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FILED

Nov 16 3 34 PM '06

*Shelby B. Rungius*

DISTRICT COURT CLERK

CLARK COUNTY, NEVADA

NEVADA INSURANCE GUARANTY,  
ASSOCIATION, a non-profit, unincorporated  
Nevada entity,

Case No. A512004

Plaintiffs,

Dept. No. X

Vs.

OPPOSITION TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT and  
JOINER TO STEEL ENGINEERS  
OPPOSITION AND COUNTER MOTION

MGM/MIRAGE, a Delaware Corporation,  
STEEL ENGINEERS, INC., a Nevada  
Corporation, DOE CORPORATIONS I-X,

Defendants.

COMES NOW Defendant, MGM MIRAGE ("hereinafter "MGM"), by and through its attorney, S. DENISE MCCURRY, ESQ., and files its Opposition to the Motion for Summary Judgment filed by Plaintiff and joins in Steel Engineers Opposition and Counter Motion.

This Opposition is made and based upon the pleadings and papers on file herein, the following memorandum of points and authorities, and any oral argument of counsel the Court may entertain at the time of hearing on this matter.

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POINTS & AUTHORITIES

I

FACTS

The Defendant, MGM, is a Nevada corporation that primarily operates within the State of Nevada. MGM is a self-insured employer pursuant to NRS 616B.300. Pursuant to NRS 616B.300(5), Nevada requires that in order for MGM to operate as a self insured employer for workers compensation, it must also carry excess insurance coverage for all workers' compensation claims that would exceed its self-insured retention. MGM purchased its Excess Workers' Compensation Insurance from Reliance National Insurance Company ("RELIANCE"), a Pennsylvania corporation that was licensed to do business in the State of Nevada.

In 2001, the Commonwealth Court of Pennsylvania declared RELIANCE insolvent and ordered its liquidation. The insolvency of RELIANCE resulted in the non-payment of certain of MGM's claim that exceeded its self-insured retention.

The Plaintiff, NIGA, was created by the Nevada Legislature to pay certain obligations of insolvent insurance companies like RELIANCE. NRS 687A.020 provides in pertinent part:

687A.020. Applicability.

Except as otherwise provided in subsection 5 of NRS 695E.200, this chapter applies to all direct insurance, except:

1. Life, annuity, health or disability insurance;
2. Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;
3. Fidelity or surety bonds or any other bonding obligations;
4. Credit insurance as defined in NRS 690A.015;
5. Insurance of warranties or service contracts;
6. Title insurance;
7. Ocean marine insurance;

1 8. Any transaction or combination of transactions between a person, including affiliates  
2 of the person, and an insurer, including affiliates of the insurer, which involves the  
3 transfer of investment or credit risk unaccompanied by the transfer of insurance risk; or

4 9. Any insurance provided by or guaranteed by a governmental entity.

5 NRS 687A.033, in part, defines "Covered claim" as follows:

6 1. "Covered claim" means an unpaid claim or judgment, including a claim for unearned  
7 premiums, which arises out of and is within the coverage of an insurance policy to which  
8 this chapter applies issued by an insurer which becomes an insolvent insurer, if one of the  
9 following conditions exists:

10 (a) The claimant or insured, if a natural person, is a resident of this state at the time of  
11 the insured event.

12 (b) The claimant or insured, if other than a natural person, maintains its principal place  
13 of business in this state at the time of the insured event.

14 (c) The property from which the first party property damage claim arises is permanently  
15 located in this state.

16 (d) The claim is not a covered claim pursuant to the laws of any other state and the  
17 premium tax imposed on the insurance policy is payable in this state pursuant to NRS  
18 680B.027.

19 2. The term does not include:

20 (a) An amount that is directly or indirectly due a reinsurer, insurer, insurance pool or  
21 underwriting association, as recovered by subrogation, indemnity or contribution, or  
22 otherwise.

23 (b) That part of a loss which would not be payable because of a provision for a  
24 deductible or a self-insured retention specified in the policy.

25 NIGA was formed to cover claims by an insured for insolvent workers' compensation  
insurance carriers. A "covered claim" is an unpaid claim, which arises out of, and is within, the  
coverage of an insurance policy issued by an insurer that becomes an insolvent insurer. This  
additional layer of surety protects individuals and companies from suffering financial hardship  
when their insurance carrier becomes insolvent and incapable of paying monies owed under their  
insurance policies for which they have paid premiums. In the instance of an insurance company  
becoming insolvent, the NIGA Act would require that the State of Nevada cover certain workers'

1 compensation claims arising out of, and within, the coverage of the direct insurance policies  
2 issued by an insurer that has become insolvent. *See* NRS 687A.020.

3 The parties, including NIGA, all agree to the following set of facts:

- 4 1. That RELIANCE was licensed to sell insurance in the State of Nevada.
- 5 2. That RELIANCE sold policies to the Defendants SEI and MGM.
- 6 3. That RELIANCE became an "insolvent insurer" as defined under NRS 687A.035  
7 in 2001.
- 8 4. That both of the Defendants were required by the State of Nevada to take out  
9 additional insurance to cover claims that would exceed their self-insured  
10 retention.

11 NIGA contends that Defendant MGM is an insurer, and therefore its claims do not meet  
12 the definition as a covered claim. Therefore it is NIGA's contention that it has no obligation to  
13 pay the claims of the Defendant in this matter.

## 14 II.

### 15 ARGUMENT

#### 16 II. LEGAL STANDARD FOR SUMMARY JUDGMENT

17 NRCP Rule 56 provides in pertinent part:

18 (a) A party seeking to recover upon a claim, counterclaim, or cross-claim or to  
19 obtain a declaratory judgment may, at any time after the expiration of 20 days from the  
20 commencement of the action or after service of a motion for summary judgment by the  
21 adverse party, move with or without supporting affidavits for a summary judgment in the  
22 party's favor upon all or any part thereof.

23 (c) Motion and proceedings thereon. The motion shall be served at least 10 days  
24 before the time fixed for the hearing. The judgment sought shall be rendered forthwith if  
25 the pleadings, depositions, answers to interrogatories, and admissions on file, together  
with the affidavits, if any, show that there is no genuine issue as to any material fact and  
that the moving party is entitled to a judgment as a matter of law. . . .

1           Although summary judgment may not be used to deprive litigants of trials on the merits  
2 where material factual doubt exists, the availability of summary proceedings promotes judicial  
3 economy and reduces litigation expense associated with actions clearly lacking in merit.  
4 Therefore, it is readily understood why the party opposing summary judgment may not simply  
5 rest on the allegations of the pleadings. To the contrary, the non-moving party must, by  
6 competent evidence, produce specific facts that demonstrate the presence of a genuine issue for  
7 trial. Elizabeth E. v. ADT Sec. Sys. W., 108 Nev. 889, 839 P.2d 1308 (1992).

8           The case of Wood v. Safeway, Inc., 121 P.3d 1026, deals with the factors to be  
9 considered when granting summary judgment.

10           “While not addressing the “slightest doubt” standard directly, the Supreme Court in  
11 Celotex noted that Rule 56 should not be regarded as a “disfavored procedural shortcut”  
12 but instead “as an integral part of the Federal Rules as a whole, which are designed ‘to  
13 secure the just, speedy and inexpensive determination of every action.’” In Liberty  
14 Lobby, the Supreme Court went further in abrogating the slightest doubt standard when it  
15 focused on the rule’s requirement that there be no “genuine” issues of “material” fact: By  
16 its very terms [the summary judgment standard] provides that the mere existence of some  
17 alleged factual dispute between the parties will not defeat an otherwise properly  
18 supported motion for summary judgment; the requirement is that there be no genuine  
19 issue of material fact. . . . The substantive law will identify which facts are material. Only  
20 disputes over facts that might affect the outcome of the suit under the governing law will  
21 properly preclude the entry of summary judgment. Factual disputes that are irrelevant or  
22 unnecessary will not be counted.” Wood, 121 P.3d at 1030.

17           “As this court has made abundantly clear, “when a motion for summary judgment is  
18 made and supported as required by NRCP 56, the non-moving party may not rest upon  
19 general allegations and conclusions, but must, by affidavit or otherwise, set forth specific  
20 facts demonstrating the existence of a genuine factual issue.” Id.

19           “Summary judgment is appropriate under NRCP 56 when the pleadings, depositions,  
20 answers to interrogatories, admissions, and affidavits, if any, that are properly before the  
21 court demonstrate that no genuine issue of material fact exists, and the moving party is  
22 entitled to judgment as a matter of law.” Wood, 121 P.3d at 1031.

### 22           III.     STATUTORY INTERPRETATION OF NIGA

23           Differing interpretations of the NIGA statute are what have led to the present litigation.  
24 When interpreting the meaning of a statute, the Court often considers three factors: (1) the plain  
25

1 meaning of the statute's language, (2) the legislative intent with which the statute was drafted,  
2 and (3) the reason and public policy interests underlying the statute.

3 The Nevada Supreme Court has held that "statutory construction is a question of law  
4 subject to de novo review. When construing a statute, this court first attempts to discern the  
5 legislative intent from the plain meaning of the words in the statute and "will not look beyond the  
6 plain language of the statute, unless it is clear that this meaning was not intended." This court  
7 must also give meaning to each part of a statute, such that, when read in context, none of the  
8 statutory language is rendered meaningless." State v. Sargent, 128 P.3d 1052, 122 Nev. Adv.  
9 Rep. 18 (2006)

10 Additionally, the Nevada Supreme Court held that "We should interpret statutes to give  
11 meaning to each of their parts, such that, when read in context, none of the statutory language is  
12 rendered mere surplusage. Ambiguous statutory provisions should be construed in accord "with  
13 what reason and public policy would indicate the legislature intended, and this court's  
14 interpretation should not produce an absurd or unreasonable result." Stockmeier v.  
15 Psychological Review Panel, 135 P.3d 807,

16 To find in favor of NIGA would be to ignore the plain meaning of the Statute and would  
17 also violate the public policy and Legislative intent.

18 A. MGM CLAIM IS A COVERED CLAIM AS DEFINED BY THE PLAIN  
19 MEANING OF THE STATUTE.

20 Pursuant to the plain meaning of the statute, MGM's claim of monies owed due to the  
21 insolvency of RELIANCE meets the definition of a "covered claim." The NIGA Act defines  
22 "covered claims" as follows:

23 1. "Covered claim" means an unpaid claim or judgment, including a claim for  
24 unearned premiums, which arises out of and is within the coverage of an insurance policy  
25 to which this chapter applies [i.e., "direct insurance"] issued by an insurer which becomes  
an insolvent insurer, if one of the following conditions exists: . . . (b) The claimant or  
insured, if other than a natural person, maintains its principal place of business in this  
state at the time of the insured event. NRS 687.033 (1).

1 It is not a disputed fact that MGM is and was a Nevada corporation operating within the  
2 State and was doing so at the time the insurance policy was taken out with RELIANCE and at the  
3 time that RELIANCE became insolvent.

4 It is clear that MGM falls within the meaning of a covered claim and therefore NIGA is  
5 obligated to PAY the monies owed to MGM that RELIANCE would have paid but for its  
6 insolvency.

7 B. NIGA'S INTERPRETATION OF THE STATUTE VIOLATES PUBLIC  
8 POLICY AND THE LEGISLATIVE INTENT OF THE STATUTE.

9 Plaintiff's reading of the NIGA Act runs against the legislative purpose for which it was  
10 drafted. NIGA was created to ensure that persons who purchase insurance benefits, *i.e.*,  
11 insured(s), are protected from claims when their insurance company becomes insolvent and is  
12 granted some sort of insolvency protection against these claims. See Cimini v. Nevada Ins. Guar  
13 Ass'n., 112 Nev. 442, 915 P.2d 279 (1996)

14 The language of NRS 687A.060(1)(b) reveals the intended purpose of the NIGA Act,  
15 declaring that NIGA is "deemed the insurer to the extent of its obligations on the covered claims  
16 and to such extent shall have all rights, duties and obligations of the insolvent insurer as if the  
17 insurer had not become insolvent." Thus, the purpose of the Act is to place the insured in a  
18 position to recover the same amount available under the insured's policy, as if the insurer had not  
19 become insolvent, subject only to certain limitations on NIGA's liability. See Herder, 751 P.2d at  
20 521; Connecticut Ins. Guar. Ass'n v. Union Carbide Corp., 217 Conn. 371, 585 A.2d 1216, 1225  
21 (Conn. 1991); Lucas v. Illinois Insurance Guaranty Ass'n, 52 Ill. App. 3d 237, 367 N.E.2d 469,  
22 471, 10 Ill. Dec. 81 (Ill. 1977); Int'l Collection 555 A.2d at 980; McKinstry Co., 784 P.2d at  
23 194.  
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1 The purpose of the NIGA Act is to serve as a remedy for the insureds whose insurers  
2 have become insolvent. NIGA's refusal to pay the claims of the Defendants directly violates the  
3 stated purpose and the underlying public policy of the act.


4 IV. MGM DOES NOT MEET THE DEFINITION OF AN INSURER

5 MGM joins in Steel Engineer's argument related to the Defendant's self-insured status  
6 not rising to the level of or meeting the definition of an insurer.

7 V. CONCLUSION

8 For the foregoing reasons, the Plaintiff's interpretation of the NIGA Act goes against the  
9 legislative purpose for which it was drafted. Accordingly, this Court should find that NIGA is  
10 obligated to cover the unpaid claims owed under MGM's Excess Insurance Policy with  
11 RELIANCE.

12 DATED this 16th day of November, 2006.

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CERTIFICATE OF MAILING

1  
2 The foregoing OPPOSITION TO MOTION FOR SUMMARY JUDGMENT was served  
3 by mailing a copy thereof, first class mail, postage prepaid on the 16 day of November,  
4 2006, addressed as follows:

5  
6 James H. Randall  
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An employee of MGM MIRAGE