

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLSTATE INSURANCE COMPANY,
Appellant,
vs.
WILLIAM MILLER,
Respondent.

No. 49760

FILED

OCT 28 2009

ORDER GRANTING REHEARING IN PART
AND MODIFYING OPINION

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

On July 30, 2009, we entered an opinion in this appeal. Allstate Insurance Co. v. Miller, 125 Nev. ___, 212 P.3d 318 (2009). Both respondent William Miller and appellant Allstate Insurance Company have filed petitions for rehearing. Having considered Miller's petition, we conclude that rehearing is not warranted. NRAP 40(c). Having considered Allstate's petition, we conclude that the opinion's reasoning should be clarified. We therefore grant Allstate's petition in part to the extent that we direct the clerk of this court to make the following modifications to the opinion filed on July 30, 2009:

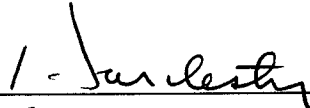
(1) In the first sentence of the third paragraph, add "exercise of its right and" after "Because a primary insurer's" so that the modified sentence will now read: "Because a primary insurer's exercise of its right and duty to defend includes settlement duties and an insurer must give equal consideration to the insured's interest, we hold that the covenant of good faith and fair dealing includes a duty to adequately inform the insured of settlement offers."

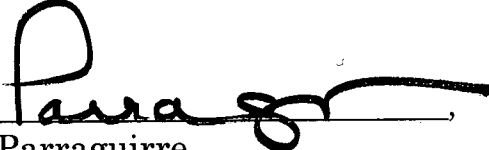
(2) From the heading numbered "II," remove "as part of the duty to defend" so that the modified heading will now read: "The implied

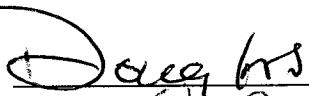
covenant of good faith and fair dealing includes a duty to adequately inform.”

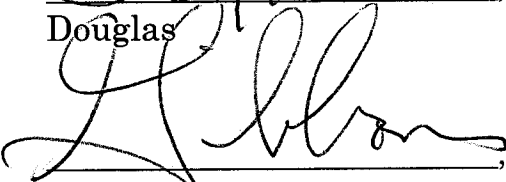
(3) In the third paragraph under the subheading labeled “A,” remove the entire first sentence that currently begins “A primary insurer’s duty to defend attaches” and replace it with a new sentence reading: “A primary insurer’s right and duty to defend attaches when the insured tenders defense of the lawsuit to the insurer and carries with it the duty to communicate to the insured any reasonable settlement offer that could affect the insured’s interests. Heredia v. Farmers Ins. Exchange, 279 Cal. Rptr. 511, 519-20 (Ct. App. 1991).”

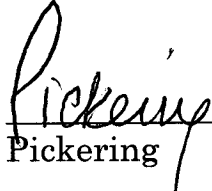
It is so ORDERED.


_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Gibbons

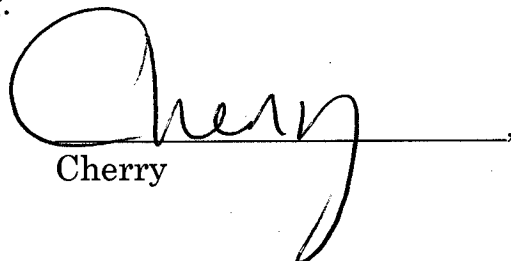

_____, J.
Pickering

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No. 49760

CHERRY, J., dissenting:

I would grant Miller's petition for rehearing and deny Allstate's petition for rehearing.

 J.
Cherry

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Lewis & Roca, LLP/Las Vegas
Luce Forward Hamilton & Scripps, LLC
Prince & Keating, LLP
Vannah & Vannah
Eighth District Court Clerk