

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

1-1-2004

### Summary of The Doctors Company v. Vincent, 120 Nev. Adv. Op. 71

Justen Ericksen  
*Nevada Law Journal*

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the **Torts Commons**

---

#### Recommended Citation

Ericksen, Justen, "Summary of The Doctors Company v. Vincent, 120 Nev. Adv. Op. 71" (2004). *Nevada Supreme Court Summaries*. 707.

<https://scholars.law.unlv.edu/nvscs/707>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

*The Doctors Company v. Vincent*, 120 Nev. Adv. Op. 71 (Nev. 2004)<sup>1</sup>

## TORTS

### Summary

Appeal by insurer from a district court order approving insurance agent's settlement with insured. Insurer contended that the district court abused its discretion in approving agent's settlement which effectively cut off insurer's claims against agent for contribution and implied indemnity.

### Disposition/Outcome

Affirmed in part, reversed in part, and remanded. The good-faith order was affirmed as far as it related to insurer's separate contribution claim. But, because the district court failed to consider the good-faith issues with regard to insurer's efforts to preserve an implied indemnity claim, the court reversed in part and remanded to the district court to undertake a complete analysis of the settlement, taking into consideration the *MGM* factors, the extent to which the settlement may not have reflected liability for compensatory and punitive damages arising from the claims of active fault, and whether the agent's settlement was fair based upon the considerable permutations of liability in connection with the substantive implied indemnity claim.

### Factual and Procedural History

Woods, an individual, brought an action in the district court against his insurance agent, insurer and its affiliate. He had applied for and paid the initial premium for health insurance to his agent. The agent claimed that he then mailed the check and application form indicating that the effective date of coverage was to be "the date after postmark." The United States Postal Service did not place its postmark on the envelope until five days after the agent received it and three days after the agent claimed to have mailed it. Ironically, the individual was seriously injured the day before the postmark was placed on the envelope. The insurance company originally accepted coverage, but later denied based on the request that coverage begin "the date after postmark." The insurer ultimately denied the damage claim of \$350,000 calling it a preexisting condition.

When the insurer's motion for summary judgment was denied it settled with Woods for \$2.75 million. This settlement did not, in its terms, extinguish the agent's liability. The agent then settled with Woods for the relatively nominal sum of \$25,000. The insurer refused to agree to the good faith of the agent's settlement. Thereafter, without a hearing, the district court determined that the agent had settled with Woods in good faith. On appeal, the insurer challenged the order of approval arguing that it effectively barred its claims for contribution or implied indemnity against the agent.

---

<sup>1</sup> By: Justen Ericksen

## **Discussion**

The remedies of contribution and indemnity allow parties extinguishing tort liabilities to seek recovery from other potential tortfeasors under equitable principles.<sup>2</sup> In Nevada, the statutory remedy of contribution allows one tortfeasor to extinguish joint liabilities via payment to the injured party, and then seek partial reimbursement from a joint tortfeasor for sums paid in excess of the settling tortfeasor's equitable share.<sup>3</sup>

Implied indemnity, generally a creation of the common law, allows a complete shifting of responsibility to an "indemnity obligor" when the party seeking indemnity has extinguished its liabilities incurred as a result of the indemnity obligor's "active" fault.<sup>4</sup> Under NRS 17.265, the provisions of the contribution statutory scheme do not impair rights of indemnity and, particularly, "[w]here one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation."

The district court upheld the agent's settlement as in good faith. Under NRS 17.245, this finding, if upheld, effectively immunizes the agent from liability on the insurer's contribution and implied indemnity claims.<sup>5</sup> In *Velsicol Chemical v. Davidson*,<sup>6</sup> The Supreme Court of Nevada held that the determination of a good-faith settlement "should be left to the discretion of the trial court based upon all relevant facts available, and that, in the absence of an abuse of discretion, the trial court's findings should not be disturbed. In such an analysis, a court may, in addition to the *MGM*<sup>7</sup> factors, assess the relative liability permutations of the particular contribution or indemnity action known to it, including the strengths and weaknesses of the contribution or indemnity claims.

### ***The Insurer's Claim of Contribution in Connection with the Good-Faith Ruling***

The insurer incorrectly argued that the district court's ruling improperly voided its perfected contribution rights. However, the insurer's settlement on behalf of the defendants, by its terms, did not extinguish the agent's liability. This omission destroyed any potential

---

<sup>2</sup> See NEV. REV. STAT. 17.225-17.305 (2004).

<sup>3</sup> See *Medallion Dev. v. Converse Consultants*, 113 Nev. 27, 31- 34, 930 P.2d 115, 118-20 (1997).

<sup>4</sup> *Id.*

<sup>5</sup> See NEV. REV. STAT. 17.245(1) ("When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury. . . : (b) It discharges the tortfeasor to whom it is given from all liability to any other tortfeasor.").

<sup>6</sup> 107 Nev. 356, 360, 811 P.2d 561, 563 (1991).

<sup>7</sup> See *MGM Grand Hotel Fire Litigation*, 570 F.Supp. 913, 927 (D.Nev. 1983) (embracing the following factors in evaluating good-faith issues under NRS 17.245: the amount paid in settlement, the allocation of the settlement proceeds among plaintiffs, the insurance policy limits of settling defendants, the financial condition of settling defendants, and the existence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants).

contribution claim as a matter of law.<sup>8</sup>

***The Insurer's Claim of Implied Indemnity in Connection with the Good-Faith Ruling***

“When one party is subject to liability, which, as between that party and another, the other should bear, the first party is entitled to full indemnity.”<sup>9</sup>

‘The right of indemnity rests upon a difference between the primary [active] and the secondary [passive] liability of two persons, each of whom is made responsible by the law to an injured party.’ The difference between primary and secondary liability depends on a difference in the character or kind of wrongs that cause the injury and in the nature of the legal obligation owed by each of the wrongdoers to the injured person.<sup>10</sup>

“Evidence of only ‘passive negligence’ . . . is insufficient to establish ‘active wrongdoing’ by a party seeking indemnity.”<sup>11</sup> Also, there must be a preexisting legal relation between a primary and secondary tortfeasor, or some duty on the part of the primary tortfeasor to protect the secondary tortfeasor in order for the secondary tortfeasor to be entitled to indemnification.<sup>12</sup>

In this case, to establish a claim of indemnity against the agent, the insurer was required to demonstrate that the agent was primarily liable for the injuries to Woods.<sup>13</sup> Because the district court did not hold an evidentiary hearing and made no findings of fact concerning the indemnity claim, the court reviewed the record independently under *MGM* and *Velsicol* to determine whether the trial court committed reversible error in approving the agent’s settlement in good faith.

Along with the *MGM* factors, the trial court could have considered the agent’s small settlement amount as well as the relative culpability of the parties. The litigation in the trial court was marked by considerable disputes over whether the insurer initially accepted coverage, whether the agent fraudulently backdated the postage, and whether the agent’s role in the matter affected acceptance of coverage. Because resolution of these issues were in large part determinative of whether the insurer was actively at fault in its refusal to cover Woods, the validity of the implied indemnity claim was far from clear.

---

<sup>8</sup> NRS 17.225(3) provides: “A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement . . . .”

<sup>9</sup> *Black & Decker v. Essex Group*, 105 Nev. 344, 345, 775 P.2d 698, 699 (1989).

<sup>10</sup> *Id.* (quoting *Tromza v. Tecumseh Products Company*, 378 F.2d 601, 605 (3d Cir.1967)).

<sup>11</sup> *Id.*

<sup>12</sup> *See id.* at 346, 775 P.2d at 699-700.

<sup>13</sup> *See Medallion Dev.*, 113 Nev. at 31-34, 930 P.2d at 118-20.

## **Conclusion**

Under NRS 17.225(3), the insurer's appellate claims concerning the district court's good-faith ruling have been rendered moot to the extent that the insurer sought to preserve its contribution claim. Thus, the court affirmed the good-faith order insofar as it related to the insurer's separate contribution claim. However, because the good-faith issues were not considered with regard to the implied indemnity claim, the court reversed and remanded that issue for the district court to undertake a complete analysis of the settlement, taking into consideration the *MGM* factors, the extent to which the settlement may not have reflected liability for compensatory and punitive damages arising from the claims of active fault, and whether the agent's settlement was fair based upon the considerable permutations of liability in connection with the substantive implied indemnity claim.