IN THE SUPREME COURT OF FLORIDA

CASE NUMBER SC 02-311

COREGIS INSURANCE COMPANY,
Designated as Movant,

VERSUS

MOSQUITO CONTROL SPECIAL TAXING DISTRICT a/k/a
THE FLORIDA KEYES MOSQUITO CONTROL DISTRICT,
Designated as Respondent.

REPLY BRIEF OF MOVANT, COREGIS INSURANCE COMPANY

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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The Mosquito District responds to Coregis' 16-page Brief with 45 pages of obfuscation regarding two simple legal issues of contract construction. In so doing, the Mosquito District strains to create coverage where none exists by stretching the common meaning of "court of law" beyond what any ordinary person would recognize. Furthermore, in discussing the policy definition of "Money Damages," the Mosquito District fails to discuss how attorneys' fees incurred in prosecuting an administrative complaint could compensate for "past harms or injuries." Finally, the Mosquito District persists in its effort to resurrect an argument that was rejected by the District Court - that a purported claim for "back wages" against the Mosquito District by Wardlow brought the administrative petition within the scope of coverage under the insuring agreement of Coregis' policy. Coregis respectfully requests that Both certified questions submitted to this Court by the United States Court of Appeals for the Eleventh Circuit should be answered in the negative.

I. THE MOSQUITO DISTRICT'S ARGUMENTS REGARDING WHAT A "COURT OF LAW" IS ARE WITHOUT BASIS OR MERIT.

The Mosquito District tirelessly cites two (2) Florida cases which hold that one should apply either a "natural, ordinary meaning" (under *Key v. Allstate Insurance Company*, 90 F.3d 1546 (11th Cir. 1996)), or a "reasonable and practical construction" of the policy language (under *Lindhiemer v. St. Paul Fire & Marine Insurance Company*, 643 So. 2d 636 (Fla. 3d DCA 1994)). Coregis could not agree more.

Under either of these general rules of construction, the Mosquito District's oxymoronic interpretation of "court of law" necessarily fails. Ironically, the Mosquito District complains that Coregis is being "hypertechnical." It is the Mosquito District, however, which has twisted the common sense meaning of a "court of law" in its effort to invent coverage where it does not exist.

In its answer brief at p. 16, the Mosquito District argues that the discussion in this case should be limited to interpretation of the insurance contract. The Mosquito District then violates its own limitation in its discussion of this Court's ruling in *Scholastic Systems, Inc. v. LeLoup*, 307 So. 2d 166 (Fla. 1975). The Mosquito District readily admits that in *Scholastic Systems*, this Court held that the Industrial Relations Commission ("IRC") was not a "court." 307 So. 2d at 170; Answer Brief at 18. The Mosquito District's argument, therefore, is that because the MCCSC might be like a court, it should be considered a court for purposes of this policy. This "close enough" approach should be summarily rejected by this Court.

The Mosquito District's argument also places heavy emphasis on the use of dictionary definitions in interpreting the policy. Despite this emphasis, the Mosquito District fails to discuss the definition of "judicial authority" used by this Court in *Scholastic Systems*:

> "'judicial power' is defined as:
>
> > 'That part of the sovereign power which belongs to the courts, or, at least, does not belong to the legislative or executive department."

307 So. 2d at 170; *citing* Ballantine's Law Dictionary at 686. If (1) "judicial power" (i.e. judicial authority) cannot belong to the executive department; and (2) the MCCSC is a part of the executive department, Ch. 69-1321, Laws of Florida, the MCCSC's authority cannot be an exercise of judicial authority and, therefore, the MCCSC cannot be a "court of law."

The Mosquito District's citation to the case of *Anoll v. Pomerance*, 363 So. 2d 329 (Fla. 1978) is equally unpersuasive because in *Anoll*, this Court only concerned itself with the proper procedure for appeal from an administrative agency and not, as the Mosquito District would have this Court believe, with the judicial nature of an administrative agency.

Under Florida law, the language in an insurance contract should be read in the light of the skill and experience of ordinary people, and one should not resort to uncommon meanings or contextual distortion. *Midwest Mutual Insurance Company v. Santiesteban*, 287 So. 2d 665 (Fla. 1973). Put another way, policy provisions must be given their ordinary meaning as understood by the "man on the street." *Thomas v. Prudential Property and Casualty*, 673 So. 2d 141 (Fla. 5th DCA 1996). Therefore, the analysis is necessarily dependant upon answering the question of whether the "man on the street" would consider the MCCSC as a "court of law." Under its own rules of construction, therefore, this Court should reject the Mosquito District's legalistic arguments and concentrate on the ordinary meaning of the term "court of law." Applying this analysis in the insurance policy interpretation context, the first

certified question should be answered in the negative.

II. THE DISTRICT COURT ALSO IMPROPERLY APPLIED THE DEFINITION OF "LOSS" UNDER THE COREGIS POLICY

The Mosquito District ignores the fact that the Policy specifically defines **Money Damages** as "monetary compensation for past harms or injuries." Instead, the Mosquito District spends eleven (11) pages trying to convince this Court that attorneys' fees are "compensation" or "damages." In so doing, the Mosquito District suggests that this Court should ignore the express language of the contract.

In support of its argument, the Mosquito District cites to the "man on the street" rule of construction discussed above, arguing that because Coregis failed to define the phrase "past harms or injuries," this phrase should be read to provide unqualified coverage. What the Mosquito District's argument fails to address, however, is that the phrase "past harms or injuries" itself defines the term "Money Damages." In essence, therefore, the Mosquito District argues that an insurance policy must define practically every word contained therein and then define the words used in the definitions themselves *ad infinitum* in order for the policy to be clear and unambiguous. Such an approach would virtually require that every insurance policy issued in Florida include an extensive glossary of "definitions of 'definitions.'"

The folly of the Mosquito District's arguments is illustrated by two policy interpretation cases decided by the District Court of Appeal of Florida. In the first, *Thomas v. Prudential Property and Casualty Company*, 673 So. 2d 141 (Fla. 5th DCA

1996) the District Court of Appeal rejected an insured's argument that the phrase "motor power of more than 50 horsepower" was ambiguous because it did not specify whether is was total horsepower or "pump horsepower." Similarly, in *Morrison Assurance Company v. School Board of Suwannee County*, 414 So. 2d 581 (Fla. 1st DCA 1982), the District Court of Appeal held that the term "physical training," although undefined, unambiguously excluded activities in high school Physical Education classes. The Mosquito District's suggestion that any undefined term is inherently ambiguous should be rejected by this Court.

Application of the word "past" in the policy definition of "Money Damages" is simple. To the extent that reference to a dictionary definition is in any way needed or desirable, "past" is defined as "having existed or taken place before the present." Webster's Ninth New Collegiate Dictionary at 861. Therefore, the Policy could only cover "harms or injuries" that had occurred before the filing of Wardlow's petition. Coregis' citation to the case of *Culter-Orosi Unified School District v. Tulare County School Districts Liability/Property Self-Insurance Authority*, 31 Cal. App. 4th 617, 37 Cal. Rptr.2d 106 (1994) illustrates this point. The attorneys' fees incurred by Wardlow were not "the injury that first brought him" before the MCCSC. *Id.* at 632.

Surprisingly, the Mosquito District also resurrects an argument implicitly rejected by the District Court. The Mosquito District asserts that Wardlow's petition was purportedly "amended" to seek back wages. The Mosquito District's brief on this issue is misleading because the issue of whether the petition was "amended" is

factually disputed and, if material, could not have been appropriately resolved via a summary judgment proceeding. Wardlow never "amended" his administrative petition - he merely filed a "position statement" which referenced a desire to seek back wages.

More significantly, even if Wardlow had amended his Petition to seek back wages, there still would not have been any "Loss" alleged (and, thus, no defense obligation) because the insuring agreement of the policy expressly affords no coverage for back wage claims against the Mosquito District. The Mosquito District again ignores the express language of the Policy. A Policy endorsement entitled "Employee Benefits Exclusion" expressly deleted the original language of Paragraph 8 of the definition of **Loss** under the Policy and replaced it with the following language:

Loss does not include:

* * *

VIII. Employment Benefits owed as a result of an **Employment Contract.**[1]

None of the relief purportedly requested by Wardlow from the MCCSC (either within the administrative petition itself or via some sort of "amendment") fell within the policy definition of Loss. Because the Policy only obligates Coregis

[1] **"Employment Benefits" is expressly defined to mean:**
Wages, salaries, bonuses, ... or other payments, entitlements or benefits owed to any employee as a result of an Employment Contract.

to defend **Claims** for **Loss** which are covered by the Policy and to pay **Claims Expenses** in the defense of covered **Suits**, Coregis was under no obligation to pay for any defense costs incurred by the Mosquito District in responding to the Administrative Petition.

CONCLUSION

For the foregoing reasons, Coregis Insurance Company respectfully requests that this Honorable Court respond to the certified questions of the United States Court of Appeals for the 11th Circuit as follows: (1) Florida law does not consider the F.M.C.C.S.C. to be a "court of law" for purposes of an insurance contract; and (2) under Florida law, Wardlow's petition did not seek "Money Damages" as defined by the Coregis policy.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing notice of appeal was sent by U.S. Mail on this ____day of November 2002 to: Dirk M. Smits, Esq., Vernis & Bowling of the Florida Keys, Post Office Drawer 529, Islamorada, Florida 33036.

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CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS

I HEREBY CERTIFY that the text of this computer generated brief is Times New Roman 14-point as required by Florida Rule of Appellate Procedure 9.210(a)(2).

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