

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA YELLOW CAB CORP.;
NEVADA FLEET MANAGEMENT,
INC.; FLEET DELIVERY SERVICES;
YELLOW CAB COMPANY, A/K/A
YELLOW CAB CO.; FLEET DELIVERY
RENO LIMITED PARTNERSHIP;
FLEET DELIVERY SERVICE OREGON,
A PARTNERSHIP; FLEET
MANAGEMENT USA; YELLOW CAB
CO. OF NEVADA, INC.; AND FLEET
DELIVERY SERVICES NORTHWEST,
Appellants,


vs.

COLORADO CASUALTY INSURANCE
COMPANY; LEAVITT GROUP AGENCY
ASSOCIATES A/K/A THE LEAVITT
GROUP; RODNEY LEAVITT; AND
GEORGE BERGIN,
Respondents.

No. 41853

FILED

SEP 07 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in favor of an insurance agent and insurance provider in an insurance coverage dispute. Eighth Judicial District Court, Clark County; Gene T. Porter, Judge.

Nevada Yellow Cab Corp. (Yellow Cab) appeals from an order granting summary judgment to Colorado Casualty Insurance Company (Colorado Casualty) and The Leavitt Group (Leavitt Group). The parties are familiar with the facts, and we do not recount them in the order except as is necessary for our disposition. As a preliminary matter, Yellow Cab

waived its improper joinder argument by failing to argue that matter before the district court.¹

Regarding Yellow Cab's contention that summary judgment in favor of Colorado Casualty was improper, given the alleged ambiguity in the stop gap endorsement policy, we conclude that the endorsement policy clearly and unambiguously limits coverage to Nevada only. The record belies Yellow Cab's assertion that it believed that the endorsement would cover liabilities arising outside Nevada. Yellow Cab attempted to purchase California workers' compensation insurance; however, there is no reason the company would have sought such coverage if it believed the stop gap policy covered its business operations in that jurisdiction. Further, it is unreasonable to believe that the parties intended a \$600 stop gap policy to provide nationwide liability coverage. Thus, the district court properly granted summary judgment on this issue.

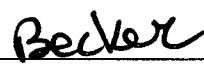
As to Yellow Cab's assertion that summary judgment was improper because genuine issues of material fact relating to the alleged negligence of Leavitt Group exist, no such issues of fact are present. In Nevada, the duty of an insurance agent is to use reasonable diligence to obtain the insurance once an agreement is reached and to notify the client if such insurance is not obtained.² Yellow Cab cites case law from various jurisdictions specifying when an agent has a heightened duty to advise; however, those circumstances, including when an agent voluntarily


¹See McCullough v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983).


²Keddie v. Beneficial Insurance, Inc., 94 Nev. 418, 420, 580 P.2d 955, 956 (1978).

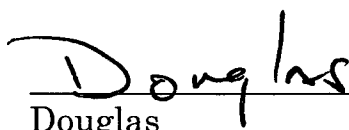
assumes responsibility to select appropriate coverage, misrepresents the nature of coverage, maintains a course of dealing over an extended period of time with the insured, or fails to respond appropriately to a specialized request for insurance, are not similarly present in this matter. Thus, summary judgment was properly granted.

Accordingly, we ORDER the judgment of the district court AFFIRMED.

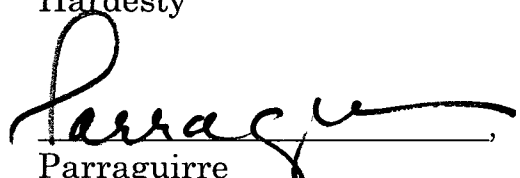

Becker, C.J.


Rose, J.


Gibbons, J.


Douglas, J.

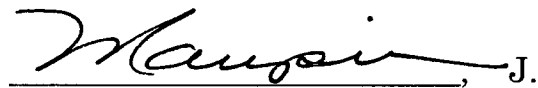

Hardesty, J.


Parraguirre, J.

cc: Eighth Judicial District Court Dept. 1, District Judge
Law Offices of Richard McKnight, P.C.
Beckley Singleton, Chtd./Las Vegas
Parker Nelson & Arin, Chtd.
Sharon Green
Clark County Clerk

MAUPIN, J., concurring:

I concur in the result reached by the majority. I would additionally note that the “stop-gap” coverage issued by Colorado Casualty cost approximately \$600 to purchase. Appellants concede that they attempted but failed to acquire workers’ compensation coverage for employee losses in the State of California. Given the language of the policy discussed in the majority opinion, it is inconceivable that Colorado Casualty and appellants agreed that, for \$600, Colorado Casualty would provide complete substitute coverage for employee losses incurred in California. Thus, appellants never relied upon the broad extension of coverage they now urge before this court, and the claim of coverage fails for lack of sufficient consideration.¹


Maupin

¹Appellants point to Colorado Casualty’s reservation of rights notice, in which the Colorado Casualty claims representative observed that the Nevada “stop-gap” coverage “would trigger and cover the same exposure as Workers Compensation, . . . if your company was negligent in not obtaining Workers Compensation Insurance.” In my view, the reservation of rights notice is not pertinent to the disposition of this appeal. First, this statement impliedly assumes that the coverage would be triggered in such circumstances for Nevada claims. Second, while this statement is at odds with the warranty and exclusionary provisions in the policy, it was never relied upon by the appellants in the placement of coverage prior to the claim at issue in this case.