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IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. SC12-323

WASHINGTON NATIONAL
INSURANCE CORPORATION, ETC.,

Petitioners,

-vs-

SYDELLE RUDERMAN, etc., et al.

Respondents.
_____/

BRIEF OF AMICUS CURIAE, FLORIDA JUSTICE ASSOCIATION, IN SUPPORT OF RESPONDENT ON THE MERITS

On appeal from the Eleventh Circuit Court of Appeals

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii-v
PREFACE	vi
INTRODUCTION	1-2
SUMMARY OF ARGUMENT	3-4
ARGUMENT	5-19

CERTIFIED QUESTIONS

1. Does an ambiguity exist about whether the Policy's "Automatic Benefit Increase Percentage" applies only to the "Home Health Care Daily Benefit" or whether it also applies to the "Lifetime Maximum Benefit Amount" and the "Per Occurrence Maximum Benefit"?

2. If an ambiguity exists in this insurance policy—as we understand that it does—should courts first attempt to resolve the ambiguity by examining available extrinsic evidence?

3. Applying the Florida law principles of policy construction, does the Policy's "Automatic Benefit Increase Percentage" apply to the "Lifetime Maximum Benefit Amount" and to the "Per Occurrence Maximum Benefit" or does it apply only to the "Home Health Care Daily Benefit"?

CONCLUSION	20
CERTIFICATE OF SERVICE	21
CERTIFICATE OF TYPE SIZE & STYLE	22

TABLE OF AUTHORITIES

	PAGE
Cases	
Auto-Owners Ins. Co. v. Anderson, 756 So.2d 29, 34 (Fla. 2000)	7, 12, 13
Auto-Owners Ins. Co. v. Hous. Auth. of City of Tampa, 121 F. Supp.2d 1365, 1367 (M.D. Fla. 1999)	15
Castillo v. State Farm Florida Ins. Co., 971 So.2d 820, 823 (Fla. 3d DCA 2007)	10
Ciba-Geigy Ltd. v. Fish Peddler, Inc., 683 So.2d 522 (Fla. 4th DCA 1999)	2
Container Corp. of Am. v. Maryland Cas. Co., 707 So.2d 733, 736 (Fla.1998)	13
DaCosta v. Gen. Guar. Ins. Co. of Florida, 226 So.2d 104, 105 (Fla. 1969)	14
Deni Associates of Florida, Inc. v. State Farm Fire & Cas. Ins. Co., 711 So.2d 1135, 1139 (Fla. 1998)	15
Dickson v. Economy Premier Assur. Co., 36 So.3d 789, 790-792 n. 3 (Fla. 5th DCA 2010)	13
Drisdom v. Guarantee Trust Life Insurance Company, 371 So.2d 690 (Fla. 3d DCA 1979)	14
Excelsior Ins. Co. v. Pomona Park Bar & Package Store, 369 So.2d 938 (Fla.1979)	7, 8, 9
Friedman v. Va. Metal Prods. Corp., 56 So.2d 515, 517 (Fla.1952)	10, 11

Garcia v. Fed. Ins. Co.,
969 So.2d 288, 291(Fla.2007) 7

Harrington v. Citizens Prop. Ins. Corp.,
54 So.3d 999, 1002 (Fla. 4th DCA 2010) 9

Hoffman v. Terry,
397 So.2d 1184 (Fla. 3d DCA 1981) 12

Hrynkiw v. Allstate Floridian Ins. Co.,
844 So.2d 739, 741-42 (Fla. 5th DCA 2003) 6

Key v. Allstate Ins. Co.,
90 F.3d 1546, 1549 (11th Cir. 1996) 6

Kiln PLC v. Advantage Gen. Ins. Co., Ltd.,
80 So.3d 429, 432 (Fla. 4th DCA 2012) 11

Langner v. Charles A. Binger, Inc.,
503 So.2d 1362, 1363 (Fla. 3d DCA 1987) 11

Mac–Gray Services, Inc. v. Savannah Associates of Sarasota, LLC,
915 So.2d 657 (Fla. 2d DCA 2005) 15

National Union Fire Ins. Co. v. CBI Indus., Inc.,
907 S.W.2d 517, 520 n. 4 (Tex.1995) 15

Northside Marina Adventures v. Lexington Ins. Co.,
2007 WL 2316502 (S.D. Fla. 2009) 11, 12

Office Depot, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA,
453 Fed. Appx. 871 (11th Cir. 2011) 14

Office Depot, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.,
734 F. Supp. 2d 1304, 1315 (S.D. Fla. 2010) 14

Pasteur Health Plan, Inc. v. Salazar,
658 So.2d 543, 544 (Fla. 3d DCA 1995) 9

Penzer v. Transp. Ins. Co.,
29 So.3d 1000, 1005 (Fla. 2010) 9

Rathkamp v. Dept. of Community Affairs,
730 So.2d 866 (Fla. 3d DCA 1999) 2

Reinman, Inc. v. Preferred Mut. Ins. Co.,
513 So.2d 788 (Fla. 3d DCA 1987) 8, 10, 11

RTG Furniture Corp. v. Industry Risk Ins.,
616 F.Supp.2d 1258 (S.D. Fla. 2008) 11

Ruderman ex rel. Schwartz v. Washington Nat. Ins. Co.,
263 F.R.D. 670, 679-680 (S.D. Fla. 2010) 15

Ruderman ex rel. Schwartz v. Washington Nat. Ins. Corp.,
671 F.3d 1208, 1211 (11th Cir. 2012) 7

Ryan v. Commodity Futures Trading Commission,
125 F.3d 1062 (7th Cir. 1997) 2

Sproles v. American States Ins. Co.,
578 So.2d 482, 484 (Fla. 5th DCA 1991) 13

Strama v. Union Fid. Life Ins. Co.,
793 So.2d 1129, 1132 (Fla. 1st DCA 2001) 10

Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.,
913 So.2d 528, 532 (Fla.2005) 7

U.S. Fire Ins. Co. v. J.S.U.B., Inc.,
979 So.2d 871, 877 (Fla.2007) 7

Universal Underwriters Ins. Co. v. Steve Hull Chevrolet, Inc.,
513 So.2d 218 (Fla. 1st DCA 1987) 11

Williams v. Essex Ins. Co.,
712 So.2d 1232 (Fla. 1st DCA 1998) 10

PREFACE

This case is on review from questions certified to the Court by the Eleventh Circuit Court of Appeals.

INTRODUCTION

The Florida Justice Association ("FJA") is a voluntary statewide association of more than 4,000 trial lawyers concentrating on litigation in all areas of the law. The members of the FJA are pledged to the preservation of the American legal system, the protection of individual rights and liberties, the evolution of the common law, and the right of access to courts. The FJA has been involved as amicus curiae in hundreds of cases in the Florida appellate courts and this Court.

This is an important case involving an issue of insurance coverage, and application of Florida law to an ambiguous policy provision. The FJA is an organization of attorneys who represent consumers who purchase insurance policies. A question of Florida law on the application of rules of construction to insurance contracts is a matter of great interest to the FJA membership. Consumers who purchase insurance policies have the right to understand what is written in those policies. When a policy is ambiguous, it is imperative that Florida law interpret that ambiguity in a predictable and logical way.

The FJA believes that its input will be of assistance to the Court in resolving the issues raised, and that this Court's decision will have a tremendous impact on its members and their clients. See, e.g., Ciba-Geigy Ltd. v. Fish Peddler, Inc., 683 So.2d 522 (Fla. 4th DCA 1999) (briefs from amicus curiae are generally for the purpose of assisting the court in cases which are of general public interest, or

aiding in the presentation of difficult issues). Accord Rathkamp v. Dept. of Community Affairs, 730 So.2d 866 (Fla. 3d DCA 1999) (endorsing and adopting the opinion in Ryan v. Commodity Futures Trading Commission, 125 F.3d 1062 (7th Cir. 1997), regarding the role of amicus curiae).

SUMMARY OF ARGUMENT

This Court should answer the certified questions by reaffirming the application of the rules of insurance policy construction without the use of extrinsic evidence. Applying those well-worn rules to this case would require a determination of what reasonable meanings the words used in the insurance policy could have, and then applying the interpretation which is most favorable to the insured.

The rules of insurance policy construction were developed over the last century to deal with the unique problems presented by contracts of adhesion. Because the insurance company is in control of the words used in the insurance policy, and because it is an expert in insurance, this Court has always held the insurer strictly to the terms which appear in the policy, and has always interpreted ambiguities in the contract against the insurer without ever considering extrinsic evidence. There is no reason to depart from that rule.

Although some intermediate and federal courts have stated that extrinsic evidence may be taken to resolve ambiguities in insurance policies, those decisions have mistakenly relied on the rules of construction applicable to bargained-for contracts, not insurance policies. Indeed, the rule allowing for the introduction of extrinsic evidence to understand the parties' intent when a contract is ambiguous only makes sense when both parties had a hand in how the contract was drafted.

Where only one party chooses the words used, there is no "intention" to understand with extrinsic evidence. The words used must be applied if they are unambiguous, or the most favorable-to-the-insured (reasonable) understanding must be applied if the words chosen are ambiguous.

No one should assume that application of the most favorable, reasonable interpretation of the policy will always result in coverage for the insured. There will be circumstances when every reasonable interpretation of the policy results in a finding of no coverage. A finding of no coverage where the policy does not provide for coverage is not an unfair result. But by maintaining the rules of construction, this Court will be reaffirming the principle that insurers must comply with the contracts they sell. By refusing to allow the introduction of extrinsic evidence, this Court will prevent the insurer from taking unfair advantage of its understanding of the policy's intent to change the contract once the loss has occurred. Insureds must be able to rely on the words used in the contract, or the insurance contract becomes illusory.

ARGUMENT

CERTIFIED QUESTIONS

1. Does an ambiguity exist about whether the Policy's "Automatic Benefit Increase Percentage" applies only to the "Home Health Care Daily Benefit" or whether it also applies to the "Lifetime Maximum Benefit Amount" and the "Per Occurrence Maximum Benefit"?

2. If an ambiguity exists in this insurance policy—as we understand that it does—should courts first attempt to resolve the ambiguity by examining available extrinsic evidence?

3. Applying the Florida law principles of policy construction, does the Policy's "Automatic Benefit Increase Percentage" apply to the "Lifetime Maximum Benefit Amount" and to the "Per Occurrence Maximum Benefit" or does it apply only to the "Home Health Care Daily Benefit"?

Amicus, Florida Justice Association, files this brief only with regard to the second and third certified questions. It is assumed for purposes of this brief that there is an ambiguity in the policy. That particular question is not of sufficient general concern to warrant discussion by this amicus.

However, the question of how the courts must resolve ambiguities in an insurance policy is of particular concern to insureds residing in Florida. Insurance is crucial to most people, and purchasing a policy is generally a significant financial commitment. Insureds purchase insurance with the understanding that the insurance will provide coverage as stated in the policy.

Unfortunately, insurance policies are written in terminology which is difficult to comprehend. Explaining why the rules of construction of insurance

policies favor the insured, the Eleventh Circuit Court of Appeals wrote, "with respect to insurance policies in particular, which are often long, detailed, and difficult for most insureds to decipher, insurers, as drafters of insurance policies, have an obligation to state explicitly their intentions to limit coverage upon the happening of certain events or under certain circumstances." Key v. Allstate Ins. Co., 90 F.3d 1546, 1549 (11th Cir. 1996). In a similar vein, the Fifth District wrote the following when explaining how the court should approach insurance policy interpretation (Hrynkiw v. Allstate Floridian Ins. Co., 844 So.2d 739, 741-42 (Fla. 5th DCA 2003)):

> When determining the meaning and scope of an exclusion clause or other provisions of an insurance policy, legal niceties, technical terms, and phraseology extracted from the vernacular of the insurance industry should never transcend the common understanding of the ordinary person. Therefore, the proper inquiry is not whether a legal scholar can, with learned deliberation, comprehend the meaning of an insurance policy provision, but instead, whether it is understandable to a layperson. (Emphasis added).

It is well-established that an insurer has an obligation to write the insurance policy in a way that is free from ambiguity. As a result of these tensions, there are several rules of construction which apply to help courts interpret insurance policies.[1]

[1] The generally accepted rules of construction are: Insurance contracts are construed according to their plain meaning, with any ambiguities construed against

The problem the Eleventh Circuit has pointed out is that there are different contradictory rules of construction being used by Florida courts (Ruderman ex rel. Schwartz v. Washington Nat. Ins. Corp., 671 F.3d 1208, 1211 (11th Cir. 2012)):

> For us, the correct approach under Florida law in resolving the ambiguity in the Policy is unclear. The chief case out of the Florida Supreme Court on the interpretation of an ambiguity in insurance contracts seems to be Auto–Owners Ins. Co. v. Anderson, 756 So.2d 29 (Fla.2000). Anderson was a response to a question certified from this Court and has been repeatedly cited by state and federal courts for the principle that "[a]mbiguous policy provisions are interpreted liberally in favor of the insured and strictly against the drafter who prepared the policy." Id. at 34.
>
> While Anderson seems to support the District Court's entry of Summary Judgment against Washington National, another principle of Florida law supports looking to extrinsic evidence to resolve the ambiguity before construing any remaining ambiguity against the drafter of the policy. In Excelsior Ins. Co. v. Pomona Park Bar & Package Store, 369 So.2d 938 (Fla.1979), the Florida Supreme Court—many years before Anderson—qualified the longstanding rule of construing an ambiguity against the drafter, stating that "[o]nly when a genuine inconsistency, uncertainty, or ambiguity in meaning remains after resort to the ordinary rules of construction is the rule apposite." Id. at 942. This position has been the basis for many

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the insurer and in favor of coverage. U.S. Fire Ins. Co. v. J.S.U.B., Inc., 979 So.2d 871, 877 (Fla.2007) (citing Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co., 913 So.2d 528, 532 (Fla.2005)). If the relevant policy language is susceptible to more than one reasonable interpretation, one providing coverage and another limiting coverage, the insurance policy is considered ambiguous. Garcia v. Fed. Ins. Co., 969 So.2d 288, 291(Fla.2007) (quoting Auto-Owners Ins. Co. v. Anderson, 756 So.2d 29, 34 (Fla.2000)). To find in favor of the insured on this basis, however, the policy must actually be ambiguous. Garcia, 969 So.2d at 291 (citing Taurus Holdings, 913 So.2d at 532). A provision is not ambiguous simply because it is complex or requires analysis. If a policy provision is clear and unambiguous, it should be enforced according to its terms. Garcia, 969 So.2d at 291 (quoting Taurus Holdings, 913 So.2d at 532).

Florida state trial and appeals courts looking to extrinsic evidence to resolve policy ambiguities. See, e.g., Reinman, Inc. v. Preferred Mut. Ins. Co., 513 So.2d 788 (Fla. 3rd Dist.Ct.App.1987).

The conflict described by the Eleventh Circuit is problematic for Florida insureds. The rules of insurance policy construction were fashioned in an effort to make the terms of coverage ascertainable to the insured, even if the policy is ambiguous. The existence of alternative rules makes the interpretation of ambiguous policy provisions a matter of chance.

The Use of Extrinsic Evidence

It is inaccurate to interpret Excelsior as stating a limitation on the insurance policy rules of construction. This Court's decision in Excelsior merely stands as a warning to courts and litigants to not rely on strained or extreme interpretations of a policy to find an ambiguity.

In that decision, the "ambiguity" relied on by Pomona Park, if taken to its logical end, would have resulted in a void contract which Pomona Park intended to use as the reason to void the provision rather than enforce the provision and void the policy. While it is obvious that the policy provision in question could have been interpreted as advocated by Pomona Park, this Court's refusal to do so was a warning to remind courts that they must first try to interpret the ambiguity in favor of coverage in a way that effectuates the terms of the policy, and to not resort to an interpretation which voids the policy, unless that conclusion is the only reasonable

conclusion. The argument made by Pomona Park resorted immediately to a literal interpretation of the policy which would result in no coverage at all – a result which was obviously contrary to the purpose of insurance. In other words, the reasonable starting point should be that no one purchases, and no insurance company sells, an insurance policy which provides no coverage for any loss. It is incorrect, however, to take from Excelsior an understanding that this Court changed or in any way limited the rules of construction. The real meaning is that there must be a genuine ambiguity before utilizing the rules of construction.

The standard rule of construction regarding ambiguity states that if an insurance policy is ambiguous, it must be interpreted in favor of coverage (i.e. against the drafter). This rule exists because an insurance policy is a contract of adhesion. Pasteur Health Plan, Inc. v. Salazar, 658 So.2d 543, 544 (Fla. 3d DCA 1995); Harrington v. Citizens Prop. Ins. Corp., 54 So.3d 999, 1002 (Fla. 4th DCA 2010). This simple rule of construction makes sense because the definition of an ambiguity is that the relevant policy language is susceptible to more than one reasonable interpretation, one providing coverage and another limiting coverage, the insurance policy is considered ambiguous. Penzer v. Transp. Ins. Co., 29 So.3d 1000, 1005 (Fla. 2010). Applying this rule of construction merely means that the court should first decide whether there are two (or more) reasonable interpretations and then, if there are, apply the one which provides the greatest coverage (or the

narrowest exclusion). It is not a difficult rule to employ. There is no place for extrinsic evidence when applying the rule. The purpose of extrinsic evidence would be to discern a meaning of the policy using information which was unknown by the insured when he or she purchased the policy.[2]

Although the rules of construction stated by this Court clearly require courts to construe ambiguous provisions in an insurance policy in a manner which provides the greatest coverage, some courts have nevertheless permitted the use of extrinsic or parol evidence to determine the meaning of the ambiguous provision. In Castillo v. State Farm Florida Ins. Co., 971 So.2d 820, 823 (Fla. 3d DCA 2007), the court wrote, "[W]hen the terms of the contract are ambiguous [and] susceptible to different interpretations, parol evidence is admissible to 'explain, clarify or elucidate' the ambiguous term." Citing Strama v. Union Fid. Life Ins. Co., 793 So.2d 1129, 1132 (Fla. 1st DCA 2001) (which, in turn, cited Friedman v. Va. Metal Prods. Corp., 56 So.2d 515, 517 (Fla.1952)); see also Williams v. Essex Ins. Co., 712 So.2d 1232 (Fla. 1st DCA 1998) (remanding with instructions to the trial court to take extrinsic evidence to determine whether the parties intended the

[2] Because an insurance policy is a contract of adhesion, the insured is never part of the decision of what terms to use. The "intent" of the drafter would therefore be something that is of no concern to the insured. The insured can only read the policy and decide whether to purchase it based on the written terms chosen. In reality, though, the insured never sees a copy of the policy until days or weeks after it is purchased, and at that time would have to read it and decide whether to keep it or replace it based on the written terms. Regardless, the insured is never privy to the drafter's intent.

policy to be primary or excess insurance – citing Reinman, infra.). The Fourth District adopted the same view in Kiln PLC v. Advantage Gen. Ins. Co., Ltd., 80 So.3d 429, 432 (Fla. 4th DCA 2012) ("In the case of an ambiguous insurance policy, where extrinsic evidence is available, consideration of that evidence may be appropriate").[3]

In Universal Underwriters Ins. Co. v. Steve Hull Chevrolet, Inc., 513 So.2d 218 (Fla. 1st DCA 1987), the court wrote that "where the terms of the written instrument are disputed and reasonably susceptible to more than one construction, an issue of fact is presented as to the parties' intent which cannot properly be resolved by summary judgment." (citing Langner v. Charles A. Binger, Inc., 503 So.2d 1362, 1363 (Fla. 3d DCA 1987). The court in Northside Marina Adventures v. Lexington Ins. Co., 2007 WL 2316502 (S.D. Fla. 2009), also allowed the use of parol evidence to explain the parties' intent and resolve an ambiguous policy, but did so by relying on non-insurance cases.

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[3] Amicus would point out to this Court that the use of extrinsic evidence in Kiln may have been proper, even though the court was concerned with the interpretation of the insurance policy. The evidence in Kiln presented a dispute over who drafted the policy. There was evidence that the terms were dictated by the insured and typed by the insurer. Under these unusual facts, it is apparent that the resultant insurance policy was not a contract of adhesion. The situation is similar to that found in RTG Furniture Corp. v. Industry Risk Ins., 616 F.Supp.2d 1258 (S.D. Fla. 2008) ("[the principle of construction of ambiguous insurance provisions against the insurer], which flows under the doctrine of *contra preferentum*, is sensibly applied in the insurance contract context where the insurer has typically drafted the policy; however, it has no logical application where the insured is a sophisticated commercial entity which has participated in drafting of the policy").

The origin of most of these cases appears to be Reinman, Inc. v. Preferred Mut. Ins. Co., 513 So.2d 788 (Fla. 3d DCA 1987), which came to the conclusion that extrinsic evidence was admissible by relying on Friedman v. Va. Metal Prods. Corp., 56 So.2d 515, 517 (Fla.1952), and Hoffman v. Terry, 397 So.2d 1184 (Fla. 3d DCA 1981), both of which did not construe insurance policies. The Fifth District in Steve Hull Chevrolet and the Southern District in Northside Marina came to the same conclusion in the respective decisions cited above by also relying on non-insurance decisions. For that reason, they came to the wrong conclusion.

As noted above, the rules of construction for insurance policies were created because insurance policies are contracts of adhesion. The courts which have decided how to resolve an ambiguity in an insurance policy by looking to decisions construing bargained-for contracts which are not insurance policies for guidance have failed to appreciate the distinction between the two types of contracts. It is pointless to ask what the parties intended by certain policy language where only one party chose the language.[4] Allowing the insurer to offer evidence of what the

[4] In this respect, the following passage from Auto-Owners Ins. Co. v. Anderson, 756 So.2d 29, 34 (Fla. 2000), could further confuse the distinction, "Florida law provides that insurance contracts are construed in accordance with the plain language of the policies as bargained for by the parties." In most situations, the terms of the insurance policy are not "bargained for" by the insured. The insured agrees to purchase the insurance and pays the premium, only to receive the policy days or weeks later.

policy means after it has collected a premium and after the insured has relied on the policy language used allows the insurer to benefit from the ambiguity.

Proper application of the insurance policy rules of construction require the court to first read the policy and decide whether the policy language is clear and unambiguous or whether it is ambiguous. If the policy terms are unambiguous, then the court must apply the policy according to its plain meaning. Auto-Owners Ins. Co. v. Anderson, 756 So.2d 29, 34 (Fla. 2000). If the terms are susceptible of more than one reasonable interpretation, then the court must adopt the meaning which provides the greatest coverage. Id; Container Corp. of Am. v. Maryland Cas. Co., 707 So.2d 733, 736 (Fla.1998).

As explained by the Fifth District Court of Appeal, interpretation of an ambiguous insurance policy is a question of law. See Sproles v. American States Ins. Co., 578 So.2d 482, 484 (Fla. 5th DCA 1991) ("The determination of whether or not a [insurance] contract provision is ambiguous and if so, the resolution of that ambiguity and the application of legal principles is a matter of law for the judge and not a matter of fact for the jury"); Dickson v. Economy Premier Assur. Co., 36 So.3d 789, 790-792 n. 3 (Fla. 5th DCA 2010) (reversing summary judgment in favor of insurer and remanding for entry of summary judgment in favor of the insured [not a trial] because "at best [for the insurer], the language is ambiguous ... and any ambiguity would have to be resolved in favor of [the insured]"). The court

in Sproles held that the jury's role in that insurance case was to decide whether the accident occurred on a "public road" after the court decided the definition of public road to be used in the policy interpretation and instructed the jury on that definition. The Fifth District rejected the argument that the jury should have been instructed on policy interpretation.

Applying the rules of insurance policy construction to an ambiguous policy, as an issue of law, must be decided by construing the policy liberally in favor of the insured. That is not to say that every ambiguity will result in coverage for the claim. It might be that the most pro-insured interpretation still does not bring the claim within coverage. In that situation it still presents an issue of law for the court, and judgment would be entered in favor of the insurer.

The Latent/Patent Distinction

Some courts have created an ill-advised variation of the rules of construction based on different types of ambiguities. The ill-advised rule states that where there is a "latent" ambiguity in the policy (as opposed to a patent ambiguity), extrinsic evidence is permissible to explain the ambiguity. See Drisdom v. Guarantee Trust Life Insurance Company, 371 So.2d 690 (Fla. 3d DCA 1979).

This Court contributed somewhat to the use of the latent/patent ambiguity by describing the ambiguous insurance policy language in DaCosta v. Gen. Guar. Ins. Co. of Florida, 226 So.2d 104, 105 (Fla. 1969), as "the patent ambiguity." The

court in Office Depot, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 734 F. Supp. 2d 1304, 1315 (S.D. Fla. 2010), aff'd *sub nom.*, Office Depot, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 453 Fed. Appx. 871 (11th Cir. 2011), took that description to be confirmation of the patent/latent distinction, and noted that extrinsic evidence may be used to determine the intent of the parties to resolve a latent ambiguity, citing Mac–Gray Services, Inc. v. Savannah Associates of Sarasota, LLC, 915 So.2d 657 (Fla. 2d DCA 2005). The court in Auto-Owners Ins. Co. v. Hous. Auth. of City of Tampa, 121 F. Supp. 2d 1365, 1367 (M.D. Fla. 1999), aff'd *sub nom.*, Auto Owners Ins. Co. v. City of Tampa Hous. Auth., 231 F.3d 1298 (11th Cir. 2000), also intimated that there was a different rule of construction for a "latent ambiguity" in an insurance policy. In this case, the district court below also relied on the perceived latent/patent ambiguity distinction and noted that extrinsic evidence can be used to decide the meaning of a latent ambiguity. Ruderman ex rel. Schwartz v. Washington Nat. Ins. Co., 263 F.R.D. 670, 679-680 (S.D. Fla. 2010), citing Da Costa.[5]

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[5] In Deni Associates of Florida, Inc. v. State Farm Fire & Cas. Ins. Co., 711 So.2d 1135, 1139 (Fla. 1998), this Court discussed and rejected the latent ambiguity distinction in that case, although not in all insurance cases, by referring to "the green house on Pecan Street" example described in National Union Fire Ins. Co. v. CBI Indus., Inc., 907 S.W.2d 517, 520 n. 4 (Tex.1995). Amicus would note that the example used by the Texas court involved a sales contract, not an insurance policy. The example therefore suffers from the same flaw as the other decisions described herein; they all import rules of construction developed in disputes over the meaning of contracts which the parties bargained. Where there is no bargain,

This Court's decision in this case is an appropriate vehicle to explain that there is no latent/patent ambiguity distinction, and that all ambiguous terms in an insurance policy must be construed in favor of coverage. The Court will note that the courts which have recognized the distinction base it on authorities which are not insurance cases. Using the law developed to resolve disputes over bargained-for contracts is inappropriate because a bargained-for contract actually involves the intent of the drafters. Both parties to the contract have a hand in the words chosen. An insurance policy, however, is a contract of adhesion and only one party – the insurance company – chooses the language used. Allowing the insurance company to introduce evidence of what it meant by the words chosen is hardly an equitable remedy to the insured who can introduce no such evidence. The insurer will always have evidence from the underwriter or language drafter that supports its after-the-loss conclusion that there is no coverage.

There is also the problem of defining latent and patent ambiguities with any precision. The popular definition used in the cases cited above define a latent defect as occurring when the policy language is clear but some extrinsic fact creates an ambiguity in application. For example, if a liability policy provides coverage for Joseph Smith while he is driving a rented vehicle, but there are two people named Joseph Smith in the household, Joseph Smith, Sr. and Joseph Smith,

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there can be no equal understanding of contractual intent. Without an equal understanding of intent, the insured would be at the mercy of the insurer.

Jr., there will be a dispute when Joseph Smith, Jr. causes an injury with a rented vehicle and the victim makes a claim. An insurer would describe this as a "latent" ambiguity because the policy terms would not appear to be ambiguous until some extrinsic fact is known; that there are two people named Joseph Smith in the household.

Using the latent/patent ambiguity distinction, the insurer in this scenario would deny coverage for the injuries caused, and then present evidence that the ambiguous policy terminology was intended to only provide coverage for Joseph Smith, Sr. while using a rented car. Or, if it was Joseph Smith, Sr. who caused the injuries while driving a rented car, then the insurer would be free to offer evidence that it intended only Joseph Smith, Jr. to be insured for such losses. The latent/patent ambiguity distinction would therefore encourage the insurer to be ambiguous in the wording of the policy so it would have flexibility when the claim was made.

The insured, on the other hand, could argue that the ambiguity is patent simply because the name John Smith is not sufficiently descriptive to mean only one person. There were always two people with the same name in the household, and it was up to the insurer to describe the insurance being provided accurately. When an insurer issues a homeowners policy, the home is described by an address or a legal description contained in the deed. Similarly, the insurer in the above

example had an opportunity to clarify the policy when it is issued, by specifying Sr. or Jr., or the specific legal description of the property insured, and should not be permitted to shift the burden of drafting the policy to the insured after the loss has occurred.

Situations such as the hypothetical above should never place the insured in the position of doubt. If there is an ambiguity in the policy, whether it is latent or patent, the ambiguity must be resolved in favor of the greatest coverage. Any other rule puts the insured at the risk of the insurer's chosen language, a rule which is contrary to the fact that the insured had no choice in the terms used in the contract of adhesion. In a contract of adhesion, ambiguities must be construed against the drafter. As the Respondent has very thoroughly explored, the rule that all ambiguities in an insurance policy are construed against the insurer has been the law in Florida since the beginning of the last century. The confusion caused by court opinions eroding that important rule should be disapproved so that insureds can count on a consistent application of the law.

The second question certified by the Eleventh Circuit is:

> If an ambiguity exists in this insurance policy—as we understand that it does—should courts first attempt to resolve the ambiguity by examining available extrinsic evidence?

The answer to this question is that if there is an ambiguity in the insurance policy, the ambiguity is resolved by 1) determining all reasonable interpretations of

the policy provision, and then 2) adopting the interpretation which provides the greatest coverage. There is no place in the interpretation of a contract of adhesion to allow the drafter to give new meaning to the contract after the insured has suffered a loss. Because the drafter had absolute control over the terms used when the policy was drafted, this Court's well-established rules of construction resolve the dispute in favor of the insured. There is no basis to change those rules now.

The answer to Question 3 follows from this rule; the trial court should determine which interpretation of the policy is most beneficial to the insured and apply that meaning to the contract.

CONCLUSION

The answer to Question 2 is that if there is an ambiguity in the insurance policy, the ambiguity is resolved by 1) determining all reasonable interpretations of the policy provision, and then 2) adopting the interpretation which provides the greatest coverage. The Court should not take or use extrinsic evidence to resolve the ambiguity in a manner which is contrary to this Court's rules of insurance policy construction. Question 3 would then be resolved by determining which interpretation of the policy language is most beneficial to the insured.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been Electronically filed with this Court via e-file@flcourts.org, and was furnished to DANIEL J. KOLEOS, ESQ., 8211 W. Broward Blvd., Ph. 4, Ft. Lauderdale, FL 33324; ADAM J. KAISER, ESQ. , 1301 Avenue of the Americas, New York, NY 10019; STEVEN R. JAFFE, ESQ. and MARK S. FISTOS, ESQ., 425 N. Andrews Ave., Ste. 2, Ft. Lauderdale, FL 33301; NEIL ROSE, ESQ., 4000 Hollywood Blvd., Ste. 610 N, Hollywood, FL 33021; STEVEN M. DUNN, ESQ., 1135 Kane Concourse, Floor 5, Bay Harbor Islands, FL 33154; LEE A. WEISS, ESQ., 2121 Avenue of the Stars, Ste. 2400, Los Angeles, CA 90067; RICHARD J. LANTINBERG, ESQ., 444 E. Duval St., Jacksonville, FL 32202; JASON S. MAZER, ESQ. , 30th Floor, 100 S.E. 2nd St., Miami, FL 33131; WILLIAM D. HORGAN, ESQ., 111 N. Calhoun St., Tallahassee, FL 32301; and LAURA A. FOGGAN, ESQ., 1776 K St., Washington, D.C., 20006,by mail, on July 3, 2012.

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CERTIFICATE OF TYPE SIZE & STYLE

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