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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

NORTHFIELD INSURANCE  
COMPANY,

Plaintiff-counter-defendant -  
Appellee,

v.

ROYAL SURPLUS LINES INSURANCE  
COMPANY, a corporation,

Defendant-counter-claimant -  
Appellant.

No. 06-55256

D.C. No. CV-03-00492-JVS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
James V. Selna, District Judge, Presiding

Argued and Submitted December 4, 2007  
Pasadena, California

Before: BOWMAN,\*\* BRUNETTI, and BYBEE, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The Honorable Pasco M. Bowman, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

Royal Surplus Lines Insurance Company (“Royal”) appeals the district court’s partial grant of summary judgment to Northfield Insurance Company (“Northfield”) and the district court’s judgment after a bench trial. We affirm.

Because the parties are familiar with the facts and procedural history, we do not restate them here except as necessary to explain our disposition.

Under California law, a moving party can establish by undisputed facts a breach of the duty to settle in good faith as a matter of law. *See Sequoia Ins. Co. v. Royal Ins. Co. of America*, 971 F.2d 1385, 1392 n.3 (9th Cir. 1992); *Walbrook Ins. Co. v. Liberty Mut. Ins. Co.*, 7 Cal. Rptr. 2d 513, 517 (Ct. App. 1992). Here, the district court reached the only reasonable conclusion available to it: Royal breached the duty to act in good faith. The defense counsel’s letters and the insurance expert’s declaration are insufficient to undermine that conclusion. Therefore, the district court’s partial grant of summary judgment in favor of Northfield was proper.

California law also provides that “[a]n insurer’s breach of its duty of good faith and fair dealing renders it liable for any damages which are the proximate result of that breach.” *Larraburu Bros., Inc. v. Royal Indem. Co.*, 604 F.2d 1208, 1212 (9th Cir. 1979) (quoting *Neal v. Farmers Ins. Exch.*, 582 P.2d 980, 988 (Cal.

1978)). Therefore, the district court did not err when it allowed Northfield to recover settlement payments made in excess of its policy limits.

Finally, because Royal failed to raise its “final judgment” argument sufficiently for the district court to rule on, we decline to consider it now. *See In re E.R. Fegert, Inc.*, 887 F.2d 955, 957 (9th Cir. 1989).

**AFFIRMED.**