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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Thomas Scott Wood,
10 Plaintiff,

11 v.

12 Provident Life and Accident Insurance
13 Company,
14 Defendant.

No. CV-17-02330-PHX-DGC

ORDER

15
16 Defendant Provident Life and Accident Insurance Company has moved for
17 reconsideration of the Court's order granting partial summary judgment to Plaintiff
18 Thomas Wood. Doc. 80. A motion for reconsideration will be denied "absent a showing
19 of manifest error or a showing of new facts or legal authority that could not have been
20 brought to [the Court's] attention earlier with reasonable diligence." LRCiv 7.2(g)(1);
21 *see Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003).

22 The Court's order concluded that an accidental bodily injury (the "lifting
23 maneuver") caused Plaintiff's disability for purposes of the parties' insurance contract
24 (the "Policy"). Doc. 77 at 10-16. Defendant makes four arguments.

25 Defendant first contends that the Court's finding of causation "assume[d] that
26 Defendant's position was based solely upon the absence of new lesions." Doc. 80 at 4.
27 This mischaracterizes the Court's decision. The Court evaluated that particular argument
28 when considering whether the lifting maneuver constituted a bodily injury. Doc. 77

1 at 11. The absence of new lesions played no role in the Court's finding on causation. *Id.*
2 at 14-16.

3 Defendant next contends that the Court overlooked the opinions of Drs. Beavers,
4 Prince, and Obray that Plaintiff's degenerative disc disease caused his disability, and the
5 lifting maneuver merely exacerbated that condition. Doc. 80 at 6.¹ The Court clearly
6 considered and rejected this argument:

7 The Policy contemplates an award of benefits where injury and
8 sickness combine to cause a disability:

9 The fact that a disability is caused by more than one Injury or
10 Sickness or from both will not matter. We will pay benefits
11 for the disability which provides the greater benefit.

12 Doc. 47-2 at 12. Thus, the Policy does not limit benefits to disabilities
13 caused solely and independently by injuries. *Id.*

14 Defendant contends that Plaintiff's degenerative disc disease caused
15 his disability, and that the lifting maneuver only exacerbated the preexisting
16 condition. *See* Doc. 46 at 14-15. The record may support a finding that the
17 lifting maneuver combined with Plaintiff's degenerative disc disease to
18 cause his disability, but the Policy's language makes this point
19 inconsequential. Even if the disease contributed to Plaintiff's disability, the
20 issue the Court must resolve is whether the lifting maneuver was a cause of
21 Plaintiff's disability.

22 Doc. 77 at 14-15. After reviewing relevant Arizona case law, the Court concluded:

23 Even if the Court accepts Defendant's characterization of the lifting
24 maneuver as an exacerbation of Plaintiff's degenerative disc disease, the
25 maneuver was a contributing cause of Plaintiff's disability. . . . The Court
26 concludes that the lifting maneuver was a cause of Plaintiff's disability
27 when, with his degenerative disc disease, it resulted in a disabling
28 condition.

29 *Id.* at 16.

30 ¹ Defendant offers no specific citations, but appears to rely on opinions described
31 in its statement of facts in support of its motion for summary judgment. Doc. 47
32 ¶¶ 69, 74, 77, 79.

1 Defendant neither challenges this interpretation of the Policy nor cites evidence
2 that the lifting maneuver was not an exacerbation. Indeed, Defendant repeatedly
3 characterized the lifting maneuver as an exacerbation. *E.g.*, Doc. 46 at 14-15. As the
4 Court explained, “the undisputed facts demonstrate that Plaintiff’s degenerative disc
5 disease was not disabling before the lifting maneuver,” and “the record is devoid of any
6 indication that Plaintiff would have become disabled in August 2015 had it not been for
7 the lifting maneuver.” Doc. 77 at 16. Defendant’s motion does not show that these
8 conclusions were based on manifest error.

9 Defendant also suggests that the Court overlooked Dr. Sternbergh’s opinion
10 (Doc. 80 at 6), a “summary of [which] was included in the parties’ summary judgment
11 briefing” (*id.* at 5 n.5). But Defendant cites *Plaintiff’s* summary judgment briefing, and
12 the cited record makes no mention of Dr. Sternbergh. *See* Doc. 52-3 at 3. The Court
13 cannot see how this amounts to overlooking Defendant’s evidence. In any event,
14 Defendant relies on Dr. Sternbergh’s opinion for the proposition that the degenerative
15 disc disease caused his disability, and the lifting maneuver merely exacerbated that
16 condition. *See* Doc. 80 at 6. That argument is unavailing for reasons stated above.

17 Defendant finally argues that the Court cannot conclude that an accidental bodily
18 injury continues to cause Plaintiff’s disability. Doc. 80 at 3. Without citation to any
19 Policy provisions, Defendant contends that the Policy contemplates a monthly
20 reassessment of the cause of Plaintiff’s ongoing disability. Doc. 80 at 1-2. Defendant
21 made the following assertion in its motion for summary judgment:

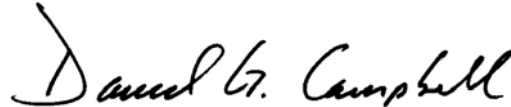
22 There is no evidence that the lifting event . . . had any lasting effect on
23 Plaintiff beyond a temporary exacerbation of Plaintiff’s already existing
24 conditions. After this temporary exacerbation resolved, only Plaintiff’s
25 preexisting conditions remained.

26 Doc. 46 at 15. This vague and conclusory statement was insufficient to raise the specific
27 issue of contract interpretation Defendant now raises. Defendant never argued that the
28 Court’s conclusion must be limited to the first month of Plaintiff’s disability. The Court

1 declines to address this separate issue that could “have been brought to its attention
2 earlier with reasonable diligence.” LRCiv 7.2(g)(1).²

3 **IT IS ORDERED** that Defendant’s motion for reconsideration (Doc. 80) is
4 **denied.**

5 Dated this 26th day of June, 2018.

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11 David G. Campbell
12 United States District Judge
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28 ² Defendant makes this assertion in its motion: “It appears that the Court’s ruling is that [the lifting maneuver] continues to be an ongoing cause as well.” Doc. 80 at 3. The Court’s previous order, however, did not specifically address this issue, and the Court does not foreclose Defendant from raising it in the future. Plaintiff, of course, will be free to oppose Defendant’s arguments.