

CLERK OF THE COURT

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12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 IDS PROPERTY & CASUALTY INSURANCE
15 COMPANY, a Wisconsin Corporation,

CASE NO.: A-15-716829-C

16 Plaintiff,

DEPARTMENT 29

17 v.

(ELECTRONIC FILING CASE)

18 DAVID FIGUEROA, an Individual,

19 Defendant.

20 **FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER GRANTING**
21 **PLAINTIFF IDS PROPERTY & CASUALTY INSURANCE COMPANY'S MOTION**
22 **FOR SUMMARY JUDGMENT**

23 Plaintiff, IDS PROPERTY & CASUALTY INSURANCE COMPANY'S Motion for
24 Summary Judgment was filed on September 23, 2015 and granted on December 21, 2015
25 pursuant to a hearing before the HONORABLE GLORIA STURMAN on temporary assignment
26 for the HONORABLE SUSAN SCANN in Department 29 of the Eighth Judicial District Court,
27 in and for Clark County, Nevada. Having reviewed the papers and pleadings on file herein and
28 heard oral arguments, this Court makes the following Findings of Fact and Conclusions of Law:

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1 **FINDINGS OF FACTS**

2 1. Plaintiff IDS PROPERTY & CASUALTY INSURANCE COMPANY (“IDS”)
3 issued a policy of insurance, Your Safety Pays Car Policy, Nevada, Ameriprise Auto & Home
4 Insurance effective 11/04/2014 through 05/04/2015 (21061 (6/96)) with an Amendment of
5 Policy Provisions – Nevada (AMNV04a (01/05)), to Defendant DAVID FIGUEROA.

6 2. IDS issued a Renewal Declaration Sheet for DAVID FIGUEROA and Judy
7 Castro for Policy No. AI00662492 for Policy Period 11/04/2014 through 05/04/2015 reflecting
8 DAVID FIGUEROA as an insured.

9 3. DAVID FIGUEROA’S Renewal Declaration Sheet lists the insured vehicles on
10 the Ameriprise policy as a 2002 GMC Yukon and a 2014 Jeep Wrangler.

11 4. DAVID FIGUEROA owns/owned a 2011 POL Cross Country motorcycle.

12 5. DAVID FIGUEROA’S Renewal Declaration Sheet does not list the 2011 POL
13 Cross Country motorcycle owned by DAVID FIGUEROA as an insured vehicle on the IDS
14 Insurance Policy.

15 6. Definitions Used Throughout This Policy of Your Safety Pays Car Policy,
16 Nevada, Ameriprise Auto & Home Insurance effective 11/04/2014 through 05/04/2015 (21061
17 (6/96)) defines “We” “us” & “our” as “IDS Property Casualty Insurance Company”.

18 7. Definitions Used Throughout This Policy of Your Safety Pays Car Policy,
19 Nevada, Ameriprise Auto & Home Insurance effective 11/04/2014 through 05/04/2015 (21061
20 (6/96)) defines “You” and “Your” as “the Policyholder named in the declarations and spouse if
21 living in the same household”.

22 8. Definitions Used Throughout This Policy of Your Safety Pays Car Policy,
23 Nevada, Ameriprise Auto & Home Insurance effective 11/04/2014 through 05/04/2015 (21061
24 (6/96)) defines “Occupying” as “in, on, entering into or alighting from”.

25 9. Definitions Used Throughout This Policy of Your Safety Pays Car Policy, Nevada,
26 Ameriprise Auto & Home Insurance effective 11/04/2014 through 05/04/2015 (21061 (6/96)) defines
27 “Utility car” as “if not used in a business or occupation other than farming or ranching, a car with a
28 rated load capacity of 2,000 pounds or less of the pick-up, van or panel truck type”.

1 10. Definitions Used Throughout This Policy of Your Safety Pays Car Policy,
2 Nevada, Ameriprise Auto & Home Insurance effective 11/04/2014 through 05/04/2015 (21061
3 (6/96)) defines "Trailer" as "a vehicle designed to be towed by a private passenger car and
4 includes a farm wagon or farm implement while towed by a private passenger car or utility car.
5 This doesn't include a trailer used as an office, store, display or passenger trailer".

6 11. Definitions Used Throughout This Policy of Your Safety Pays Car Policy,
7 Nevada, Ameriprise Auto & Home Insurance effective 11/04/2014 through 05/04/2015 (21061
8 (6/96)) defines "Your insured car" as "(a) The car described in the declarations. (b) A trailer you
9 own, when attached to your insured car. (c) A car you acquire during the policy period if: (i) it
10 replaces the car described in the declarations; (ii) we insure all private passenger or utility cars
11 owned by you on the date of your acquisition of the car and you notify us during the policy
12 period or within 30 days after the acquisition of your election to make this and no other policy
13 issued by us applicable to the car; and (iii) you wish Car Damage Coverage to apply to the
14 replacing car you must notify us within 30 days of its acquisition. (d) A car or trailer not owned
15 by you being temporarily used as a substitute for a vehicle described in this definition, because
16 of withdrawal from normal use due to breakdown, repair, servicing, loss or destruction".

17 12. Part II – Expenses for Medical Services of Your Safety Pays Car Policy, Nevada,
18 Ameriprise Auto & Home Insurance effective 11/04/2014 through 05/04/2015 (21061 (6/96))
19 issued to FIGUEROA contains the following Exclusion: "We do not cover bodily injury to a
20 person: (3) Occupying a motorized vehicle with less the four wheels."

21 13. The Amendment of Policy Provisions – Nevada (AMNV04a (01/06)), Part III –
22 Uninsured Motorists/Underinsured Motorist Coverage, issued to FIGUEROA provides
23 underinsured motorist coverage for bodily injury that an insured person "suffers in a car accident
24 while occupying your insured car or utility car, or as a pedestrian as a result of having being
25 struck by an uninsured motor vehicle or an underinsured motor vehicle."

26 14. Part III – Uninsured Motorists/Underinsured Motorist Coverage of Your Safety
27 Pays Car Policy, Nevada, Ameriprise Auto & Home Insurance effective 11/04/2014 through
28 05/04/2015 (21061 (6/96)) issued to FIGUEROA contains the following Exclusion: "We do not

1 cover bodily injury to a person: (1) Occupying or when struck by, any motor vehicle owned by
2 you or any relative which is not insured for this coverage under this policy. This includes a
3 trailer of any type used with that vehicle. This exclusion applies only to the extent that the limits
4 of liability for this coverage exceed the limits of liability required by the Nevada Motor Vehicle
5 Safety Responsibility Act.”

6 15. On or about March 7, 2015, DAVID FIGUEROA was traveling straight on
7 Camino Al Norte when another driver, Sukanya Bhromuibha, turned in front of DAVID
8 FIGUEROA at the last minute causing a collision.

9 16. DAVID FIGUEROA was driving a 2011 POL Cross Country motorcycle that he
10 owned at the time of the accident.

11 17. As a result of the collision, DAVID FIGUEROA was thrown from his motorcycle
12 resulting in bodily injury.

13 18. Sukanya Bhromuibha’s insurance carrier, Safeco Insurance, accepted 100%
14 liability for the accident, and Safeco tendered its policy limits to DAVID FIGUEROA.

15 19. DAVID FIGUEROA’s 2011 POL Cross Country motorcycle involved in the
16 accident was insured by American National Insurance Company.

17 20. American National Insurance Company tendered its policy limits to DAVID
18 FIGUEROA.

19 21. American National Insurance Company was inadequate to cover DAVID
20 FIGUEROA’s damages for bodily injury.

21 22. DAVID FIGUEROA has made a Policy Limits demand for \$510,000.00 to IDS.

22 23. IDS has issued payment to FIGUEROA in the amount of \$15,000.00.

23 24. On April 10, 2015, IDS filed a Complaint against DAVID FIGUEROA.

24 25. On April 14, 2015, IDS filed an Amended Complaint against DAVID
25 FIGUEROA.

26 26. On June 5, 2015, an Acceptance of Service of the Summons and Amended
27 Complaint for DAVID FIGUEROA was filed with the Court.

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1 27. On June 5, 2015, DAVID FIGUEROA filed an Answer to IDS' Amended
2 Complaint.

3 28. DAVID FIGUEROA'S policy with IDS precludes coverage under Part III –
4 Uninsured Motorists/Underinsured Motorists Coverage for an accident involving a vehicle not
5 insured by IDS other than the statutory minimum of \$15,000.00 for underinsured motorists
6 coverage in Nevada as set out in Nevada Revised Statutes 690B.020(b) and 485.185(a).

7 29. DAVID FIGUEROA'S policy with IDS precludes stacking of coverage under
8 Part III – Uninsured Motorists/Underinsured Motorists Coverage as DAVID FIGUEROA was
9 not driving an insured vehicle at the time of the accident under the policy in Part III – Uninsured
10 Motorists/Underinsured Motorists Coverage.

11 30. DAVID FIGUEROA'S policy with IDS precludes coverage under Part II –
12 Expenses for Medical Services for motorcycles.

13 31. IDS has fulfilled its obligations to DAVID FIGUEROA under his policy by
14 issuing payment to DAVID FIGUEROA in the amount of \$15,000.00 which is the statutory
15 minimum for underinsured motorists coverage in Nevada as set out in Nevada Revised Statutes
16 690B.020(b) and 485.185(a).

17 32. IDS has issued all available coverage in the amount of \$15,000.00 to DAVID
18 FIGUEROA under his policy with IDS based upon the language of the policy as well as
19 applicable Nevada law.

20 33. On September 23, 2015, IDS moved for summary judgment on the declaratory
21 relief claims against DAVID FIGUEROA as no genuine issue of material fact remained; and IDS
22 was entitled to judgment as a matter of law.

23 34. If any findings of fact are properly conclusions of law, they shall be treated as if
24 appropriately identified and designated.

25 35. On December 21, 2015, Judge Sturman granted IDS's Motion for Summary
26 Judgment as to the following: (1) first cause of action – declaratory relief; (2) second cause of
27 action – declaratory relief; and (3) third cause of action – declaratory relief.

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1 **CONCLUSIONS OF LAW**

2 1. Summary Judgment is appropriate when the moving party is entitled to judgment
3 as a matter of law. "A party against whom a claim, counterclaim, or cross-claim is asserted or
4 declaratory judgment is sought may, at any time; move with or without supporting affidavits for
5 a summary judgment in his favor as to all or any part thereof." NRCP 56(b).

6 2. Summary Judgment "shall be rendered forthwith" when the pleadings and other
7 evidence on file demonstrate no "genuine issue as to any material fact [remains] and that moving
8 party is entitled to a judgment as a matter of law." See NRCP 56(c).

9 3. A court may enter a partial summary judgment on any point of law or as to a
10 particular cause of action and still retain jurisdiction to determine other issues. NRCP 56(d) and
11 Brown v. Capanna, 105 Nev. 665, 782 P.2d 1288 (1989).

12 4. While the facts must be construed in the light most favorable to the non-moving
13 party in opposition to a motion for summary judgment, the non-moving party must: "set forth
14 specific facts demonstrating the existence of a genuine issue for trial or have summary judgment
15 entered against them." Bulbman, Inc. v. Nevada Bail, 108 Nev. 105, 110, 825 P.2d 588, 592
16 (1992).

17 5. The non-moving party cannot have a summary judgment motion denied on the
18 mere hope that at trial he will be able to discredit the movant's evidence. Hickman v. Meadow
19 Wood Reno, 96 Nev. 782, 617 P.2d 871 (1980). The Nevada Supreme Court has made it clear
20 that the non-moving party, in attempting to defeat a motion, may not rely on "the gossamer
21 threads of whimsy, speculation and conjecture." Wood v. Safeway, 121 Nev. 724, 121 P.3d 1026
22 (2005) (quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302 662 P.2d 610, 621
23 (1983)).

24 6. IDS issued a motor vehicle policy of insurance, Your Safety Pays Car Policy,
25 Nevada, Ameriprise Auto & Home Insurance effective 11/04/2014 through 05/04/2015 (21061
26 (6/96)) with an Amendment of Policy Provisions – Nevada (AMNV04a (01/05)), to Defendant
27 DAVID FIGUEROA for a 2002 GMC Yukon and a 2014 Jeep Wrangler as set out in the
28 Renewal Declaration Sheet.

1 7. DAVID FIGUEROA owns/owned a 2011 POL Cross Country motorcycle.

2 8. DAVID FIGUEROA'S Renewal Declaration Sheet does not list the 2011 POL
3 Cross Country motorcycle owned by DAVID FIGUEROA as an insured vehicle on the IDS
4 Insurance Policy.

5 9. DAVID FIGUEROA was driving a 2011 POL Cross Country motorcycle that he
6 owned at the time of the accident.

7 10. Part III – Uninsured Motorists/Underinsured Motorist Coverage of Your Safety
8 Pays Car Policy, Nevada, Ameriprise Auto & Home Insurance effective 11/04/2014 through
9 05/04/2015 (21061 (6/96)) issued to FIGUEROA contains the following Exclusion: “We do not
10 cover bodily injury to a person: (1) Occupying or when struck by, any motor vehicle owned by
11 you or any relative which is not insured for this coverage under this policy. This includes a
12 trailer of any type used with that vehicle. This exclusion applies only to the extent that the limits
13 of liability for this coverage exceed the limits of liability required by the Nevada Motor Vehicle
14 Safety Responsibility Act.”

15 11. The Amendment of Policy Provisions – Nevada (AMNV04a (01/06)), Part III –
16 Uninsured Motorists/Underinsured Motorist Coverage, issued to FIGUEROA provides
17 underinsured motorist coverage for bodily injury that an insured person “suffers in a car accident
18 while occupying your insured car or utility car, or as a pedestrian as a result of having being
19 struck by an uninsured motor vehicle or an underinsured motor vehicle.”

20 12. Part II – Expenses for Medical Services of Your Safety Pays Car Policy, Nevada,
21 Ameriprise Auto & Home Insurance effective 11/04/2014 through 05/04/2015 (21061 (6/96))
22 issued to FIGUEROA contains the following Exclusion: “We do not cover bodily injury to a
23 person: (3) Occupying a motorized vehicle with less the four wheels.”

24 13. Based upon the findings of the Court, a genuine issue of material fact does not
25 exist; and IDS is entitled to judgment as a matter of law.

26 14. Based upon the findings of the Court, DAVID FIGUEROA'S policy with IDS
27 precludes coverage under Part III – Uninsured Motorists/Underinsured Motorists Coverage for
28 an accident involving a vehicle not insured by IDS other than the statutory minimum of

1 \$15,000.00 for underinsured motorists coverage in Nevada as set out in Nevada Revised Statutes
2 690B.020(b) and 485.185(a).

3 15. Based upon the findings of the Court, DAVID FIGUEROA'S policy with IDS
4 precludes stacking of coverage under Part III – Uninsured Motorists/Underinsured Motorists
5 Coverage as DAVID FIGUEROA was not driving an insured vehicle at the time of the accident
6 under the policy in Part III – Uninsured Motorists/Underinsured Motorists Coverage.

7 16. Based upon the findings of the Court, DAVID FIGUEROA'S policy with IDS
8 precludes coverage under Part II – Expenses for Medical Services for motorcycles.

9 17. Based upon the findings of the Court, IDS has fulfilled its obligations to DAVID
10 FIGUEROA under his policy by issuing payment to DAVID FIGUEROA in the amount of
11 \$15,000.00 which is the statutory minimum for underinsured motorists coverage in Nevada as set
12 out in Nevada Revised Statutes 690B.020(b) and 485.185(a).

13 18. Based upon the findings of the Court, IDS has issued all available coverage in the
14 amount of \$15,000.00 to DAVID FIGUEROA under his policy with IDS based upon the
15 language of the policy as well as applicable Nevada law.

16 19. If any conclusions of law are properly findings of fact, they shall be treated as if
17 appropriately identified and designated.

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Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED Plaintiff IDS
PROPERTY & CASUALTY INSURANCE COMPANY'S Motion for Summary Judgment filed
September 23, 2015 is granted as there is no genuine issue of material fact, and this Plaintiff is
entitled to judgment as a matter of law. *See* N.R.C.P. 56.

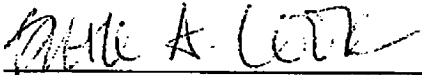
IT IS SO ORDERED.

Dated: February 12, 2016



DISTRICT COURT JUDGE Jw

Respectfully Submitted By:
BROWN, BONN & FRIEDMAN, LLP



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