

1 issue under a policy of automobile insurance issued by LM General.
2 The issue is whether an exclusion to the liability coverage of the
3 LM General policy precludes coverage for wrongful death/bodily
4 injury claims arising from a February 23, 2015 motor vehicle
5 collision involving LM General's insured, Paul S. Williams
6 ("Williams"). Both parties agree there are no material issues of
7 fact in dispute and this action should be decided on the cross
8 motions for summary judgment.

9 **I. Background**

10 LM General issued an insurance policy to Williams with
11 effective dates of April 15, 2014 to April 15, 2015. The policy
12 provides liability coverage of \$250,000 for each person and
13 \$500,000 for each accident. The policy provides coverage "for
14 'bodily injury' or 'property damage' for which any 'insured'
15 becomes legally responsible because of an auto accident." (ECF No.
16 18 (Def. Counter motion Summ. J. Ex. 2 (Williams' LM General
17 insurance policy)). However, the policy includes an exclusion
18 which provides:

19 **B.** We do not provide Liability Coverage for the
20 ownership, maintenance or use of:

21 **2.** Any vehicle, other than "your covered
22 auto," which is:
23 a. owned by you; or
24 b. furnished or available for your
regular use.

25 *Id.*

26 The subject vehicle is a Kia Sportage assigned to Williams by
27 his employer PGM Safety Services, LLC ("PGM"). PGM employed
28 Williams as a safety specialist and his duties included providing

1 safety services to PGM clients in northern Nevada. As part of his
2 employment, PGM provided Williams with the Kia to drive to and from
3 work and to use for work purposes throughout the business day.

4 Williams had driven his assigned Kia for several years prior
5 to the collision. He was given a set of keys and was expected to
6 drive the Kia to and from work and to take it to job sites during
7 the workday. Williams kept the Kia at his home in between work
8 periods. Williams was also expected to keep up with the Kia's
9 regular maintenance and was reimbursed for the costs through PGM.
10 PGM prohibited any personal use of the company vehicles, including
11 even inconsequential errands. If an employee violated that policy,
12 the employee was required to reimburse PGM at a rate of \$.40/mile.
13 There is no evidence in the record that Williams violated PGM's
14 policies with regard to personal use of the company vehicle.

15 On the morning of February 23, 2015, Williams was driving to
16 work southbound on South McCarran Boulevard in his assigned Kia.
17 For unknown reasons, Williams allowed the Kia to cross into
18 northbound traffic where it collided head-on with the vehicle
19 plaintiff Clara Knight was driving. Williams and Clara Knight's
20 husband, Logan Knight, sustained fatal injuries. Clara Knight
21 survived, but was seriously injured.

22 Following the accident, plaintiffs collectively made claims to
23 LM General for the full \$500,000 limit of bodily injury liability
24 coverage available under Williams' policy. The nature and extent
25 of the injuries is not in dispute and the parties agree that those
26 injuries are sufficient to implicate the limits of the subject
27 insurance policy. However, LM General denied plaintiffs' claims
28 solely on the basis of the "regular use" exception in Williams'

1 policy. Plaintiffs disputed the applicability of the "regular use"
2 exception and the parties agreed to seek a resolution of their
3 dispute through a declaratory relief action filed with this court
4 (ECF No. 1 (Plaintiffs' complaint)).

5 **II. Legal standard**

6 Summary judgment shall be granted "if the movant shows that
7 there is no genuine issue as to any material fact and the movant is
8 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).
9 The burden of demonstrating the absence of a genuine issue of
10 material fact lies with the moving party, and for this purpose, the
11 material lodged by the moving party must be viewed in the light
12 most favorable to the nonmoving party. *Adickes v. S.H. Kress &*
13 *Co.*, 398 U.S. 144, 157 (1970); *Martinez v. City of Los Angeles*, 141
14 F.3d 1373, 1378 (9th Cir. 1998). A material issue of fact is one
15 that affects the outcome of the litigation and requires a trial to
16 resolve the differing versions of the truth. *Lynn v. Sheet Metal*
17 *Workers Int'l Ass'n*, 804 F.2d 1472, 1483 (9th Cir. 1986); *S.E.C. v.*
18 *Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982).

19 Here, "[t]he parties agree on the applicable legal standard
20 and appear to agree that the interpretation and application of the
21 regular use exclusion to the facts of this case is a matter of law
22 for the [c]ourt." (ECF No.20 (Def. Opposition to plaintiffs' Mot.
23 Summ. J. at 2)).

24 **III. Analysis**

25 **A. Interpretation of insurance policies under Nevada law**

26 In general, Nevada courts apply the principles of contract law
27 when interpreting insurance policies. *Continental Cas. Co. v.*
28 *Summerfield*, 87 Nev. 127, 131, 482 P.2d 308, 310 (1971). However,

1 "[w]hile clauses providing coverage are interpreted broadly so as
2 to afford the greatest possible coverage to the insured, clauses
3 excluding coverage are interpreted narrowly against the insurer."
4 *National Union Fire Ins. v. Reno's Exec. Air*, 100 Nev. 360, 365,
5 682 P.2d 1380, 1383 (1984).

6 **B. The regular use exclusion**

7 Although the Williams' policy does not provide a definition of
8 the term "regular use" the Supreme Court of Nevada has done so. In
9 Nevada, "regular use" "means constant, systematic . . .
10 continuous use; uninterrupted normal use for all purposes; without
11 limitation as to use; and customary use as opposed to occasional
12 use or special use." *Hartford Ins. Group v. Winkler*, 89 Nev. 131,
13 138, 508 P.2d 8, 13 (1973); see also *Allstate Ins. Co. v. Larimer*,
14 433 F.Supp.2d 1195, 1198 (D. Nev. 2005) (citing with approval the
15 Supreme Court of Nevada's definition of "regular use").

16 Here, LM General argues that the regular use exclusion applies
17 because Williams used the Kia continuously during work hours, had
18 keys to the Kia, kept the Kia at his home overnight, kept up with
19 the Kia's maintenance schedule, and had continuous access to the
20 Kia at all hours (ECF No. 18 (Def. Countermotion Summ. J.)).

21 While Williams was, under the terms of his employment,
22 expected to use the Kia throughout the work day, store the Kia at
23 his home, drive the Kia to and from work, and keep the Kia in good
24 repair, Williams' personal use of the Kia was expressly prohibited
25 under company policy. Any violation of the policy was sanctioned
26 at a rate of \$.40/mile. This policy prohibiting personal use was
27 clearly understood and adhered to by both PGM and Williams and
28 there is no evidence before the court that Williams ever violated

1 the policy.

2 LM General cites to several cases outside of Nevada including
3 *Farmers Ins. Co. of Ariz. v. Zumstein*, 675 P.2d 729 (Ariz. App.
4 1983) for the proposition that "a finding of regular use is not
5 predicated on completely unrestricted use of the vehicle at issue."
6 (ECF No. 18 (Def. Countermotion Summ. J.)). Therefore, LM General
7 seeks a broad interpretation of the regular use exclusion in
8 Williams' policy. However, under Nevada law, courts interpret
9 exclusions narrowly to afford the greatest coverage to the insured.
10 *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 162, 252 P.3d
11 668, 672 (2011). LM General could have provided a more expansive
12 definition of "regular use" but did not do so in drafting the
13 policy in question.

14 Because PGM placed express limitations on Williams' use of his
15 company vehicle, and there is no evidence Williams exceeded those
16 limitations, the regular use exclusion in Williams' LM General auto
17 insurance policy does not bar coverage here. Therefore,
18 plaintiffs' motion for summary judgment (ECF No. 16) is GRANTED and
19 LM General's countermotion for summary judgment (ECF No. 18) is
20 DENIED. The clerk of the court shall enter judgment in favor of
21 the plaintiffs and against the defendant.

22 IT IS SO ORDERED.

23 DATED: This 2nd day of January, 2018.

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27 UNITED STATES DISTRICT JUDGE
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