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AmTrust North America, Inc. v. Ramon Vasquez, Jr., 140 Nev. Adv. Op. 61 (Sept. 19, 2024)

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AmTrust North America, Inc. v. Ramon Vasquez, Jr., 140 Nev. Adv. Op. 61 (Sept. 19, 2024)[1]

THE NEVADA SUPREME COURT UPHELD AN INSURER'S STATUTORY RIGHT TO ASSERT AN INTEREST IN THE **TOTAL** DAMAGES AN INSURED WORKER RECOVERS FROM A THIRD PARTY

Summary

Prior to *AmTrust*, Nevada courts were guided not by statute, but by common law, when assessing the degree to which an insurer may assert a claim to damages its insured worker obtained from a third party. One case required courts to use a formula, making insurers bear a portion of the litigation fees and costs when the insurer did not timely intervene.[2] The other limited the portions of the settlement against which insurers could assert a claim, in conflict with the language of NRS § 616C.215.[3] The Court in *AmTrust* held that the *Breen* formula is unworkable and that both *Breen* and *Poremba* were fundamentally in conflict with the plain language of NRS § 616C.215. Thus, the Court held that moving forward, litigants and courts should focus solely on the statutory language. This decision enforced an insurer's right to recover from the **total** amount of a third-party settlement.

Background

Respondent Vasquez sustained injuries while working at a restaurant and filed a workers' compensation claim with AmTrust. When Vasquez initiated third-party litigation against defendants associated with his injuries, AmTrust intervened as subrogee. After two years of litigation, Vasquez settled with the third-party defendants, without consulting AmTrust, and netted a recovery of $139,706.71. At that point, AmTrust had spent over $50,000 in costs and fees. Vasquez moved to adjudicate the lien, awarding AmTrust, at most, $83,577.82 pursuant to *Breen* and *Poremba*. The district court agreed with Vasquez and found that AmTrust had not "meaningfully participate[d] in the third-party litigation" and, without providing a calculation, determined AmTrust was not entitled to any recovery on its lien.[4] The district court dismissed AmTrust's claim, and AmTrust appealed the decision.

Discussion

Reviewing the district court's application of caselaw de novo, the Nevada Supreme Court determined *Breen* and *Poremba* to be unworkable within the language of NRS § 616C.215. The Court reversed the lower court's order adjudicating AmTrust's lien.

Legal Standard

The Court first addressed the issue of stare decisis, emphasizing that a departure from precedent is not acceptable absent "compelling reasons."[5] Where a prior decision is clearly in

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[1] By Andrew Elkins, Junior Staffer – NLJ Vol. 25.
[2] Breen v. Caesars Palace, 102 Nev. 79, 85, 715 P.2d 1070, 1074 (Nev. 1986).
[3] Poremba v. S. Nev. Paving, 133 Nev. 12, 18, 388 P.3d 232, 238 (Nev. 2017).
[4] AmTrust N. Am., Inc. v. Ramon Vasquez, Jr., 140 Nev. Adv. Op. 61, 4 (Sept. 19, 2024).
[5] Miller v. Burk, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (Nev. 2008).

conflict with the language of a statute, the Court reasoned that overruling it is probably appropriate, especially when it is "unworkable" or "badly reasoned."[6]

We overrule* Breen *to the extent it conflicts with this opinion

Vasquez argued that, under the *Breen* framework, AmTrust was not entitled to recovery from the total settlement amount. AmTrust argued that the precedent framework was in direct conflict with the statute governing worker's compensation. The Court addressed whether *Breen* did in fact conflict with NRS § 616C.215.

Breen involved an employee of Caesars Palace who was injured and later died in the hospital.[7] The work-related injuries were nonfatal, and the employee's family filed a suit against the physician and the hospital alleging medical malpractice.[8] Prior to settling with those parties, Caesars intervened as subrogee based on having paid $39,728.16 in benefits and having reserved $650,000 for future pension benefits.[9] The court decided *Breen* based on principles of equity, attempting to prevent insurers from unjustly enriching themselves when they did not meaningfully participate in the litigation.[10]

In *Breen*, the court acknowledged that the subrogee was entitled to assess its lien against the total settlement, but the court viewed the acquiescence on allocation of fees and costs as a statutory deficiency.[11] To counter that, the Court devised a formula that allocated the insured's share of litigation fees and costs as a ratio of the total amount of the lien over the settlement amount minus fees and costs.[12] The Court subsequently overruled *Breen*.

Breen *conflicts with NRS 616C.215 because the statute does not require insurers to bear a portion of the injured worker's third-party litigation expenses*

The Court relies on a characterization of workers' compensation as a "creature of statute," necessitating that alterations to the program "must come from the legislature, not the courts."[13] The plain language of NRS § 616C.215 does not refer to allocation of costs, but merely states that insurers have a lien upon the total recovery of the insured, whether it be through judgment, settlement, or otherwise.[14] Therefore, the *Breen* court, though well-intentioned, inappropriately imposed additional responsibilities on insurers seeking to recover from their insured.

The* Breen *formula is unworkable and is therefore abandoned

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[6] *See* Rupert v. Stienne, 90 Nev. 397, 400, 528 P.2d 1013, 1015 (Nev. 1974); State v. Lloyd, 129 Nev. 739, 750, 312 P.3d 467, 474 (Nev. 2013).
[7] *Breen*, 102 Nev. at 80, 715 P.2d at 1071.
[8] *Id.*
[9] *Id.* at 81.
[10] *Id.* at 85.
[11] *Id.* at 84.
[12] *Id.* at 85.
[13] 82 AM. JUR. 2D *Workers' Compensation* § 3 (2013).
[14] NEV. REV. STAT. § 616C.215.

According to the *Breen* decision, the formula proffered was meant to "safeguard principles of fundamental fairness and equity" by preventing insurers from being unjustly enriched.[15] The idea was to ensure recovery for both parties, but the issue in the instant case emphasized the mathematical flaws in the formula.

Upon performing the calculation that the lower court failed to perform, the Court found that the *Breen* formula would have resulted in a negative net recovery for AmTrust rather than creating a situation in which both parties walk away with a positive net recovery, as intended. In fact, AmTrust's share of the litigation fees would have exceeded the amount it paid to Vasquez in workers' compensation and the calculation would have allowed Vasquez a "double recovery," which is also against the provision in § 616C.215 prohibiting double recovery for an insured party.[16] Further, the formula has led to inconsistent results, and reverting to the language of the statute will prevent further confusing application of *Breen*.

The Court saw AmTrust's intervention as timely and saw them as participating sufficiently in the litigation. The district court's characterization of this participation as less-than meaningful was an error. Overall, given the formula's flaws and the inconsistency in its application, the Court decided the best course of action would be to abandon it.

Insurers may collect from the "total proceeds" of any recovery by an injured worker

The Court focused on *Poremba*, a case that dealt with an injured employee's compensation claim that the insurer accepted, then closed, and a subsequent third-party settlement followed by a denied request to re-open the original claim.[17] The insurer denied the claim asserting that the third-party settlement offset the damages.[18] The *Poremba* court addressed the issue of whether settlement funds for non-economic damages are assessable by an insurer and limited an insurer's claim to funds designated as "compensation" as defined under NRS § 616A.090.[19] The ruling effectively limited the reach of an insurer to recover from its insured. In reviewing the instant case, the Court determined that the precedent set by *Poremba* had "left lower courts confused."[20] The Court held that *Poremba* conflicted with statutory language giving insurers the right to recover from the whole third-party settlement.

Conclusion

Having determined that the precedent set by *Breen* and *Poremba* are inconsistent with statutory law, the Court reversed the lower court's decision dismissing AmTrust's claim. AmTrust, under the language of the statute, would be able to assert a claim to the entirety of Vasquez's settlement. The Court explicitly says that "litigants and courts should now rely wholly" on § 616C.215 when adjudicating workers' compensation liens.[21] The Court remanded the case for further proceedings consistent with this opinion.

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[15] *Breen*, 102 Nev. at 84, 715 P.2d at 1073–74.
[16] NEV. REV. STAT. § 616C.215.
[17] Poremba v. S. Nev. Paving, 133 Nev. 12, 14, 388 P.3d 232, 234–35 (Nev. 2017).
[18] *Id.* at 14.
[19] *Id.* at 18.
[20] AmTrust N. Am., Inc. v. Ramon Vasquez, Jr., 140 Nev. Adv. Op. 61, 12 (Sept. 19, 2024).
[21] *Id.* at 13.