

**Document:** Figueroa v. IDS Prop. & Cas. Ins. Co., 2017 Nev. App. Unpub. ...

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## Figueroa v. IDS Prop. & Cas. Ins. Co., 2017 Nev. App. Unpub. LEXIS 440

Copy Citation

Court of Appeals of Nevada

June 16, 2017, Filed

No. 69940

### Reporter

**2017 Nev. App. Unpub. LEXIS 440 \*** | 2017 WL 2734093

DAVID FIGUEROA, AN INDIVIDUAL, Appellant, vs. IDS PROPERTY & CASUALTY INSURANCE COMPANY, A WISCONSIN CORPORATION, Respondent.

**Notice:** AN UNPUBLISHED ORDER SHALL NOT BE REGARDED AS PRECEDENT AND SHALL NOT BE CITED AS LEGAL AUTHORITY. [SCR 123](#).

### Core Terms

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coverage, uninsured, policies, insured, granting summary judgment, district court, motor vehicle, motor vehicle insurance, insurance policy, bodily injury, motorcycle, occupying, statute's, argues, stack, words, insured motor vehicle, underinsured motorist, uninsured motorist, motorist coverage, statutory minimum, general terms, de novo, anti-stacking, underinsured, vehicles, limits, struck

**Judges:** [\*1] [Silver](#) ▼, C.J., [Tao](#) ▼, J., [Gibbons](#) ▼, J.

### Opinion

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## ORDER OF AFFIRMANCE

David Figueroa appeals a grant of summary judgment in an auto insurance coverage matter. Eighth Judicial District Court, Clark County; [Susan Scann](#) ▼, Judge. [1](#) ↓

An underinsured motorist struck appellant David Figueroa while he was operating his motorcycle, causing him to suffer extensive bodily injury. The motorcycle was not covered by a policy with respondent IDS Property & Casualty Insurance Company. Following the accident, Figueroa sought the full limits of two uninsured/underinsured motorist policies that IDS provided on two of Figueroa's separate vehicles that were not involved in the accident. IDS tendered to Figueroa the statutory minimum of \$15,000 under [NRS 690B.020\(2\)](#), arguing that it did not owe the full limits Figueroa demanded under his policies because the insurance policy contained an "owned but uninsured" exclusion and an "anti-stacking" provision. [2](#) ↓

IDS sought declaratory relief below, asserting that as a matter of law, it owed Figueroa no more than \$15,000. was not required to stack the policies, and owed no medical expense coverage. IDS moved for summary judgment, which the district court granted. Figueroa timely appealed, but has abandoned [\[\\*2\]](#) the issue of medical coverage on appeal. Thus, this court will address only whether the court properly granted summary judgment on the validity and application of the "owned but uninsured" exclusion and the "anti-stacking" provision contained in Figueroa's policies.

This court reviews a district court's order granting summary judgment de novo. [Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 \(2005\)](#). The parties do not dispute the underlying facts, and instead dispute the interpretation of the insurance policy and applicable statutes, which are both questions of law reviewed de novo. [Zohar v. Zbiegien, 130 Nev. \\_\\_, \\_\\_, 334 P.3d 402, 405 \(2014\)](#); [Serrett v. Kimber, 110 Nev. 486, 488-89, 874 P.2d 747, 749 \(1994\)](#).

In Nevada, companies selling motor vehicle insurance must also offer uninsured and underinsured motorist coverage ("UM/UIM") up to the full limits of coverage for bodily injury the insured purchases. [NRS 687B.145\(2\)](#). Figueroa argues that although IDS was statutorily required to offer him UM/UIM coverage, IDS failed to do so because the policy sold to him was "riddled with exceptions" and therefore was not a sufficient offer. IDS argues it was not required to offer such coverage on the motorcycle because it falls under an exception to the "must offer" which states:

An insurer need not offer, provide or make available uninsured or underinsured vehicle coverage in connection [\[\\*3\]](#) with a general commercial liability policy, an excess policy, an umbrella policy or other policy that does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, operation or use of a specifically insured motor vehicle.

[NRS 687B.145\(5\)](#).

Figueroa argues this exception applies only to insurers who provide a policy that does not apply to a specific motor vehicle. Respondents argue this exception means it does not have to offer UM/UIM coverage in connection with any vehicle Figueroa's policy does not specifically cover.

The statute's plain language defines three specific types of policies exempted from the "must offer" requirement, and then a more general catch-all indicated by the words "or other policy" meant to encompass other policies that do not provide primary liability insurance for a particular motor vehicle. See [State, Dept. of Motor Vehicles & Pub. Safety v. Brown, 104 Nev. 524, 526, 762 P.2d 882, 883 \(1988\)](#) ("It is a well settled rule of statutory construction that where a general term in a statute follows specific words of a like nature, the general term takes its meaning from the specific words."). Here, the statute requires IDS to offer UM/UIM coverage to Figueroa because his policy provides primary motor vehicle insurance, and does not fall [\[\\*4\]](#) within any of the statute's other exceptions. IDS offered and Figueroa accepted said coverage. Thus, we now consider whether the coverage was properly limited by the "owned but uninsured" clause contained in Figueroa's policy.

Because Figueroa's insurance policy contained an "owned but uninsured" exclusion similar to ones that the Nevada Supreme Court has upheld as unambiguous and valid, we decline to hold that they are invalid. See [Cont'l Ins. Co. v. Murphy, 120 Nev. 506, 508 n.6, 96 P.3d 747, 749 n.6 \(2004\)](#) (upholding an exclusion which stated that "[w]e do not provide Uninsured Motorists Coverage for 'bodily injury' sustained by any 'insured' . . . While 'occupying' any vehicle other than 'your covered auto.'"); [Farmers Ins. Exch. v. Neal, 119 Nev. 62, 65, 64 P.3d 472, 473 \(2003\)](#) (upholding an exclusion that stated "[t]his coverage does not apply while occupying any vehicle owned by you or a family member for which insurance is not afforded under this policy or through being struck by that vehicle"); [Nelson v. CSAA, 114 Nev. 345, 346 n.1, 956 P.2d 803, 804 n.1 \(1998\)](#) (upholding an exclusion for injuries sustained "[w]hile occupying a motor vehicle, other than the insured motor vehicle").

Moreover, having found that the "owned but uninsured" exclusion is valid, Figueroa was specifically excluded from coverage over the required statutory minimum of \$15,000, and IDS was under no obligation to stack coverage [\*5] to offer more than that amount. See *Nelson*, 114 Nev. at 349, 956 P.2d at 806 ("Had [Nelson] been an occupant of one of the two insured vehicles when injured by an uninsured motorist, he would have been entitled to stack his uninsured motorist coverage . . . [h]owever, Nelson's coverage was expressly limited by the owned but uninsured clause."). Accordingly, the district court properly granted summary judgment and we

ORDER the judgment of the district court AFFIRMED.

/s/ Silver ▼, C.J.

Silver

/s/ Tao ▼, J.

Tao

/s/ Gibbons ▼, J.

Gibbons

### Footnotes

1 ↑

Although Judge Scann ▼ signed the order, the Honorable Gloria Sturman ▼, District Judge, decided the motion at issue while sitting in Department 29.

2 ↑

We do not recount the facts except as necessary to our disposition.

**Content Type:** Cases

**Terms:** Figueroa v. IDS

**Narrow By:** -None-

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