

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEANDREW DESMON DOMINGO,
Appellant,
vs.
NEVADA GENERAL INSURANCE
COMPANY, A NEVADA
CORPORATION,
Respondent.

No. 38040

FILED

APR 08 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment in a declaratory relief action and bad faith counterclaim involving insurance coverage.

Respondent Nevada General Insurance Company (NGIC) issued an automobile liability policy to Dion Domingo. While driving under the influence, appellant Leandrew Domingo, Dion's brother, crashed Dion's car, killing Dion and seriously injuring a third party, Carole Kuczajda. Under the terms of the insurance policy, Domingo was a permissive driver and, thus, an insured. Upon receipt of a demand for payment from Kuczajda, NGIC paid the \$15,000.00 per person policy limit in exchange for a release of claims discharging Dion and NGIC. The release did not include Domingo.

Kuczajda filed a lawsuit against Domingo for personal injuries. NGIC provided Domingo with outside defense counsel. NGIC filed a declaratory relief action, seeking to establish that it had satisfied its duty to indemnify Domingo. Domingo filed a counterclaim, asserting that NGIC acted in bad faith by tendering the policy limits without obtaining a release for him. Following a bench trial, the district court found that NGIC had no further duty to indemnify Domingo and that NGIC did not act in bad faith when it failed to obtain a release for him.

Domingo first argues NGIC breached its implied covenant of good faith and fair dealing by tendering the policy limits without making any effort to secure a release for him.

Nevada imposes a duty of good faith and fair dealing between contracting parties.¹ The relationship of an insured to an insurer is one of special confidence.² An insurer has a duty to negotiate with its insureds in good faith and to deal with them fairly.³ Whether an insurer's duty to act in good faith and protect the interests of its insured requires an insurer to obtain a release before tendering a policy limit is a question of law, which we review de novo.⁴

In Nationwide Insurance Company v. Hunley,⁵ the Ninth Circuit determined that, as long as a permissive driver receives everything under an insurance policy that a policyholder would have been entitled to if the roles had been reversed, the permissive driver is insured to the same extent as the policyholder. We adopt the conclusion of Nationwide Insurance that an insurer owes a duty to attempt to obtain a release in

¹See Wohlens v. Bartgis, 114 Nev. 1249, 1258, 969 P.2d 949, 956 (1998).

²Ainsworth v. Combined Ins. Co., 104 Nev. 587, 592, 763 P.2d 673, 676 (1988).

³Id.

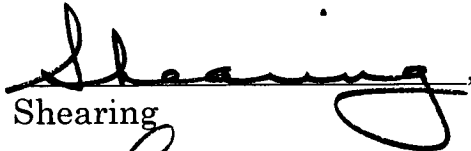
⁴See SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

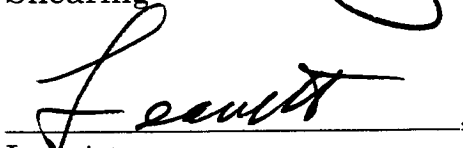
⁵915 F.2d 557, 559 (9th Cir. 1990) (concluding an insurer made the best deal for its insureds by obtaining a release for the policyholder and a defense plus an offset for the permissive driver where a release was not available, but noting a different case would have been presented if the insurer could have obtained a release for the permissive driver in exchange for the policy limit or less).

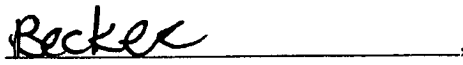
exchange for tendering policy limits, but failure to obtain a release is not automatically bad faith or a breach of duty. Whether the insurer made reasonable attempts to obtain a release, or whether a release would have been obtainable are factual issues to be determined by the trier of fact.

Here, there was conflicting testimony regarding what steps, if any, NGIC took to obtain a release for Domingo. However, the district court found that even if NGIC did not take reasonable steps to try to obtain a release for Domingo, no such release would have been forthcoming. Kuczajda testified that she would not have signed a release for Domingo when the policy limit was tendered. Thus, there is substantial evidence to support the district courts' findings. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Leavitt, J.


Becker, J.

cc: Hon. Stewart L. Bell, District Judge
Flangas Law Office
Mills & Associates
Clark County Clerk