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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 ELMER MEGALLON,

10 Plaintiff,

11 v.

12 NATIONAL CASUALTY COMPANY,
13 SCOTTSDALE INSURANCE COMPANY,

14 Defendants.

2:08-cv-01497-LRH-PAL

ORDER

15 Before the court is defendants National Casualty Co. and Scottsdale Insurance Co.'s
16 (hereinafter "National") motion to reconsider, or in the alternative, second motion for partial
17 summary judgment filed on September 9, 2009. Doc. #26¹. Plaintiff Elmer Megallon ("Megallon")
18 filed his response on September 28, 2009. Doc. #28. Thereafter, National filed a reply on October
19 9, 2009. Doc. #29.

20 **I. Facts and Procedural History**

21 On September 27, 2005, Megallon was involved in a car accident in Clark County, Nevada.
22 Megallon was driving when another vehicle turned into his path. As a result of the collision, he
23 suffered serious spinal injuries. The other driver was held at fault and Megallon received the
24 \$15,000.00 maximum for the other driver's bodily injury coverage.

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26 ¹ Refers to the court's docket entry number.

1 At the time of the accident, Megallon was driving a vehicle owned by his employer, Pro-
2 Action Limousine, and insured by National. Megallon was a named insured under National's policy
3 which included \$1,000,000.00 of underinsured/uninsured coverage. He demanded the entire
4 \$1,000,000.00 from National for his injuries. National offered \$51,000.00 to resolve his claim.

5 On September 30, 2008, Megallon filed a complaint against National alleging three causes
6 of action: (1) breach of contract; (2) violation of Nevada's Unfair Claims Practices Act (NRS §
7 686A.310 et seq.); and (3) breach of the covenant of good faith and fair dealing. Doc. #1,
8 Exhibit A. National moved for summary judgment on Megallon's second and third causes of
9 action, along with his request for punitive damages. Doc. #14. The court denied National's motion
10 as premature finding that discovery had only recently begun and that the motion was filed with a
11 very limited record. Doc. #15.

12 After discovery concluded, National filed the present motion to reconsider, or in the
13 alternative, for summary judgment on Megallon's second and third causes of action. Doc. #26.

14 **II. Motion for Reconsideration**

15 The federal district court has the inherent power to revise, correct, or amend interlocutory
16 orders at any time prior to a final judgment. *See School Dist. No. 5 v. Lundgren*, 259 F.2d 101, 105
17 (9th Cir. 1958). A previous order may be reconsidered when the decision is clearly erroneous, there
18 has been an intervening change of law, or there is manifest injustice. *See United States v. Cuddy*,
19 147 F.3d 1111, 1114 (9th Cir. 1998).

20 National argues that reconsideration is warranted because there is new evidence obtained
21 through discovery to support the previous motion for summary judgment. However, the court finds
22 this evidence is best evaluated under National's second motion for summary judgment rather than
23 reconsidering the original motion. The original motion was insufficient in both evidentiary support
24 and legal reasoning. Additionally, the court finds that bifurcation of Megallon's claims is still
25 improper. Therefore, National's motion for reconsideration is denied.
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1 The record before the court does not support National's position that it is entitled to
2 judgment as a matter of law that it had a reasonable basis to offer a settlement of only \$51,000 for
3 Megallon's injury claim. The court finds that there are disputed issues of material fact concerning
4 the extent of Megallon's injuries and National's reliance on the independent medical examiner's
5 report in denying Megallon's claim. Summary judgment is inappropriate where "relevant facts are
6 in dispute or when facts permit differing inferences as to the reasonableness of the insurer's
7 conduct." *United Fire Ins. Co. v. McClelland*, 780 P.2d 193, 197 (Nev. 1989).

8 **b. Statutory Unfair Claims Practices**

9 Megallon has brought suit alleging that National violated Nevada's Unfair Claims Practices
10 Act, NRS § 686A.310. The act specifically identifies what constitutes an unfair practice. *See* NRS
11 686A.310. In particular, it is an unfair trade practice for an insurance company to fail to effectuate
12 prompt, fair and equitable settlements of claims in which liability has become reasonable clear.
13 NRS 686A.310(1)(e); *see also*, *Turk v. TIG Ins. Co.*, 616 F.Supp.2d 1044, 1052 (D. Nev. 2009)
14 ("An insured has a cause of action against an insurer if the insurer waits an inordinate amount of
15 time before informing the insured that there is no coverage.").

16 The court finds that there are disputed issues of material fact concerning whether National's
17 settlement offer constituted a prompt, fair and equitable settlement. Viewing the evidence in the
18 light most favorable to Megallon, there is sufficient medical evidence of Megallon's injuries to
19 infer that a \$51,000 settlement offer was neither fair nor equitable. Accordingly, National is not
20 entitled to judgment as a matter of law.

21 **c. Punitive Damages**

22 Under Nevada law, in order to recover punitive damages, a plaintiff must show the
23 defendant acted with oppression, fraud or malice. *Pioneer Chlor Alkali Co. v. National Union Fire*
24 *Ins. Co.*, 863 F.Supp. 1237, 1250 (D. Nev. 1994). Oppression is a conscious disregard for the rights
25 of others constituting cruel and unjust hardship. *Pioneer Chlor Alkali Co.*, 863 F.Supp. at 1251
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1 (citing *Ainsworth v. Combined Ins. Co. of America*, 763 P.2d 673, 675 (Nev. 1988)). Malice is
2 conduct which is intended to injure a person or despicable conduct which is engaged in with a
3 conscious disregard of the rights and safety of others. *See* NRS § 42.005(1).

4 Due to the disputed nature of the evidence concerning Megallon's need for future medical
5 treatment and reasonable future damages associated with his condition, it cannot be determined at
6 this time that as a matter of law malice could not be attributed to National by the trier of fact.

7 IT IS THEREFORE ORDERED that defendants' motion for reconsideration, or in the
8 alternative, second motion for partial summary judgment (Doc. #26) is DENIED.

9 IT IS SO ORDERED.

10 DATED this 4th day of March, 2010.



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12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE
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