

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM MOWBRAY; DEE  
MOWBRAY; AND KATHLEEN  
MAGIEROWSKI,  
Appellants,  
vs.  
NATIONWIDE INSURANCE  
COMPANY,  
Respondent.

No. 43958

**FILED**

MAY 10 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order granting summary judgment concerning an insurance contract, certified as final under NRCP 54(b). Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

The parties are familiar with the facts, and we do not recount them except as necessary for our disposition.

This court reviews summary judgment de novo.<sup>1</sup> Summary judgment is appropriate “when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.”<sup>2</sup> “[S]ubstantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.”<sup>3</sup>

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<sup>1</sup>Fire Ins. Exch. v. Cornell, 120 Nev. 303, 305, 90 P.3d 978, 979 (2004).

<sup>2</sup>Wood v. Safeway, Inc., 121 Nev. \_\_\_, \_\_\_, 121 P.3d 1026, 1031 (2005).

<sup>3</sup>Id.

There was no dispute of material fact between the parties below. The fundamental question of law before this court is whether Legion Insurance Company became insolvent for the purposes of NRS 690B.020 within two years after the May 2, 2000 accident.

NRS 690B.020(4) provides:

For the purposes of this section, the term "uninsured motor vehicle" also includes, subject to the terms and conditions of coverage, an insured other motor vehicle where:

- (a) The liability insurer of the other motor vehicle is unable because of its insolvency to make payment with respect to the legal liability of its insured within the limits specified in its policy;
- (b) The occurrence out of which legal liability arose took place while the uninsured vehicle coverage required under paragraph (a) was in effect; and
- (c) The insolvency of the liability insurer of the other motor vehicle existed at the time of, or within 2 years after, the occurrence.

Therefore, uninsured motorist coverage is triggered where the tortfeasor is insured at the time of the accident and where the tortfeasor's insurer is subsequently unable to pay the claims against the tortfeasor, due to the insurer becoming insolvent within two years of the accident. The primary issue below was whether Legion Insurance Company became "insolvent" within two years after the accident under NRS 690B.020(4).

Nationwide contended in its opposition to summary judgment that Legion did not become insolvent as a result of the Pennsylvania order of rehabilitation that was entered on March 28, 2002, and argued that

Legion did not become insolvent until October 29, 2002, when the Nevada Department of Insurance entered an official order of insolvency against it.<sup>4</sup>

Consequently, the district court granted summary judgment for Nationwide, and declared that Nationwide was not required to pay uninsured motorist benefits to the appellants, because Legion did not become insolvent within two years after the date of the accident.

An insurer becomes insolvent for the purposes of NRS 690B.020(4) when it is “involved in [a] judicial proceeding in its state of domicile or in Nevada related to the determination of its solvency, rehabilitation or liquidation, if the court conducting those proceedings has issued an order prohibiting the insurer from paying claims for more than 30 days.”<sup>5</sup> The order of rehabilitation stated, in no uncertain terms, that “[n]o payments of any type shall be made to any claimants of Legion . . . except in the discretion of the Rehabilitator.” The order of rehabilitation indefinitely terminated Legion’s ability to pay all claimants’ claims. Therefore, Legion was subject to an insolvency proceeding in its state of domicile on March 28, 2002, within two years of the date of the accident, which prevented it from making “payment with respect to the legal liability of its insured within the limits specified in its policy.”<sup>6</sup>

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<sup>4</sup>We note that Nationwide has abandoned this argument on appeal and instead argues that a one-year insolvency provision in the insurance policy applies under California law.

<sup>5</sup>NRS 687A.035; see also NRS 104.1201(2)(v)-(w).

<sup>6</sup>NRS 690B.020(4)(a).

Consequently, we hold that the tortfeasor was uninsured pursuant to NRS 690B.020(4), which triggered the appellants' uninsured motorist coverage with Nationwide.<sup>7</sup>

Therefore, the district court erred as a matter of law by granting summary judgment to Nationwide and by declaring that Nationwide was not liable for paying uninsured motorist benefits to the appellants. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

cc: Hon. Valerie Adair, District Judge  
Lynn R. Shoen, Chtd.  
Rands, South, Gardner & Hetey  
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno  
Clark County Clerk

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<sup>7</sup>We have reviewed the arguments and authorities raised by both parties with regard to California law and Nationwide's one-year insolvency provision. We agree with the district court that Nationwide expressly waived its one-year insolvency provision. Therefore, we decline to apply the provision under either Nevada or California law.