SUPREME COURT OF NEVADA

Nevada Yellow Cab Corp. v. Eighth Judicial District Court, 123 Nev. 44

152 P.3d 737 (2007) · No. No. 46579 · Decided March 8, 2007

SUMMARY

The Supreme Court of Nevada denied a petition for a writ of mandamus challenging the disqualification of counsel representing Nevada Yellow Cab in an insurance bad-faith action against Insurance Company of the West. The court adopted the majority rule that counsel retained by an insurer to defend its insured represents both the insurer and the insured absent a conflict, and held that the former and current representations were substantially related and adverse. The court concluded that the district court did not manifestly abuse its discretion in ordering disqualification and that the insurer had not waived the conflict.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Nevada
DECIDED	March 8, 2007
DOCKET	No. 46579
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original petition for a writ of mandamus challenging a district court order disqualifying counsel for Nevada Yellow Cab Corporation in its insurance bad faith action against Insurance Company of the West.
STANDARD OF REVIEW	Mandamus is an extraordinary remedy committed to the Supreme Court's discretion. A district court order disqualifying counsel is reviewed for manifest abuse of discretion; the decision will not be set aside absent such an abuse.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential
PARTIES	Nevada Yellow Cab Corporation, Robert D. Vannah, Vannah Costello Vannah & Ganz v. Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, Honorable Valerie Adair, District Judge

TOPICS

insurance bad faith | civil procedure | appellate procedure | writ of certiorari | commercial litigation

PRACTICE AREAS

legal ethics | insurance bad faith | civil procedure | appellate procedure

QUESTIONS PRESENTED

1. Whether ICW waived its right to seek disqualification by delaying its motion for more than two years after the bad faith action began.
2. Whether counsel retained by an insurer to defend its insured represents both the insurer and the insured, absent a conflict, for purposes of former-client conflict analysis.
3. Whether the former defense representation and the current bad faith representation were substantially related and adverse under SCR 159 and SCR 160.
4. Whether the district court manifestly abused its discretion by disqualifying Vannah and his firm.

HOLDINGS

1. ICW did not waive its right to seek disqualification because delay alone is insufficient to establish waiver, and ICW promptly asserted the conflict, expressly reserved its right to seek disqualification during mediation, and filed its motion after mediation failed.
2. In the absence of a conflict, counsel retained by an insurer to defend its insured represents both the insured and the insurer, creating an attorney-client relationship between the insurer and defense counsel.
3. The prior defense representation and the current bad faith representation were substantially related, and the conflict of the associate who participated extensively in the prior representation was imputed to Vannah and the rest of VCVG.
4. The district court did not manifestly abuse its discretion by disqualifying Vannah and VCVG, so mandamus relief was unwarranted.

KEY QUOTATIONS

> *"We now expressly adopt the majority rule concerning the relationship between an insurer and counsel retained by the insurer to defend its insured. In the absence of a conflict, counsel represents both the insured and the insurer."* (at 741-42)

> *"A district court presented with a disqualification motion based on a former representation should (1) make a factual determination concerning the scope of the former representation, (2) evaluate whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing a client in those matters, and (3) determine whether that information is relevant to the issues raised in the present litigation."* (at 742)

> *"Courts deciding attorney disqualification motions are faced with the delicate and sometimes difficult task of balancing competing interests: the individual right to be represented by counsel of one's choice, each party's*

> *right to be free from the risk of even inadvertent disclosure of confidential information, and the public's interest in the scrupulous administration of justice.”* (at 743)

FACTUAL BACKGROUND

Insurance Company of the West retained Vannah Costello Canepa Riedy & Rubino to defend its insured, Nevada Yellow Cab, in a personal-injury action. The firm defended the action for several years, during which associate Denise Cooper Osmond performed substantial work and communicated with ICW regarding the claim. After the firm was terminated and split, Osmond joined Vannah's new firm, which Yellow Cab retained to pursue a bad faith action against ICW based on ICW's rejection of a policy-limits settlement offer and the resulting settlement for more than twice the policy limits. ICW sought to disqualify Vannah and the new firm, and the district court granted the motion.

PROCEDURAL HISTORY

Insurance Company of the West moved to disqualify Robert Vannah and his firm from representing Nevada Yellow Cab in a bad faith action. The Eighth Judicial District Court granted the motion. Nevada Yellow Cab, Vannah, and the firm petitioned the Supreme Court of Nevada for mandamus relief; the Supreme Court denied the petition.

DISPOSITION

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writ_denied
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CASES CITED

- Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981)
- Poulos v. District Court, 98 Nev. 453, 652 P.2d 1177 (1982)
- Waid v. District Court, 121 Nev. 605, 119 P.3d 1219 (2005)
- Cronin v. District Court, 105 Nev. 635, 781 P.2d 1150 (1989)
- Mahban v. MGM Grand Hotels, 100 Nev. 593, 691 P.2d 421 (1984)
- Host Int'l, Inc. v. Summa Corp., 94 Nev. 572, 583 P.2d 1080 (1978)
- Hudson v. Horseshoe Club Operating Co., 112 Nev. 446, 916 P.2d 786 (1996)
- Mackintosh v. California Fed. Sav., 113 Nev. 393, 935 P.2d 1154 (1997)
- Home Indem. Co. v. Lane Powell Moss & Miller, 43 F.3d 1322 (9th Cir. 1995)
- State Farm v. Federal Ins. Co., 72 Cal. App. 4th 1422, 86 Cal. Rptr. 2d 20 (1999)
- Unigard Ins. Group v. O'Flaherty & Belgum, 38 Cal. App. 4th 1229, 45 Cal. Rptr. 2d 565 (1995)
- Nandorf, Inc. v. CNA Ins. Companies, 134 Ill. App. 3d 134, 88 Ill. Dec. 968, 479 N.E.2d 988 (1985)
- McCourt Co., Inc. v. FPC Properties, Inc., 386 Mass. 145, 434 N.E.2d 1234 (1982)
- Gray v. Commercial Union Ins. Co., 191 N.J. Super. 590, 468 A.2d 721 (Ct. App. Div. 1983)
- Spratley v. State Farm Mut. Auto. Ins. Co., 78 P.3d 603 (Utah 2003)
- Semenza v. Nevada Med. Liability Ins. Co., 104 Nev. 666, 765 P.2d 184 (1988)

- C.S.A.A. v. District Court, 106 Nev. 197, 788 P.2d 1367 (1990)
- Ballard v. District Court, 106 Nev. 83, 787 P.2d 406 (1990)
- Brown v. District Court, 116 Nev. 1200, 14 P.3d 1266 (2000)
- Ciaffone v. District Court, 113 Nev. 1165, 945 P.2d 950 (1997)
- Leibowitz v. District Court, 119 Nev. 523, 78 P.3d 515 (2003)
- Boyd v. Second Judicial District Court, 51 Nev. 264, 274 P. 7 (1929)
- Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991)
- Nevada Pay TV v. District Court, 102 Nev. 203, 719 P.2d 797 (1986)