

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE DOCTORS' COMPANY,  
Appellant,  
vs.  
ROBERT L. VINCENT,  
Respondent.

No. 45751

**FILED**

MAY 31 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order, entered on remand, granting a motion for approval of good faith settlement in an insurance dispute. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

The dispute below involved claims by Samuel Woods, Jr., for negligence and various bad faith insurance practices, against appellant The Doctors' Company (TDC), respondent Robert L. Vincent, and several other parties.<sup>1</sup> Two days before trial, TDC agreed to pay Woods \$2.75 million in settlement on behalf of itself and all other named defendants, except Vincent. At the hearing to finalize this settlement, Vincent announced that he had also settled with Woods, for the sum of \$25,000. After TDC refused to stipulate to the good faith of the Vincent-Woods' settlement, Vincent filed a motion for approval of good faith settlement pursuant to NRS 17.245, which the district court granted. TDC appealed.

In that appeal, we affirmed the district court's good faith determination regarding the Vincent-Woods settlement insofar as it

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<sup>1</sup>The parties are familiar with the facts of this case; we do not recite them here except as necessary to our decision.

related to any potential contribution claims by TDC, as TDC had failed to perfect those claims.<sup>2</sup> However, we determined that the district court failed to properly assess the good faith settlement of Vincent's settlement as it related to any claim by TDC for implied indemnity. We therefore remanded the action to the district court for "complete analysis" of good faith in relation to any claim for implied indemnity, considering both the factors established in the federal district court's In re MGM Grand Hotel Fire Litigation<sup>3</sup> decision and TDC's chances for success in an implied indemnity action.<sup>4</sup>

On remand to the district court, both parties thoroughly briefed the issue of good faith as it related to any implied indemnity claim by TDC. After holding a hearing, the district court issued an order granting Vincent's motion for good faith settlement, finding that the evidence did not support a finding of collusion, fraud or tortious conduct under MGM, and that any implied indemnity action brought by TDC would have little merit, because TDC was the primary tortfeasor and Vincent was merely a passive tortfeasor. TDC appeals, asserting that the district court abused its discretion by approving the settlement, specifically arguing that the district court erred in finding (1) that Vincent and Woods did not engage in collusive conduct under MGM and (2) that TDC was unlikely to succeed in a claim for implied indemnity.

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<sup>2</sup>See Doctors Company v. Vincent, 120 Nev. 644, 98 P.3d 681 (2004).

<sup>3</sup>570 F. Supp. 913 (D. Nev. 1983).

<sup>4</sup>Doctors Company, 120 Nev. at 658, 98 P.3d at 690-91.

We will not disturb a district court's determination of good faith settlement under NRS 17.245 absent an abuse of discretion.<sup>5</sup> Therefore, we will uphold the district court's good faith determination if it is supported by substantial evidence which "a reasonable mind might accept as adequate to support a conclusion."<sup>6</sup> When faced with contradictory evidence, credibility determinations and the weight to be given to varying testimony are matters within the sole discretion of the district court.<sup>7</sup>

As we stated in our prior decision in this case, "[w]hen one party is subject to liability, which, as between that party and another, the other should bear, the first party is entitled to full indemnity."<sup>8</sup> Unlike the statutory right of contribution, which allows for partial reimbursement between two equally negligent tortfeasors, the common law right of implied indemnity entitles a party guilty of only "passive" or "secondary" negligence to full indemnity from another "active" or "primary" tortfeasor.<sup>9</sup> Thus, a party seeking to recover under implied indemnity must establish

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<sup>5</sup>Doctors Company, 120 Nev. at 652, 98 P.3d at 686-87 (citing Velsicol Chemical v. Davidson, 107 Nev. 356, 360, 811 P.2d 561, 563 (1991)).

<sup>6</sup> Stratosphere Gaming Corp. v. Las Vegas, 120 Nev. 523, 528, 96 P.3d 756, 761 (2004) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

<sup>7</sup>Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).

<sup>8</sup>Doctors Company, 120 Nev. at 653, 98 P.3d at 687 (quoting Black & Decker v. Essex Group, 105 Nev. 344, 345, 775 P.2d 698, 699 (1989)).

<sup>9</sup>Id. at 650-51, 98 P.3d at 686.

both that he or she was only passively negligent, and that the other party actually engaged in active wrongdoing.<sup>10</sup>

In addition, under NRS 17.245, when two parties reach a good faith agreement to settle, that settlement insulates the settling party from any claims of contribution or implied indemnity. In the MGM decision, the federal district court set forth a list of factors to examine when determining whether a settlement agreement was made in good faith, including

the amount paid in settlement, the allocation of the settlement proceeds among plaintiffs, the insurance policy limits of settling defendants, the financial condition of settling defendants, and the existence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants.<sup>11</sup>

However, as established in Doctors Company, a district court is not bound solely to the consideration of these factors.<sup>12</sup> Rather, the district court should consider a variety of factors, including the MGM factors, but also the extent to which the settlement agreement does not reflect liability for claims arising from the active fault of the settling party, and whether the settlement is fair in light of the potential success of any implied indemnity claim.<sup>13</sup>

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<sup>10</sup>Id.

<sup>11</sup>570 F. Supp. at 927.

<sup>12</sup>120 Nev. at 652, 98 P.3d at 686.

<sup>13</sup>Id. at 658, 98 P.3d at 690.

Here, the district court noted that three of the MGM factors, namely the amount paid in settlement, the limits of Vincent's liability insurance policy and the relative financial condition of the parties, all mitigated against the good faith of the Vincent-Woods' settlement agreement. On the other hand, the district court found no evidence to suggesting fraud, collusion, or tortious conduct between Vincent and Woods. The district court further found that TDC's "internal problems" in handling Woods' claim suggested that the true focus of the case was an "insurance bad faith case" against TDC, indicating that TDC was not likely to succeed in an implied indemnity action against Vincent.

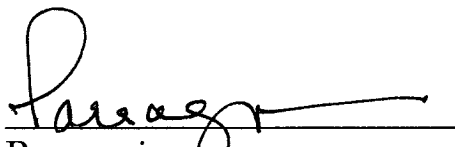
We conclude that each of these findings is supported by substantial evidence. With respect to the district court's finding that no collusion or fraud occurred between Vincent and Woods, we note that each of the parties presented conflicting affidavits regarding the purported timing of the settlements. The weight to be given to this conflicting evidence was within the sole discretion of the district court.<sup>14</sup> Similarly, while some evidence did indicate that Vincent may have acted negligently in handling Woods' insurance application, other evidence indicated that

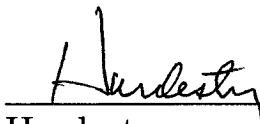
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<sup>14</sup>See Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). We have also considered TDC's assertion that the district court improperly relied on evidence related to Vincent's alleged wrongdoing in the underlying action in finding a lack of collusion or fraud during the settlement negotiations, and we conclude that this argument lacks merit. A negotiated settlement becomes collusive only when aimed to injure the interests of an absent tortfeasor. MGM, 570 F. Supp. at 927. If the evidence indicated that Vincent could not be held liable for any claims of implied indemnity, he would have little motive or ability to injure the interests of TDC or otherwise engage in collusive conduct.

TDC acted in bad faith in processing Woods' claim. In light of this conflicting evidence, a reasonable person could conclude, as did the district court, that TDC was not likely to succeed in an implied indemnity action against Vincent. Because each of these findings was supported by substantial evidence, we conclude that the district court did not abuse its discretion in certifying the Vincent-Woods' settlement as made in good faith under NRS 17.245. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Steven P. Elliott, District Judge  
John W. Hawkins, Settlement Judge  
John H. Cotton & Associates, Ltd.  
Jones Vargas/Reno  
Washoe District Court Clerk