

FILED

MAR 04 2004

CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GARY GREENBERG, husband,

Plaintiff - Appellee,

v.

PAUL REVERE LIFE INSURANCE
COMPANY, a foreign corporation;
UNUMPROVIDENT CORP., a foreign
corporation fka Provident Companies, Inc.,

Defendants - Appellants.

No. 02-16501

D.C. No. CV-99-00154-SRB

ORDER

Before: PREGERSON, BEAM, and PAEZ, Circuit Judges.

The memorandum disposition filed on January 12, 2004, is hereby

AMENDED as follows:

1. On page 3, the following sentence is deleted: "Nor was the district court obliged to make an express reliability finding after Paul Revere explicitly waived its objection to Kelley's testimony about industry standards." Footnote 1 is also deleted.

The Honorable C. Arlen Beam, Senior Circuit Judge for the Eighth Circuit,
sitting by designation.

2. In their place on page 3, the following new sentences are added:
“Even assuming that the district court erred in allowing Kelley to testify, we cannot reverse absent some showing of prejudice. *See Janes*, 279 F.3d at 886. Here, Paul Revere was not prejudiced because much of Kelley’s testimony about the industry standards for the proper handling of disability claims was corroborated by one of Paul Revere’s lead claim examiners on the witness stand. Thus, the decision to admit Kelley’s testimony ultimately was not prejudicial.”

With these amendments, the petition for rehearing and for rehearing en banc is DENIED. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35(f).