

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Cheri Shippy v. Banner Life Insurance Company

Shippy · No. CV-25-00177-PHX-JJT · Decided December 16, 2025

SUMMARY

The United States District Court for the District of Arizona granted Plaintiff Cheri Shippy relief under Federal Rule of Civil Procedure 56(d), finding that additional discovery could create a genuine dispute of material fact concerning the denial of accidental death insurance benefits. The court denied Banner Life Insurance Company’s motion for summary judgment without prejudice and granted leave to file a second motion when appropriate.

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Cheri Shippy, No. CV-25-00177-PHX-JJT 10 Plaintiff, ORDER 11 v. 12 Banner
Life Insurance Company, 13 Defendant. 14 15 At issue is Defendant Banner Life Insurance
Company’s Motion for Summary 16 Judgment (Doc. 37, MSJ), to which Plaintiff Cheri Shippy
responded (Doc. 45, Resp.), and 17 Defendant replied (Doc.

55, Reply). In her Response, Plaintiff requests relief under Federal 18 Rule of Civil Procedure
56(d) (Resp. at 16) and attached a Declaration of Fabian Zazueta, 19 Esq. in Support of Request
for Rule 56(d) Relief (Doc. 45-1, Decl.).

The Court finds this 20 matter appropriate for resolution without oral argument. See LRCiv 7.2(f).
21 I. BACKGROUND 22 This matter arises from Defendant’s denial of benefits of an accidental
death 23 insurance policy to Plaintiff after her husband, Mr. Shippy, died in a three-car collision.
24 Defendant denied Plaintiff’s claim on the basis that, inter alia, Mr. Shippy died while street 25
racing, which met an exclusion from coverage under the policy.

(MSJ at 8–9.) Plaintiff 26 sued Defendant on the following claims: (1) declaratory judgement; (2)
estoppel from 27 denying policy coverage; and (3) insurance bad faith. (Doc. 1-1 ¶¶ 22–62.)
Defendant now 28 moves for summary judgment as to each claim, arguing that no genuine dispute
exists as 1 to whether: (1) Plaintiff failed to provide satisfactory proof that Mr. Shippy’s death was
2 covered under the policy; and (2) Defendant acted in good faith in denying Plaintiff’s 3 claim.

(MSJ at 8–13.) Defendant filed its Motion nearly five months before the close of 4 discovery and
nearly six months before the deadline to file dispositive motions. (See, e.g., 5 Doc. 10.) To date,
discovery remains open. (Id.) Plaintiff maintains that she cannot present 6 facts in opposition of
the Motion and seeks relief under Rule 56(d). (Resp. at 16; Decl.

7 ¶¶ 13–14.) 8 II. LEGAL STANDARD 9 Under Rule 56(d), “[i]f a nonmovant shows by affidavit or declaration that, for 10 specified reasons, it cannot present facts essential to justify its opposition [to a motion for 11 summary judgment], the court may: (1) defer considering the motion or deny it; (2) allow 12 time to obtain affidavits or declarations or to take discovery; or (3) issue any other 13 appropriate order.” Fed.

R. Civ. P. 56(d). “The burden is on the party seeking a Rule 56(d) 14 continuance to proffer sufficient facts to show that the evidence sought exists, and that it 15 would prevent summary judgment.” *Atay v. Cty. of Maui*, 842 F.3d 688, 698 (9th Cir. 2016) 16 (citation modified). “A party seeking additional discovery under Rule 56(d) must explain 17 what further discovery would reveal that is essential to justify its opposition to the motion 18 for summary judgment.” *Stevens v. CoreLogic, Inc.*, 899 F.3d 666, 678 (9th Cir.

2018) 19 (citation modified). “This showing cannot, of course, predict with accuracy precisely what 20 further discovery will reveal; the whole point of discovery is to learn what a party does not 21 know or, without further information, cannot prove.” *Id.* Still, “the evidence sought must 22 be more than the object of pure speculation.” *Id.* (citation modified).

23 III. ANALYSIS 24 Defendant argues that none of the evidence sought by Plaintiff “could undermine or 25 shed light on the facts material to Banner Life’s motion.” (Reply at 11.) According to 26 Plaintiff’s Declaration, though, she seeks to depose Detective Guilbault who investigated 27 the vehicular collision and prepared the police report, Andrew Lugo who was involved in 28 the collision and informed investigators that he was not “racing” with Mr. Shippy, and 1 Courtney Johnson who investigated and denied Plaintiff’s claim.

(Decl. ¶ 7.) Plaintiff avers 2 that these depositions “are essential to determining whether a ‘race’ or ‘contest’ actually 3 occurred, the credibility and admissibility of the police report, and how Banner interpreted 4 and applied the Racing Exclusion.” (*Id.* ¶ 8.) Plaintiff also intends to “conduct additional 5 written discovery into Banner’s internal communications regarding the denial, its reliance 6 on external sources, and whether its decision was based on a reasonable and founded 7 investigation,” which would be germane to whether the denial was proper and in good 8 faith.

(*Id.* ¶¶ 9, 12–13.) The Court agrees that this discovery has the potential to create a 9 genuine issue of material fact. Whether it will do so is “the whole point of discovery,” 10 which has not closed to date. *Stevens*, 899 F.3d at 678. 11 Next, Defendant argues that Plaintiff should not be granted Rule 56(d) relief because 12 she has not diligently pursued discovery opportunities.

(Reply at 10.) But the record shows 13 that Plaintiff issued disclosures (Docs. 12, 28, 30), served numerous discovery requests 14 (Docs. 17, 18, 26), served deposition notices to Defendant’s other fact witnesses (Docs. 23, 15 27) and engaged in discovery dispute litigation while the parties were still briefing 16 Defendant’s Motion (see, e.g., Doc. 40).

The record also indicates that discovery occurred 17 even after the Motion was fully briefed. For example, the Court ordered Defendant to 18 produce relevant portions of its claim manual to Plaintiff on November 17, 2025 (Doc. 61), 19 which was issued thirteen days after briefing on the Motion ended. Discovery is still open 20 and underway, and Plaintiff has not failed to diligently engage in that discovery.

21 IV. CONCLUSION 22 There is still time to conduct discovery in this matter, and Plaintiff sufficiently avers 23 that such discovery may create a genuine issue of material fact that would defeat 24 Defendant's Motion. "Especially where, as here, documentation or witness testimony may 25 exist that is dispositive of a pivotal question... lightning-quick summary judgment 26 motions can impede informed resolution of fact-specific disputes." Burlington N. Santa Fe 27 R.R. v. Assiniboine & Sioux Tribes of the Fort Peck Reservation, 323 F.3d 767, 774 (9th 28 Cir.

2003). Therefore, Rule 56(d) relief is appropriate, and the Court will grant Plaintiff that relief. Accordingly, the Court will deny Defendant's Motion without prejudice and 2|| grant Defendant, on a sua sponte basis, leave to file a second motion for summary judgment 3 || if or when it is appropriate. 4 IT IS ORDERED granting Plaintiff relief pursuant to Federal Rule of Civil || Procedure 56(d).

6 IT IS FURTHER ORDERED denying Defendant's Motion for Summary 7\ Judgment (Doc. 37) without prejudice. 8 IT IS FURTHER ORDERED granting Defendant, on a sua sponte basis, leave to 9|| file a second motion for summary judgment if or when appropriate. 10 Dated this 16th day of December, 2025. CN 11 "wok: 12 wef holee— Unifga State#District Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 -4-