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Summary of Vanguard Piping v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 63

Allison Vitangeli
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Vanguard Piping v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 63 (Sept. 19, 2013)[1]

CIVIL PROCEDURE—DISCOVERY

Summary

The Court determined whether NRCP 16.1(a)(1)(D) compels disclosure of all insurance agreements, regardless of whether the primary policy limits exceed the amount of potential liability or whether the policies provide secondary coverage.

Disposition

The Court concluded that the plain language of NRCP 16.1(a)(1)(D) requires disclosure of *any* insurance agreement that may be liable to pay a portion of a judgment.

Factual and Procedural History

Aventine-Tramonti Homeowners Association filed construction defect actions against petitioners Vanguard Piping Systems, Inc.; Viega, LLC; Industies, Inc.; and Viega, Inc. (collectively, Vanguard), and Vanguard's German parent companies Viega GmbH and Viega International GmbH. In June 2012, the Nevada Supreme Court entered a stay of the district court proceedings as to the German parent companies. The stay order did not stay or in any way limit any other proceedings against Vanguard.

During discovery, pursuant to NRCP 16.1(a)(1)(D), Vanguard disclosed some of its primary insurance agreements to Aventine-Tramonti. The special master then ordered Vanguard to disclose the additional undisclosed agreements. Vanguard refused and sought relief from the district court, arguing that disclosing the documents would violate the stay of proceedings against the German parent companies and that it had already complied with NRCP 16.1(a)(1)(D)'s requirements by disclosing its primary insurance agreements that were sufficient to cover any judgment against it. The district court affirmed the special master's order and this writ for mandamus or prohibition followed.

Discussion

The Court first disposed of Vanguard's argument that producing the agreements would violate the stay entered by the Court with regard to the German parent companies. The Court noted that the referenced stay temporarily halted the district court proceedings as to the German parent companies only.[2] Any relevant documents should be produced in the proceedings against Vanguard, regardless of whose possession they were in.

Next, the Court disposed of Vanguard's second argument that it should not be required to disclose the agreements because Aventine-Tramonti's counsel sought the disclosure for an improper purpose, i.e., to use in other pending construction defect

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[1] By Allison Vitangeli.

[2] *Viega GmbH v. Eighth Jud. Dist. Ct. (La Paloma Homeowners' Ass'n)*, No. 60015 (Nev. June 13, 2012)

[2] *Viega GmbH v. Eighth Jud. Dist. Ct. (La Paloma Homeowners' Ass'n)*, No. 60015 (Nev. June 13, 2012) (order granting motion for stay).

litigation against Vanguard. The Court concluded that there is no prohibition against the use of discovery in later, unrelated litigation, provided that the discovery is relevant to the current litigation.[3]

NRCP 16.1(a)(1)(D) requires disclosure of the additional insurance agreements

Nevada's Rules of Civil Procedure are subject to the same rules of interpretation as statutes.[4] The Court will give effect to the plain meanings of the words, without resort to the rules of construction, if the statute is clear and unambiguous.[5] Here, the plain language of NRCP 16.1(a)(1)(D) states that "any insurance agreement" which "may be liable to satisfy part or all of a judgment" be disclosed.[6] Additionally, NRCP 16.1(a)(1)(D) states that a party "must" disclose any insurance agreement.[7] Therefore, the Court concluded that the plain language of NRCP 16.1(a)(1)(D) requires disclosure of any and all insurance agreements that may be liable to pay a portion of the judgment regardless of whether the party has already disclosed policies with limits that exceed the party's potential liability.

Furthermore, the Court supported its conclusion by discussing how federal courts broadly interpret FRCP 26(a)(1)(A)(iv), Nevada's federal counterpart. Federal courts have rejected arguments that a party should be able to limit disclosure of insurance agreements to only those agreements that a party deems relevant.[8] The Court noted that it is impossible to foresee all possible circumstances in which insurance policies will be subject to liability and potentially exhausted by other judgments. Therefore, Vanguard should not be permitted to determine which insurance policies were relevant. Finally, since NRCP 16.1(a)(1)(D) requires that more information be disclosed than FRCP 26(a)(1)(A)(iv),[9] it is evident that *any* insurance agreement which may be liable must be disclosed.

Conclusion

Petitioners were required, pursuant to the plain reading of NRCP 16.1(a)(1(D), to produce *any* insurance agreement that may be liable to pay a portion of the judgment. The writ for mandamus or prohibition was denied.

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[3] *See Dove v. Atl. Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992). *See also Fuling v. Gristede's Operating Corp.*, 266 F.R.D. 66, 75–76 (S.D.N.Y. 2010).
[4] *Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611, 618, 218 P.3d 1239, 1244 (2009).
[5] *Consipio Holding, BV v. Carlberg*, 128 Nev. ___, ___, 282 P.3d 751, 756 (2012).
[6] Nev. R. Civ. P. 16.1(a)(1)(D).
[7] *Id.*
[8] *See In re ML-Lee Acquisition Fund, II, L.P.*, 151 F.R.D. 37, 41 (D. Del. 1993).
[9] *See* Nev. R. Civ. P. 16.1 drafter's note (2004) (noting that NRCP 16.1(a)(1)(D) "expands on the federal rule").