

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFONSO MORALES, AN  
INDIVIDUAL,  
Appellant,

vs.

PRUDENTIAL INSURANCE COMPANY  
OF AMERICA, A FOREIGN  
CORPORATION AND PSI PARTNERS,  
INC., A NEVADA CORPORATION,  
Respondents.

ALFONSO MORALES, AN  
INDIVIDUAL,  
Appellant,

vs.

PRUDENTIAL INSURANCE COMPANY  
OF AMERICA, A FOREIGN  
CORPORATION AND PSI PARTNERS,  
INC., A NEVADA CORPORATION,  
Respondents.

RUTH KNOX,  
Appellant,

vs.

PRUDENTIAL INSURANCE COMPANY  
OF AMERICA, A FOREIGN  
CORPORATION; PRUCO LIFE  
INSURANCE COMPANY, A FOREIGN  
CORPORATION; PSI PARTNERS, INC.,  
A NEVADA CORPORATION; AND  
JEFFREY A. SKOLL, AN INDIVIDUAL,  
Respondents.

No. 48165

**FILED**

DEC 11 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

No. 48443

No. 50181

ORDER OF REVERSAL AND REMAND

Consolidated appeals from a district court summary judgment  
in an insurance matter, certified as final under NRCP 54(b), and from a

post-judgment order awarding costs. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.<sup>1</sup>

In 1999, Bradley Knox certified on a life insurance application submitted to respondent Prudential Insurance Company that he had not been convicted of driving under the influence of drugs or alcohol (DUI) in the past three years. This was a falsehood. After Knox's eventual death, Prudential discovered the misrepresentation, rescinded the policy pursuant to NRS 687B.110, and denied any payment to appellant Alfonso Morales, the named policy beneficiary. Morales brought suit against Prudential, and the district court, citing NRS 687B.110, granted Prudential's motion for summary judgment.<sup>2</sup> This court reviews the grant of summary judgment de novo.<sup>3</sup>

NRS 687B.110 provides that

All statements and descriptions in any application for an insurance policy or annuity contract, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts and incorrect statements shall not prevent a recovery under the policy or contract unless either:

1. Fraudulent; or
2. Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

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<sup>1</sup>Pursuant to NRAP 34(f), this court has determined that oral argument is not warranted, and this case is submitted for decision on the briefs.

<sup>2</sup>The district court later awarded costs to Prudential.

<sup>3</sup>Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate when there is no genuine issue of material fact, such that the moving party is entitled to judgment as a matter of law. Id.

3. The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

As established by this court in Randono v. CUNA Mutual Insurance Group, if any one of the enumerated factors in NRS 687B.110 applies, the insurance company is justified in rescinding the policy, even if the alleged misrepresentation did not relate to the decedent's actual cause of death.<sup>4</sup> In this case, we conclude that Knox's misrepresentation regarding his prior DUI conviction was clearly material to the acceptance of risk, and that Prudential would not have issued the same policy rate had it known of the misrepresentation, indicating that Prudential was justified in rescinding the policy pursuant to both NRS 687B.110(2) and (3).

Nonetheless, this court has also established that when an insurer knows that an applicant has made a material misrepresentation on its application, it waives the right to rescind the policy on the basis of the misrepresentation.<sup>5</sup> Under this doctrine, the insurer is "chargeable" with knowledge of the misrepresentation if "full information about it" is present in its own files.<sup>6</sup> Generally, the question of whether an insurer

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<sup>4</sup>106 Nev. 371, 375-76, 793 P.2d 1324, 1326-27 (1990).

<sup>5</sup>Vigoren v. Transnational Ins. Co., 86 Nev. 810, 812, 482 P.2d 96, 97 (1970); Violin v. Fireman's Fund Ins. Co., 81 Nev. 456, 461, 406 P.2d 287, 290 (1965). While these cases predate the enactment of NRS 687B.110, the statute in no way mentions or attempts to abolish the doctrine of waiver. Accordingly, we apply the doctrine here.

<sup>6</sup>Violin, 81 Nev. at 461, 406 P.2d at 287.

had knowledge of a misrepresentation is an issue of fact to be determined by the jury.<sup>7</sup>

Here, as a part of Knox's application, it appears that he underwent a medical examination, which included a urine screening. In conjunction with this screening, Knox was required to complete a form for the company "Lab One," which became a part of his file at Prudential. A question at the bottom of the application asked, "In the past 5 years, have you ever had a moving violation or your driver's license restricted, suspended, or revoked?" Next to this question, Knox checked the box "yes," and circled the word "suspended."

Given the presence of the "Lab One" report in Knox's file, we conclude that genuine issues of material fact exist regarding whether Prudential could be "charged" with knowledge of Knox's previous DUI conviction. Therefore, we

ORDER the judgment of the district court REVERSED AND REMANDED to district court for further court proceedings.<sup>8</sup>

Cherry J.  
Cherry

Gibbons J.  
Gibbons

Saitta J.  
Saitta

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<sup>7</sup>See Vigoren, 86 Nev. at 812, 482 P.2d at 97.

<sup>8</sup>Accordingly, we also reverse the award of costs to Prudential in Docket No. 48443.

cc: Hon. Mark R. Denton, District Judge  
William C. Turner, Settlement Judge  
The Law Offices of Christopher J. Raleigh, P.C.  
Brownstein Hyatt Farber Schreck, LLP  
Schreck Brignone/Las Vegas  
Eighth District Court Clerk