in administering
12 the plan when it denied benefits to a woman under a disability plan. The plan as written
13 had no limitation on coverage to exclude from disability status those who were able to
14 perform their job with accommodations, yet the administrator denied benefits because the
15 plaintiff could perform her job with the accommodation of elevating her feet. In that
16 case, as in this, the policy language specified that the beneficiary had to be “completely
17 unable” to perform the duties of her regular occupation. This language, the administrator
18 in *Saffle* argued, was sufficient to deny coverage in those cases in which the Plaintiff
19 could perform the work with an accommodation. Yet, the Ninth Circuit rejected the
20 argument noting that the administrator had abused its discretion because denying benefits
21 when accommodations could be made was effectively rewriting the plan. *Id.* at 459–60.

22 *Saffle* was an ERISA case, not a bad faith case. But, not unlike that case, this case
23 involves disability insurance. Thus, *Saffle*’s central conclusion at least suggests that an
24 insurer may not be able to deny benefits when accommodations allow the policyholder to
25 perform her job if the policy language does not explicitly include such a limitation.

26 Of course, that the contract may require coverage that the Defendant in fact denied
27 does not, in and of itself, meet the requirements for bad faith. And many of the additional
28 arguments which Plaintiff asserts as being sufficient to raise issues of bad faith are based

1 on unreasonable inferences from the record. But Plaintiff does sufficiently raise the
2 argument that in cases like this, the nature and extent of the proposed accommodation
3 used as a basis for denying coverage might present facts sufficient to raise an issue as to
4 whether the denial was made in good faith. In this case the Plaintiff is a psychiatrist at
5 the VA. Dr. Ramos concluded that the Plaintiff could return to former job if she was
6 given the following three accommodations: (1) flexible leave when experiencing a
7 migraine (up to two hours at a time, up to four times per month) and (2) a dark, private
8 place to rest when experiencing a migraine at work, and (3) the avoidance of severe
9 work-related stress.

10 Given the demands of Plaintiff’s profession as a VA psychiatrist, the nature and
11 extent of the accommodations asserted by Defendant as a sufficient basis on which to
12 deny coverage present an issue of fact as to their reasonableness. A reasonable juror
13 might be able to find that they are not realistically available and thus not a good faith
14 basis on which the Defendant could have denied coverage. As a result, the Defendant’s
15 motion on the bad faith claim is denied.

16 **III. Punitive Damages Claim**

17 Punitive damages require “something more” than simply demonstrating that a tort
18 occurred—in this case, the tort of bad faith. *See Rawlings v. Apodaca*, 151 Ariz. 149,
19 162, 726 P.2d 565, 478 (1986) (en banc). “The requisite ‘something more,’ or ‘evil
20 mind,’ is established by [clear and convincing] evidence that [the] defendant either (1)
21 intended to injure plaintiff or (2) consciously pursued a course of conduct knowing that it
22 created a substantial risk of significant harm to others.” *Gurule v. Illinois Mut. Life and*
23 *Cas. Co.*, 152 Ariz. 600, 602, 734 P.2d 85, 87 (1987) (en banc) (citations and internal
24 quotation marks omitted).

25 “[A] willful and knowing failure to process or pay a claim known to be valid” can
26 be sufficient to support a claim for punitive damages. *Farr v. Transamerica Occidental*
27 *Life Ins. Co.*, 145 Ariz.1, 8, 699 P.2d 376, 383 (Ariz. Ct. App. 1984). If any reasonable
28 evidence exists that will support punitive damages, “the question of whether punitive

1 damages are justified should be left to the jury.” *Id.* at 9. However, “[t]he evidence . . .
2 must be more than slight and inconclusive such as to border on conjecture.” *Id.*

3 Here, as explained above, there is reasonable evidence from which a jury could
4 conclude that American General acted knowing that its conduct created a substantial risk
5 of harming Tyler by depriving her of disability benefits. A jury could reasonably
6 conclude that American General willfully and knowingly failed to pay a valid claim
7 based on the evidence in the record. Summary judgment is therefore not appropriate.

8 **IT IS THEREFORE ORDERED** that Defendant United States Life Insurance
9 Company in the City of New York’s Motion for Partial Summary Judgment (Doc. 172) is
10 **DENIED.**

11 Dated this 1st day of November, 2018.

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15 G. Murray Snow
16 Chief United States District Judge
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