Don't Take "No Coverage" for an Answer: *Nevada's Public Policy vs. The World*

by Brett A. Carter

So into your office walks a mother and her two children. Jane Johnson tells you that they were recently involved in a single car rollover in Las Vegas. She had been driving on I-15 when she overcorrected and lost control. Her two boys suffered injuries, both leaving the scene by ambulance. Medical treatment was ongoing in Las Vegas. The bills were mounting and unpaid.

Jane had relocated to Las Vegas. She was recently divorced from Larry Johnson, father of their children. The Johnsons had two vehicles insured under a Mississippi motor vehicle policy; Jane took one with her. The two boys stayed with their father until Jane got settled in Las Vegas. The children arrived just the day before the accident.

You come to learn that following the accident Jane made claims on behalf of the children to the Mississippi insurer, a national insurance company that also writes policies in Nevada. The insurer denied their claims based upon the policy's *Family Member Exclusion*.

You contemplate whether you can feasibly take these cases. The only means of recovery is, or was, an insurance policy with a flat "no thank you," "don't call us, we'll call you" denial. You confirm on Westlaw and by contacting a helpful and informed member of the Mississippi Trial Lawyers Association that the insurer's denial is valid under Mississippi law. But, this is not Mississippi.

The first thing to consider is which state's law should apply. Nevada follows *Sievers v. Diversified*, 95 Nev. 811, 603 P.2d 270 (1979), wherein the state whose law to apply must bear a substantial relation with the transaction, and that transaction must not be contrary to the public policy of the forum. Specifically, when dealing with contract law, Nevada would apply the law of the situs unless this factor was outweighed by public policy. *See Sotirakis v. USAA*, 106 Nev. 123, 787 P.2d 788 (1990).

In order to determine which state's law to apply in a contract case, Nevada has adopted the substantial relationship test. *See Sotirakis, supra*, 106 Nev. 123, 125-26, 78 P.2d 788, 790-91 (1990). Our Court has delineated five (5) factors to consider in determining whether a state possesses a substantial relationship with a contract:

1. the place of contracting,
2. the place of negotiation of the contract,
3. the place of performance,
4. the location of the subject matter of the contract, and
5. the domicile, residence, nationality, place of incorporation and place of business of the parties.

← *Williams v. United Services Auto. Ass'n*, 109 Nev. 333, 334-35, 849 P.2d 265, 266 (1993) (quoting *Sotirakis*, 106 Nev. at 126, 787 P.2d at 790). Additionally, the transaction must not violate a strong public policy of Nevada. *Id.* at 334, 849 P.2d at 266.

The Mississippi insurer would only be successful in finding two of the five *Sotirakis* "substantial relationship" factors applicable. You can compellingly argue that three factors support application of Nevada law under your client's fact scenario.

The "place of performance" of the insurance benefits is Nevada since the boys were injured in Nevada, have been treated for those injuries in Nevada, and have incurred medical expenses for that treatment in Nevada. Because they remain residents of Nevada with no intention otherwise, all future related treatment can reasonably be contemplated to occur in Nevada. Further, the "location of the subject matter" is therefore Nevada. The third, fourth and fifth factors are satisfied. You have the majority: 3 beats 2. Automatic win? Not so fast.

In deciding which state's law to apply, the Court must ascertain whether public policy of the forum would be contravened. This is the second step.

→For the Mississippi insurer, winning would impose an exclusionary clause under Mississippi law that would prevent Jane's children from receiving any compensation for their injuries whatsoever. However, here's where it's good to be a Nevadan kicks in; Nevada has determined that an exclusionary clause is void to the extent that it would defeat the minimum security required by statute. *See Estate of Neal v. Farmers Ins. Exchange*, 93 Nev. 348, 566 P.2d 81 (1977); *Transamerica Ins. v. State Farm Mut. Auto Ins.*, 492 F. Supp. 283 (D. Nevada 1980).

The Nevada Supreme Court has struck down an insurer's attempt to avoid covering an insured for the statutory minimum (i.e., $15,000 per person/$30,000 per accident). *See Zobrist v. Farmers Ins. Exchange*, 103 Nev. 104, 734 P.2d 699 (1987); NRS 485.3091. The Court reasoned in *Zobrist*, "[t]his conclusion balances state policy to provide minimum coverage to all persons with the reality of the need to pay a premium for insurance coverage." *Id.*, 103 Nev. at 106, 734 P2d at 700.

An automobile insurer must provide minimum coverage to all persons who drive an insured's car with the insured's permission regardless of whether a permissive driver has been explicitly excluded from coverage. *See Federated American Ins. Co. v. Granillo*, 108 Nev. 560, 835 P.2d 803 (1992). Pursuant to NRS 485.3091, Nevada requires the following in regards to motor vehicle liability policies:

1. An owner's policy of liability insurance must:

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(b) Insure the person named therein and any other person, as insured, using any such motor vehicle with the express or implied permission of the named insured, against loss

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> from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows:
>
> (1) Because of bodily injury to or death of one person in any one accident, $15,000;
> (2) Subject to the limit for one person, because of bodily injury to or death of two or more persons in any one accident, $30,000; and
> (3) Because of injury to or destruction of property of others in any one accident, $10,000.

The Nevada Supreme Court has consistently held that NRS 485.3091 voids certain insurance exclusions to the extent they limit car accident victims from recovering the statutory minimum amount. For instance, in *Baker v. Criterion Co.*, 107 Nev. 25, 805 P.2d 599 (1991), the Nevada Supreme Court noted that, under NRS 485.3091(1), a household exclusion clause is valid only for claims in excess of the $15,000/$30,000 minimum liability insurance required by statute. *See also, Estate of Neal, supra.*

The Nevada Supreme Court has held that "under NRS 485.3091(1), an insurance company must provide minimum coverage to all persons who drive an insured's car with the insured's permission regardless of whether the permissive driver has been explicitly excluded from coverage." *Federated American Ins. Co. v. Granillo*, 108 Nev. at 563, 835 P.2d at 804. The Court based its decision on "our previously stated policy of providing persons who are injured in motor vehicle accidents with at least minimum compensation for their injuries." *Id.* Explaining the State's interest further, the Court offered the following:

> Nevada has a strong public policy interest in assuring that individuals who are injured in motor vehicle accidents have a source of indemnification. Our financial responsibility law reflects Nevada's interest in providing at least minimum levels of financial protection to accident victims.

Id. (quoting *Hartz v. Mitchell*, 107 Nev. 893, 896, 822 P.2d 667, 669 (1991)), (cited to in *Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 14 P.3d 511 (2000)).

In *Salas v. Allstate Rent-A-Car, supra,* the Nevada Supreme Court determined that Allstate was required to insure its rental vehicles up to the statutory minimum in cases where the lessee's personal insurance does not fully compensate the victim, as dictated by "sound public policy." *Id.*, 116 Nev. at 1169, 14 P.3d at 514. The Court explained that "reason and public policy support our conclusion: the general spirit of Nevada's financial responsibility law clearly favors protecting accident victims to the extent possible." *Id.*

Lastly, the U.S. District Court cited *Daniels v. National Home Life Assurance Co.*, 103 Nev. 674, 677 (1987) in its Order denying Defendant-Appellant's Motion for Summary Judgment. The Court found that, just like in *Daniels*, an insurance policy provision that violates the purposes of the Nevada Insurance Code is unenforceable, even if that policy contains a choice of law provision with the policy being enforceable under the foreign forum's law.

Clearly, you have a state behind you that evidences a strong public policy to protect and provide for accident victims such as your new clients through statutory and case law. The out-of-state insurer would be hard-pressed to convince our local court to disregard Nevada's legislative intent and well-established, Nevada common law authority.

On the issue of foreseeability, well, cars travel, people travel, people move, and different states have different laws. The Mississippi insurer would reasonably expect that its insureds and insured vehicles will occasionally end up in accidents in other jurisdictions and subjected to those rules and regulations. The public policy of that forum may govern.

In the end, assuming the court sides in your clients' favor and you do not end up in perpetual appealdum, 15/30 recovery for your clients may be all there is and will be, but it sure beats zero. This way compensation gets spread around—your young clients, their medical providers, and you, the hard-headed attorney who wouldn't take "no coverage" for an answer.

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