

Client Alert

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Florida Supreme Court Denies Resort to Extrinsic Evidence to Resolve Ambiguities in Insurance Contracts

On July 3, 2013, the Florida Supreme Court confirmed a key aspect of insurance law, holding that where a policy is ambiguous, it must be construed against the insurer and in favor of coverage without resort to consideration of extrinsic evidence. The case is *Washington v. Ruderman*, No. SC12-323, 2013 WL 3333059 (Fla. July 3, 2013). Three members of the court dissented.

Background

This case originated in the Southern District of Florida and concerned insurance policies providing for reimbursement of certain home health care expenses. The controversy concerned whether the “Automatic Benefit Increase Percentage” provision contained in the home health care policies applied only to the daily benefit amount or also applied to the per occurrence maximum benefit amount and the lifetime maximum benefit amount. The district court and the U.S. Court of Appeals for the Eleventh Circuit found the policy to be ambiguous. Because of conflicting language in Florida Supreme Court precedent, the Eleventh Circuit was uncertain whether it was permitted to consider extrinsic evidence concerning the terms of the policy. The Eleventh Circuit’s uncertainty stemmed from *Excelsior Ins. Co. v. Pomona Park Bar & Package Store*, 369 So. 2d 938 (Fla. 1979), where the Florida Supreme Court stated “[o]nly when a genuine inconsistency, uncertainty, or ambiguity in meaning remains after resort to the ordinary rules of construction is the rule [of construction against the drafter] apposite.” In other cases, such as *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000), the court had held that “[a]mbiguous policy provisions are interpreted liberally in favor of the insured and strictly against the drafter who prepared the policy.” The Eleventh Circuit therefore certified its question concerning the use of extrinsic evidence (among others) to the state supreme court.

Holding

The Florida Supreme Court agreed with the Eleventh Circuit that the policy was ambiguous and held that “[u]nder Florida law, because the policy is ambiguous it must be construed against the insurer and in favor of coverage without resort to consideration of extrinsic evidence.” The court stated that “nothing in *Excelsior* expressly holds that extrinsic evidence must be considered in determining if an ambiguity exists. Further, nothing in *Excelsior* constitutes an implicit declaration that resort must be made to consideration of extrinsic evidence before an insurance policy is found to be ambiguous and construed against the insurer.” Instead the court held that ambiguities are to be construed liberally in favor of the insured and strictly against the insurer.

The majority rejected the dissent’s contention that the policy was unambiguous and the dissent’s contention that “an ambiguous contract is construed against the insurer only as a last resort, meaning only after all available construction aids, including extrinsic evidence, fail to resolve the ambiguity.” As such, the majority confirmed that ultimate responsibility for policy language lies with the insurer and that, because the purpose of insurance is to provide protection, ambiguities are automatically to be construed in favor of insurance.

Implications

The court's ruling confirms a central principle of insurance law: ambiguities in a policy are to be construed in favor of coverage. This ruling will assist insureds to obtain the broadest coverage consistent with policy language. By interpreting ambiguities in favor of coverage, the court, moreover, has made it less burdensome for insureds to pursue their rights under insurance policies by eliminating the need for expensive discovery concerning extrinsic evidence about policy drafting.

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