

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 21 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SONIA MENA GARCIA, an individual;
JUAN VALENCIA, an individual,

Plaintiffs-Appellants,

v.

GEICO CASUALTY COMPANY,

Defendant-Appellee.

No. 23-55646

D.C. No.

2:22-cv-06041-PA-JEM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Argued and Submitted October 9, 2024
Pasadena, California

Before: NGUYEN and HURWITZ, Circuit Judges, and EZRA,** District Judge.

The issue in this diversity action is whether the district court erred in granting summary judgment against Sonia Mena Garcia and Juan Valencia (“Plaintiffs”), who had been assigned any rights that Luis Herrera, the named insured under an

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

automobile insurance policy issued by GEICO Casualty Company, had against the insurer after Plaintiffs obtained a judgment against Herrera greatly in excess of the policy's \$15,000 limits. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

1. Plaintiffs claim that GEICO acted in bad faith by conditioning settlement of Plaintiffs' claims in a wrongful death action on obtaining a release for both Herrera and Ramiro Hernandez, Herrera's father-in-law. The operative wrongful death complaint asserted claims against both Herrera and Hernandez, whose vehicle Herrera was driving in the accident that killed Plaintiffs' decedent, and to whom GEICO extended coverage under its policy as an additional insured. Under California law, however, an insurer "cannot favor the interests of one insured over the other," and thus an insurer does not act in bad faith by making a policy limits offer on behalf of all insureds and rejecting a counteroffer for policy limits that releases only one. *Lehto v. Allstate Ins. Co.*, 31 Cal. App. 4th 60, 72 (1995).

Seeking to avoid this rule, Plaintiffs argue that a competent investigation by GEICO would have revealed that Hernandez was not living with Herrera at the time of the accident, had not given Herrera permission to drive the vehicle, and therefore did not qualify under the policy as an additional insured. However, the cases that Plaintiffs cite concerning the insurer's duty to conduct an adequate investigation, *see, e.g., Betts v. Allstate Ins. Co.*, 154 Cal. App. 3d 688, 707 (1984); *Wilson v. 21st*

Century Ins. Co., 171 P.3d 1082, 1086 (Cal. 2007), involve the *denial* of coverage. Plaintiffs have provided no California authority holding that an insurer acts in bad faith to its named insured by agreeing to *extend* coverage to a relative of the named insured as an additional insured, and we are aware of no such case.

2. Plaintiffs also argue that “even if Hernandez could be construed as an additional insured,” GEICO acted in bad faith by demanding a release for both insureds, because “by settling with Plaintiffs for Herrera’s \$15,000 policy limits, GEICO would have also completely wiped away Hernandez’s exposure under Plaintiffs’ complaint.” This argument is premised on (1) California Vehicle Code § 17151(a), which limits an automobile owner’s vicarious liability to \$15,000 “for the death of or injury to one person in any one accident,” and (2) the California rule that “where the operator settles the claim of the injured third party for a sum equal to, or in excess of the amount of the owner’s statutory liability, the owner’s obligation is discharged,” *Rashtian v. BRAC-BH, Inc.*, 9 Cal. App. 4th 1847, 1853 (1992).

However, when GEICO rejected Plaintiffs’ settlement offer, it could not be certain that Plaintiffs’ claims against Hernandez were premised solely on vicarious liability. The complaint did not so allege, and Plaintiffs’ insistence that any settlement agreement exclude a release for Hernandez implied that vicarious liability was not their only theory about Hernandez’s liability. Indeed, if such were the case, there would have been no reason for Plaintiffs to reject GEICO’s offer to settle the

claims against both defendants for policy limits and instead reserve their claims against Hernandez, because any vicarious liability of Hernandez would have been limited to \$15,000 and satisfied by GEICO's payment of policy limits.

3. Plaintiffs also claim that GEICO acted in bad faith by failing to communicate their settlement counteroffer to Herrera. But, an insurer acts in bad faith by failing to communicate a settlement offer only if that failure "prevented the insurer from settling the claim within policy limits." *Hedayati v. Interins. Exch. of the Auto. Club*, 67 Cal. App. 5th 833, 845 (2021). Here, any failure to communicate Plaintiffs' offer did not prevent GEICO from settling within policy limits because Plaintiffs were unwilling to release both insureds in return for the limits of the GEICO policy. *See Lehto*, 31 Cal. App. 4th at 72.

AFFIRMED.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1) Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - A material point of fact or law was overlooked in the decision;
 - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
 - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
 - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
 - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to *(party name(s))*:

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