IN THE
COURT OF APPEALS OF MARYLAND

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NO. 21
SEPTEMBER TERM, 2014

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PEOPLE'S INSURANCE COUNSEL DIVISION,

Petitioner,

v.

STATE FARM FIRE AND CASUALTY INSURANCE COMPANY,

Respondent.

_____

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

_____

BRIEF OF AMICI CURIAE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES, LEAGUE OF LIFE AND HEALTH INSURERS OF MARYLAND, MEDICAL MUTUAL LIABILITY INSURANCE SOCIETY OF MARYLAND

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Property Casualty Insurers Association of America, National Association of Mutual Insurance Companies, League of Life and Health Insurers of Maryland, and Medical Mutual Liability Insurance Society of Maryland (collectively, "Amici Curiae"), pursuant to Maryland Rule 8-511(a)(1), file this Brief of Amici Curiae in support of the position of the Respondent, State Farm Fire and Casualty Insurance Company.[1]

STATEMENT OF THE CASE

Amici Curiae adopt the Statement of the Case of the Respondent.

QUESTION PRESENTED

Should this Court abandon the longstanding and well-settled principle that insurance policies issued and delivered in Maryland are construed as ordinary contracts and, in its place, adopt the minority view that insurance policies are construed as a matter of course strongly against the insurer?

STATEMENT OF FACTS

Amici Curiae adopt the Statement of Facts of the Respondent.

STANDARD OF REVIEW

This case arose out of a complaint filed by the holder of a homeowner's insurance policy with the Maryland Insurance Administration (the "Administration"), alleging an unfair claim settlement practice of the insurer in violation of Md. Code Ann., Ins. § 27-303. The Administration found no violation. The People's Insurance Counsel Division ("PICD") filed a petition for judicial review of the Administration's decision in the Circuit Court for Baltimore City. The Circuit Court affirmed the final decision of the Administration. PICD filed an appeal to the Court of Special Appeals, which correctly stated the standard of review in an appeal from the judgment of the circuit court on judicial review of a final agency decision. The Court's review is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and

[1] Amici Curiae obtained the written consent of both parties to this appeal to file this brief in support of the position of the Respondent. *See* Md. Rule 8-511(a)(1).

conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. *People's Ins. Counsel Div. v. State Farm Fire & Cas. Ins. Co.*, 214 Md. App. 438, 449 (2013); *see also Bereano v. State Ethics Comm'n*, 403 Md. 716, 732 (2008) (noting that the "substantial evidence" test applies at each level of judicial and appellate review).

PICD asks this Court to reexamine Maryland common law on construing insurance contracts and hold that terms contained in an insurance policy must be strictly construed against the insurer. This requested reexamination is unnecessary to the disposition of this case. The interpretation of the policy is irrelevant to the issue before this Court – whether the Respondent engaged in an unfair claim settlement practice in violation of Md. Code Ann., Ins. § 27-303. As the Court of Special Appeals correctly observed:

> The findings of the [Administration] in the case at bar constituted substantial evidence to support its ultimate determination that State Farm denied the Taylors' claim based upon a "lawful principle or standard" that the insurer applied consistently to all claims and that State Farm acted honestly and diligently in adjusting the claim, *i.e.*, in good faith. On this basis alone, we would affirm the decision of the [Administration]. Even if we disagreed with State Farm's interpretation of its Policy language, we would conclude that the record contains substantial evidence to support the [Administration]'s decision that State Farm did not adjust the Taylors' claim arbitrarily or without good faith and hence did not engage in the alleged unfair claim settlement practices.

People's Ins. Counsel Div., 214 Md. App. at 452.

Any examination of the common law rules of interpretation of insurance policies in this case is *dictum* and may be avoided on that ground alone. The dispositive issue in this case is whether there is substantial evidence to support the Administration's decision that Respondent did not violate Md. Code Ann., Ins. § 27-303 in denying the insured's claim. The common law rules of insurance policy interpretation are not relevant to this issue or to this case.

ARGUMENT

In *Dutta v. State Farm Insurance Co.*, 363 Md. 540, 556 (2001), the Court of Appeals observed that "Maryland does not follow the rule that insurance policies should, as a matter of course, be construed against the insurer." Similarly, in *Cheney v. Bell National Life Insurance Co.*, 315 Md. 761, 766-67 (1989), the Court of Appeals stated that "Maryland does not follow the rule, adopted in many jurisdictions, that an insurance policy is to be construed most strongly against the insurer." To the contrary, in Maryland, "insurance contracts are construed as ordinary contracts." *Dutta*, 363 Md. at 556.

In this case, PICD asks this Court to re-examine Maryland common law on construing insurance contracts and to hold that terms contained in an insurance policy must be strictly construed against the insurer. Brief of Petitioner at 4. PICD claims that forty-four states construe insurance policies most liberally in favor of the insured. *Id.* at 14.

Amici Curiae respectfully submit that PICD's research is flawed. Contrary to PICD's assertion about other jurisdictions, "the principles applied under Maryland law to the construction of insurance contracts . . . are by no means unique to this State." *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 387 (1985). In fact, a majority of jurisdictions construe insurance policies as ordinary contracts, using rules of construction similar to Maryland's. *See* Appendix A to this Brief. In these jurisdictions, a court will enforce the plain and unambiguous language of the policy even if it favors the insurer and will look to extrinsic or parol evidence to resolve an ambiguity even if the resolution favors the insurer. A handful of jurisdictions hold that courts should enforce the reasonable expectations of the policyholder even if the plain and unambiguous language of the policy favors the insurer. *See* Appendix C to this Brief. A larger number of jurisdictions (but still a minority) will enforce plain and unambiguous language favoring

the insurer but will resolve ambiguous language against the insurer without regard to extrinsic or parol evidence bearing on the parties' intent. *See* Appendix B to this Brief.[2]

This Court should reject the proposition advanced by PICD that insurance contracts should be construed as a matter of course most strongly against the insurer. Instead, this Court should apply the doctrine of *stare decisis* and reaffirm the longstanding and well-settled common law rule that, in Maryland, insurance contracts are construed as ordinary contracts and are not subject to a special set of rules applicable only to insurance contracts.[3]

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[2] Not surprisingly, given PICD's misunderstanding of the law in other jurisdictions, twenty of the forty-four cases cited by PICD in its Petition for Certiorari in support of its position were decided in favor of the insurer. *See* Petition for Certiorari at Appendix A. PICD also cites forty-four decisions in Appendix A to its Brief. However, twenty-two of these cases are different from the cases cited in PICD's Petition for Certiorari. *See* Brief of Petitioner at App. A-1 – A-2. Still, sixteen of the forty-four cases cited by PICD in the Appendix to its Brief were decided in favor of the insurer.

[3] PICD makes much of the fact that an insurance policy is a contract of adhesion. *See* Brief of Petitioner at 14. Then Chief Judge Wilner, writing for the Court of Special Appeals, disposed of this issue:

> The fact that a contract is one of adhesion does not mean that either it or any of its terms are invalid or unenforceable. A court will, to be sure, look at the contract and its terms with some special care. As in most cases, it will refuse to enforce terms that it finds unconscionable and will construe ambiguities against the draftsman; but it will not simply excise or ignore terms merely because in any given case, they may operate to the perceived detriment of the weaker party.

Meyer v. State Farm Fire & Cas. Co., 85 Md. App. 83, 89-90 (1990).

I. Under Maryland Common Law, The Rules Of Construction For Ordinary Contracts Apply To Insurance Policies Issued And Delivered In Maryland

It is well settled in Maryland that an insurance policy is a contract, construed in accordance with the ordinary principles of contract interpretation. *Springer v. Erie Ins. Exch.*, No. 79, Sept. Term 2013, 2014 Md. LEXIS 376, at *23 (Md. June 24, 2014); *United Servs. Auto. Ass'n v. Riley*, 393 Md. 55, 79 (2006); *Dutta*, 363 Md. at 556; *Kendall v. Nationwide Ins. Co.*, 348 Md. 157, 165 (1997); *N. River Ins. Co. v. Mayor of Baltimore*, 343 Md. 34, 39 (1996). Like any other contract governed by Maryland law, an insurance policy is measured by its terms, unless the terms violate a statute, regulation, or public policy. *Springer*, 2014 Md. LEXIS 376, at *23; *Moscarillo v. Prof'l. Risk Mgmt. Servs., Inc.*, 398 Md. 529, 540 (2007); *United Servs. Auto. Ass'n*, 393 Md. at 79; *Pac. Indem. Co.*, 302 Md. at 388.[4]

The point of the whole analysis is to determine the intention of the parties. *Moscarillo*, 398 Md. at 540; *Pac. Indem. Co.*, 302 Md. at 388. The intention of the parties is to be ascertained from the policy as a whole. *Moscarillo*, 398 Md. at 540; *United Servs. Auto. Ass'n*, 393 Md. at 79; *Clendenin Bros v. U.S. Fire Ins. Co.*, 390 Md. 449, 458 (2006); *Sullins v. Allstate Ins. Co.*, 340 Md. 503, 508 (1995); *Cheney*, 315 Md. at 766-67; *Pac. Indem. Co.*, 302 Md. at 388.

The determination of coverage under an insurance policy requires an examination of the policy to determine the scope and limitations of its coverage. *United Servs. Auto. Ass'n*, 393 Md. at 80; *Chantel Assocs. v. Mount Vernon Fire Ins. Co.*, 338 Md. 131, 142

[4] The first section of the Argument is intended to be a compilation of the rules applied by this Court over the last thirty years in construing insurance policies. This section does not purport to be a summary of the rules of policy interpretation; it is rather a compilation of the Court's own language in enunciating the governing principles. The exercise is useful because no single case describes all of the rules of policy interpretation. Altogether the principles set forth in this section are drawn from eighteen insurance policy interpretation cases. Even without applying the stringent rules of construction urged by PICD, the Court decided thirteen of these eighteen cases in favor of the insured.

(1995). In the first instance the inquiry is confined to analysis of the language used. *Pac. Indem. Co.*, 302 Md. at 389. The interpretation of an insurance policy to determine the scope and limitations of coverage begins with the contract language employed by the parties. *Clendenin Bros.*, 390 Md. at 459; *MAMSI Life & Health Ins. Co. v. Callaway*, 375 Md. 261, 279 (2003); *Cole v. State Farm Mut. Ins. Co.*, 359 Md. 298, 305 (2000); *Chantel Assocs.*, 338 Md. at 142; *Kendall*, 348 Md. at 166.

In construing specific words or terms in an insurance contract, the court gives them their customary, ordinary, and accepted meaning unless there is evidence that the parties intended to employ them in a special or technical sense. *Springer*, 2014 Md. LEXIS 376, at *23; *Clendenin Bros.*, 390 Md. at 459; *Dutta*, 363 Md. at 556; *United Servs. Auto. Ass'n*, 393 Md. at 80; *Lloyd E. Mitchell, Inc. v. Md. Cas. Co.*, 324 Md. 44, 56 (1991); *MAMSI Life & Health Ins. Co.*, 375 Md. at 279; *Sullins*, 340 Md. at 508; *Chantel Assocs.*, 338 Md. at 142; *Cheney*, 315 Md. at 766; *Pac. Indem. Co.*, 302 Md. at 389. The test is what meaning a reasonably prudent layperson would attach to terms of the contract. *Sullins*, 340 Md. at 508; *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 779 (1993); *Pac. Indem. Co.*, 302 Md. at 388.

If the terms used in the insurance policy are plain and unambiguous, the court will determine the meaning of the terms of the contract as a matter of law. *Clendenin Bros.*, 390 Md. at 459; *MAMSI Life & Health Ins. Co.*, 375 Md. at 279; *Cole*, 359 Md. at 305. If no ambiguity in the terms of the insurance contract exists, the court must enforce those terms. *Dutta*, 363 Md. at 556; *Kendall*, 348 Md. at 171. Courts in Maryland follow the law of objective interpretation of contracts, giving effect to the clear terms of the contract regardless of what the parties to the contract may have believed those terms to mean. *United Servs. Auto. Ass'n*, 393 Md. at 79. When the language of the contract is plain and unambiguous, there is no room for construction, and a court must presume that the parties meant what they expressed. *Id.* at 80. The true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant. *Id.* The clear and unambiguous language of an

agreement will not give way to what the parties thought that the agreement meant or intended it to mean. *Id*.

A term of an insurance contract is ambiguous if a reasonably prudent person would understand the term as susceptible to more than one possible meaning. *Id*.; *Clendenin Bros.*, 390 Md. at 459; *MAMSI Life & Health Ins. Co.*, 375 Md. at 279; *Cole*, 359 Md. at 305-06; *Sullins*, 340 Md. at 508; *Collier v. MD-Individual Practice Ass'n*, 327 Md. 1, 6 (1992); *Pac. Indem. Co.*, 302 Md. at 389. To determine if language is susceptible to more than one meaning, the court should examine the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution. *Moscarillo*, 398 Md. at 540; *United Servs. Auto. Ass'n*, 393 Md. at 80; *Clendenin Bros.*, 390 Md. at 459; *MAMSI Life & Health Ins. Co.*, 375 Md. at 279; *Pac. Indem. Co.*, 302 Md. at 388. A term that is clear in one context may be ambiguous in another. *Sullins*, 340 Md. at 508; *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 74 (1986). Whether a term is ambiguous is itself a question of law. *United Servs. Auto. Ass'n*, 393 Md. at 79.

If the language of the contract is ambiguous, extrinsic and parol evidence may be consulted to determine the intention of the parties and whether the ambiguous language has a trade usage. *Clendenin Bros.*, 390 Md. at 459; *MAMSI Life & Health Ins. Co.*, 375 Md. at 279; *Cole*, 359 Md. at 305; *Sullins*, 340 Md. at 508; *Collier*, 327 Md. at 6; *Cheney*, 315 Md. at 767; *Pac. Indem. Co.*, 302 Md. at 389. Construction of the contract by the parties to it before the controversy arises is an important aid to interpretation of uncertain terms. *Pac. Indem. Co.*, 302 Md. at 389.

The court may construe an ambiguous contract if there is no factual dispute in the extrinsic evidence. *Id.* If the extrinsic evidence presents disputed factual issues, construction of the ambiguous contract is for the jury. *Id*.

If no party presents extrinsic or parol evidence bearing upon the meaning of the ambiguous term, or if the ambiguity remains after consideration of extrinsic or parol evidence that is introduced, the court would normally apply the principle of contract

construction that where one party is responsible for the drafting of an instrument, absent evidence indicating the intention of the parties, any ambiguity will be resolved against that party, where no material evidentiary factual dispute exists. *Clendenin Bros,* 390 Md. at 459-60; *Sullins,* 340 Md. at 508-09; *Collier, Inc*., 327 Md. at 6; *Cheney*, 315 Md. at 767; *Pac. Indem. Co.*, 302 Md. at 405. Under general principles of contract construction, if an insurance policy is ambiguous, it will be construed liberally in favor of the insured and against the insurer as drafter of the instrument. *MAMSI Life & Health Ins. Co.*, 375 Md. at 280; *Dutta*, 363 Md. at 556. As Judge Harrell, then a member of the Court of Special Appeals, noted in *Empire Fire & Marine Insurance Co. v. Liberty Mutual Insurance Co.*:

> Students of Latin . . . might recognize this as the doctrine of *contra proferentem*. The principle for this rule is that, as a matter of fairness, because the insurer prepared the policy, it is just and reasonable that the drafter's own words should be construed against it.

117 Md. App. 72, 98 n.10 (1997).

The Court of Special Appeals did not have to apply these common law rules to dispose of this appeal. However, the Court agreed "with State Farm's interpretation of its Policy language, as did the [Administration], and also would affirm on that basis." *People's Ins. Counsel Div.*, 214 Md. App. at 453. Faithfully applying the common law rules of contract interpretation set forth above, the Court of Special Appeals, in *dictum*, concluded that a carport is not a "building" as that word is commonly used and understood. The term "building" as used in Respondent's insurance policy is plain and unambiguous and must be enforced in accordance with its accepted meaning. *Id.* at 456. Had this case been an original action in circuit court to resolve a coverage dispute or an appeal from an adverse decision by the Administration under Md. Code Ann., Ins. § 27-1001, regarding first-party property and casualty coverage, rather than judicial review of a final agency decision under Md. Code Ann., Ins. § 27-303, regarding the claim

settlement practices of the insurer, the Court of Special Appeals would have concluded that there was no coverage for the damaged carport.

II. A Vast Majority Of Jurisdictions Enforce The Plain And Unambiguous Terms Of Insurance Policies As Written

PICD asserts that forty-four jurisdictions construe insurance policies liberally in favor of the insured and argues that Maryland should join these jurisdictions by changing its rules of construction for insurance policies. Brief of Petitioner at 14. PICD's research is fundamentally flawed. In fact, in forty-four jurisdictions, including Maryland, courts enforce the plain and unambiguous terms of the insurance policy even if the policy terms favor the insurer. *See* Appendices A and B to this Brief. In only seven jurisdictions will a court seek out and enforce the reasonable expectations of the policyholder even if the policy terms are unambiguous. *See* Appendix C to this Brief.

Under the doctrine of reasonable expectations,[5] coverage avails where the insured has an objectively reasonable expectation of coverage even if the terms of the policy limiting coverage are plain and unambiguous. As the Colorado Supreme Court explained, in the seven jurisdictions (including Colorado) listed in Appendix C to this Brief, "courts . . . have the authority to avoid a manifestly unfair result not by reference to any purported ambiguity, but by reference to reasonable expectations." *Bailey v. Lincoln Gen. Ins. Co.*, 255 P.3d 1039, 1053 (Colo. 2011). These jurisdictions "mak[e] use of the doctrine precisely where no ambiguity exist[s], so that courts [do] not strain to find an ambiguity that could be construed against the drafter[.]" *Id.*

[5] The doctrine of reasonable expectations was developed and propounded by the late federal judge and Harvard Law School Professor Robert Keeton. *See* Robert E. Keeton, *Insurance Law Rights at Variance with Policy Provisions* (Parts I & II), 83 Harv. L. Rev. 961 (1970) and 83 Harv. L. Rev. 1281 (1970).

The Supreme Court of Florida (a jurisdiction listed in Appendix B to this Brief) has explicitly rejected the doctrine of reasonable expectations for interpreting insurance policies:

> We decline to adopt the doctrine of reasonable expectations. There is no need for it if the policy provisions are ambiguous because in Florida ambiguities are construed against the insurer. To apply the doctrine to an unambiguous provision would be to rewrite the contract and the basis upon which the premiums are charged . . . [and] can only lead to uncertainty and unnecessary litigation.

Deni Assocs. v. State Farm Fire & Cas. Ins. Co., 711 So. 2d 1135, 1140 (Fla. 1998) (footnote omitted).

In the forty-four jurisdictions listed in Appendices A and B to this Brief, a court will apply the rule of *contra proferentem* only upon a finding of ambiguity.[6] In twenty-six jurisdictions, including Maryland, the court will apply the rule of *contra proferentem* only after considering extrinsic or parol evidence. *See* Appendix A to this Brief. In eighteen jurisdictions, including Florida, the court will apply the rule of *contra proferentem* without regard to extrinsic or parol evidence. *See* Appendix B to this Brief.

Despite PICD's assertion that courts in other jurisdictions "do not typically consider extrinsic evidence as a matter of law," Brief of Petitioner at 22, more jurisdictions than not allow extrinsic evidence to be admitted in order to clarify ambiguous policy language. *See* Appendices A and B to this Brief. The twenty-six jurisdictions listed in Appendix A to this Brief, including Maryland, apply the rule of *contra proferentem* as the final step in the interpretation analysis, only after examination of any extrinsic evidence fails to clarify ambiguous policy language. These jurisdictions view the court's function in insurance contract interpretation as doing everything possible to ascertain the true intent of the parties to that contract. *See, e.g., Powerine Oil Co. v.*

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[6] *Contra proferentem* translates literally to "against the offeror, he who puts forth, or proffers or offers the language." *John L. Mattingly Constr. Co. v. Hartford Underwriters Ins. Co.*, 415 Md. 313, 334 (2010).

Superior Court, 118 P.3d 589, 597-98 (Cal. 2005) ("The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties."); *Hart Constr. Co. v. Am. Family Mut. Ins. Co.*, 514 N.W.2d 384, 388 (N.D. 1994) ("The primary goal of contract interpretation is to give effect to the mutual intention of the parties as it existed at the time of contracting."). By contrast, the eighteen jurisdictions listed in Appendix B to this Brief apply the rule of *contra proferentem* to resolve an ambiguity without regard to any extrinsic evidence clarifying the parties' intent.

PICD cites California as a jurisdiction liberally favoring policyholders, Brief of Petitioner at 14, yet California is one of the twenty-six jurisdictions that allow extrinsic evidence to be considered to assist in interpreting the meaning of ambiguous policy language prior to construing a policy against the insurer as drafter of the language. *See* Appendix A to this Brief. In California, as in Maryland, insurance contracts "are still contracts to which the ordinary rules of contractual interpretation apply." *California v. Cont'l Ins. Co.*, 281 P.3d 1000, 1004 (Cal. 2012). If the policy language is clear and explicit, it governs. *Id.* If not, California allows for the admission of extrinsic evidence to explain the meaning of the language. *Producers Dairy Delivery Co. v. Sentry Ins. Co.*, 718 P.2d 920, 925 (Cal. 1986); *Pac. Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 644 (Cal. 1968). California, like Maryland, uses the rule of *contra proferentem* only where the ambiguity cannot be remedied by other rules of interpretation, including the consideration of any available extrinsic evidence. *Producers Dairy Delivery Co.*, 718 P.2d at 924.

California case law at times professes a strong rule of interpretation against insurers for ambiguous policy terms, particularly exclusions, which may have misled PICD. PICD cites *Delgado v. Heritage Life Insurance Co.*, 203 Cal. Rptr. 672, 676 (Cal. App. 2d Dist. 1984), for the proposition that coverage exclusions are strictly construed against the insurer and liberally interpreted in favor of the insured. Brief of Petitioner at 14. However, California has made clear, in a case discussing *Delgado*, that:

> Although insuring clauses normally are interpreted broadly and exclusions are strictly construed, "where an exclusion is clear and unambiguous, it is given its literal effect." And, while exceptions to exclusions are "somewhat analogous to coverage provisions" and thus are interpreted broadly, they are still subject to the same rules of policy interpretation, "i.e., we first look to the language of the contract in order to ascertain its plain meaning."

Westoil Terminals Co. v. Indus. Indem. Co., 1 Cal. Rptr. 3d 516, 521 (Cal. App. 2d Dist. 2003) (internal citations omitted) (citing *Delgado*, 203 Cal. Rptr. at 676). Thus, despite a professed rule of strict construction for coverage exclusions, California's rules of interpretation and sequence of analysis are in effect identical to those of Maryland.

New York is another jurisdiction listed in Appendix A to this Brief but cited by PICD as liberally construing insurance policies in favor of policyholders. Brief of Petitioner at App. A-2. In fact, New York insurance policy interpretation is fully consistent with Maryland's existing rules of construction. In New York, as in Maryland, "if contract language is ambiguous, then the courts . . . look to extrinsic evidence to determine the true intent of the parties." *World Trade Ctr. Props. LLC v. Travelers Indem. Co.*, No. 01 Civ. 12738, 2002 U.S. Dist. LEXIS 9863, at *11 (S.D.N.Y. June 5, 2002).

World Trade Center Properties LLC v. Travelers Indemnity Co., a case involving coverage of the World Trade Center for the September 11, 2001 terrorist attack, is instructive. *Id.* The policy language provided a maximum amount to be paid for each separate covered "occurrence," which was an undefined term in the policy. *Id.* at *3. The interpretation of the term "occurrence" in the policy determined the recovery, depending on whether the two planes flown into the World Trade Center constituted one occurrence or two. *Id.* The court declined to apply the rule of *contra proferentem* prior to examining extrinsic evidence that might shed light on the meaning of "occurrence" under the policy. It noted that "none of the relevant cases compels a finding that the term 'occurrence' has such an unambiguous meaning that, in its search for the truth, justice

should blind itself to the wealth of extrinsic evidence concerning the parties' intentions that is available in this case." *Id.* at *17. Ultimately, based on extrinsic evidence of the parties' negotiations and circulated drafts, a jury found that a majority of the insurers were bound to a definition that treated the attack on September 11 as one occurrence, while a minority of insurers were bound to a definition that treated the attack as two occurrences. *SR Int'l Bus. Ins. Co. v. World Trade Ctr. Props., LLC*, 467 F.3d 107, 113-15 (2d Cir. 2006).

Likewise, in Maine, another jurisdiction cited by PICD as liberally interpreting insurance policies in favor of the policyholder, Brief of Petitioner at App. A-1, "[i]t is well established that the meaning of insurance contracts is to be determined by the same principles of law as are applicable to other contracts." *Palmer v. Mut. Life Ins. Co.*, 324 F. Supp. 254, 256-57 (D. Me. 1971). As such, the rule of construing ambiguous policy language against the insurer applies at the final step of analyzing policy language. *Tinker v. Cont'l Ins. Co.*, 410 A.2d 550, 554 (Me. 1980).

In *Tinker v. Continental Insurance Co.*, a state employee on state business was driving his personal car when he was involved in an accident. *Id.* at 551. Due to the limits on his own policy, the driver sought to recover from Continental under a comprehensive policy it issued to the State of Maine for the state's fleet. The policy was ambiguous as to personal vehicle coverage. *Id.* On appeal, the Maine Supreme Court upheld the trial court's refusal to construe the policy language strictly against the insurance company until it had evaluated pertinent extrinsic evidence. *Id.* The court held that "[t]he rule of strict construction . . . is a rule of last resort which must not be permitted to frustrate the intention the parties have expressed, if that can otherwise be ascertained." *Id.* at 554. Because the evidence showed that the intention of the parties was to provide insurance to state employees operating state-owned vehicles in the discharge of state business, the court affirmed the ruling in favor of the insurer. *Id.*

The eighteen jurisdictions listed in Appendix B to this Brief enforce unambiguous policy terms as written, but apply the doctrine of *contra proferentem* without reference to

extrinsic evidence upon a finding of ambiguity in order to construe the insurance policy strictly against the insurer. Some jurisdictions treat this approach as a version of the doctrine of reasonable expectations and hold that, upon a finding of ambiguity, the reasonable expectations of the policyholder control. *See, e.g., Flomerfelt v. Cardiello,* 997 A.2d 991, 996 (N.J. 2010). Others simply require ambiguous policy language to be construed in favor of coverage. *See, e.g., Gilbert Tex. Const., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 133 (Tex. 2010). Despite these variations, the functional outcome in these eighteen jurisdictions is the same: any ambiguous policy provision will be interpreted in favor of the insured without resort to extrinsic evidence to determine the intention of the parties.[7]

Idaho exemplifies this approach. Idaho courts construe ambiguous insurance policy language against the insurer as a matter of course without regard to extrinsic evidence. *Moss v. Mid-American Fire & Marine Ins. Co.*, 647 P.2d 754, 756 (Idaho 1982). In *Moss v. Mid-American Fire & Marine Insurance Co.,* the Idaho court applied this rule to a commercial hauling liability policy with a "radius endorsement" that excused the insurer from liability if the insured made "regular or frequent" business trips to locations more than 300 miles from his residence. *Id.* The insured made 135 commercial hauling trips, of which thirteen were outside the 300 mile radius endorsement. *Id.* On the last of these thirteen trips, the insured was involved in an accident. *Id.* Finding that reasonable minds could differ on whether the thirteen trips were "regular or frequent," the Court held the policy language to be ambiguous and by

[7] Although some jurisdictions label their test for resolving ambiguities in an insurance policy as a "reasonable expectations" test, the doctrine of reasonable expectations for insurance policies as used in this Brief refers to the original and narrow formulation of the doctrine, under which an insurance policy need not be found ambiguous in order to be construed according to the policyholder's reasonable expectations. As a number of courts, including the Michigan Supreme Court, have explained, "when its application is limited to ambiguous contracts, the rule of reasonable expectations is just a surrogate for the rule of construing against the drafter." *Wilkie v. Auto-Owners Ins. Co.,* 664 N.W.2d 776, 786-87 (Mich. 2003).

extension that the insurer had not met its burden to use clear and precise language to restrict the scope of coverage. *Id.* Accordingly, the Court reversed the lower court's grant of summary judgment in favor of the insurer. *Id.* at 759.

Notwithstanding PICD's assertion that Maryland is an outlier in its construction of insurance policies, Maryland adheres to the majority view in construing insurance policies. First, Maryland is among forty-four jurisdictions that enforce plain and unambiguous terms regardless of the reasonable expectations of the policyholder. Second, Maryland is among twenty-six jurisdictions that attempt to resolve ambiguities in an insurance policy through extrinsic or parol evidence in an effort to determine the intention of the parties. Only if there is no extrinsic or parol evidence or if a term remains ambiguous after the examination of any extrinsic or parol evidence will a Maryland court (or a court in one of the twenty-five other jurisdictions listed in Appendix A) construe an ambiguous term against the insurer. As Judge Harrell explained in *Empire Fire & Marine Insurance Co.*:

> Essentially, Maryland courts apply the majority rule, but do so at a different point in the analytical process. Maryland courts first ascertain the intent of the parties from the policy as a whole, considering extrinsic and parol evidence to construe any ambiguity. Only if either no extrinsic or parol evidence is introduced or if an ambiguity still remains after the examination of extrinsic evidence will Maryland courts construe a policy against an insurer.

117 Md. App. at 98 n.10 (citations omitted).

Presumably, PICD would encourage this Court to join the seven jurisdictions listed in Appendix C to this Brief in adopting the rule of reasonable expectations to construe even an unambiguous term against the insurer, or to join the eighteen jurisdictions listed in Appendix B to this Brief in applying the rule of *contra proferentem* to any ambiguous term in the policy without regard to extrinsic or parol evidence. However, neither change would align Maryland with the majority of jurisdictions. It is a

heavy burden indeed for PICD to convince this Court that the abandonment of the majority position serves the public interest.[8]

III. Under The Doctrine Of *Stare Decisis*, This Court Should Confirm The Longstanding And Well-Settled Principle That Insurance Policies Issued And Delivered In Maryland Are Construed As Ordinary Contracts

Even if PICD were correct in its research and understanding of the law in other jurisdictions, this Court would have to consider the doctrine of *stare decisis* before undertaking the change advocated by PICD. The doctrine of *stare decisis*, or "stand by the thing decided," stands for the proposition that changes in decisional law should not be made lightly or without a compelling reason. Two recent decisions of this Court are instructive on this issue and militate against the change advocated by PICD.

In *Livesay v. Baltimore County*, 384 Md. 1 (2004), this Court was urged to reconsider its earlier decision that a prison guard is a public official and, therefore, in the absence of malice, is entitled to common law immunity with respect to discretionary acts

[8] At least two commentators have argued that the rule of construction applied in the eighteen jurisdictions listed in Appendix B to this Brief is grossly inefficient in that it produces substantial costs and only small benefits. Michael B. Rappaport, *The Ambiguity Rule and Insurance Law: Why Insurance Contracts Should Not Be Construed Against the Drafter*, 30 Ga. L. Rev. 171, 175 (1995); David S. Miller, *Insurance as Contract: The Argument for Abandoning the Ambiguity Doctrine*, 88 Colum. L. Rev. 1849, 1850 (1988). Construing an ambiguous term against the insurer without regard to the parties' intent as demonstrated by extrinsic evidence creates uncertainty about the meaning of insurance policies and induces insurers to take costly actions to avoid ambiguous language. Rappaport, *supra* at 175. It also induces insurers to draft longer, more technical, and less readable policies in an effort to eliminate all possible ambiguities. *Id.* It also discourages insurers from using new or innovative terms out of fear that they would be found ambiguous. *Id.* The rule followed in the twenty-six jurisdictions listed in Appendix A to this Brief requiring consideration of extrinsic evidence before construing an ambiguous policy term against the insurer strongly encourages insurers to explain policy language to insureds while discouraging insurers from drafting longer, more technical, and less readable policies or avoiding even arguably ambiguous language altogether. Miller, *supra* at 1866.

committed in furtherance of the prison guard's official duties. This Court declined the invitation. Judge Raker, writing for the Court, explained:

> The rule of *stare decisis* dictates the outcome of our decision today. *Stare decisis* . . . "is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." The United States Supreme Court has noted that "by the important doctrine of *stare decisis* . . . we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." That Court also explained that *stare decisis* "permits society to presume that bedrock principles are founded in the law rather than the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and fact." While a court has the judicial power to overrule prior cases, courts generally act in a constrained manner to create predictability, "stability and integrity in the law."

Id. at 14-15 (citations omitted). Judge Raker continued:

> While we have never construed the doctrine of *stare decisis* to preclude us from changing or modifying a common law rule when conditions have changed or that rule has become so unsound that it is no longer suitable to the people of this State, departure from the rule should be the extraordinary case, especially so when the change will have a harmful effect upon society.

Id. at 15.

In light of these principles, the Court found three reasons not to overrule its earlier decision. First, prison guards, when they accepted employment, had every reason to believe, based on existing decisional law, that they would be protected from suit by public official immunity. Second, the circumstances of prisoners and prison guards had not changed so much in the intervening years as to warrant reversal of the Court's earlier classification that prison guards are public officials. Third, the State and counties had

been able to attract and retain prison guards in the intervening years with the expectation that the prison guards' discretionary, non-malicious actions would not be subject to liability. *Id.* at 15.

More recently, in *DRD Pool Service, Inc. v. Freed*, 416 Md. 46 (2010), this Court was asked to revisit an issue first decided twenty years earlier – namely, whether the statutory limit on non-economic damages is constitutional. This Court had found the limit constitutional on two prior occasions. *See Oaks v. Connors*, 339 Md. 24 (1995); *Murphy v. Edmonds*, 325 Md. 342 (1992). In reaffirming these earlier decisions, the Court relied on the principle of *stare decisis*. Illustrating the bedrock importance of the doctrine, Judge Greene, writing for the majority, noted that "[t]he tests for departing from *stare decisis* are extremely narrow in Maryland, and there are few exceptions for when this Court should set aside precedent." *DRD Pool Serv., Inc.*, 416 Md. at 63.

> We have recognized two circumstances when it is appropriate for this Court to overrule its own precedent. First, this Court may strike down a decision that is, "clearly wrong and contrary to established principles." Further, "previous decisions of this Court should not be disturbed . . . unless it is plainly seen that a glaring injustice has been done or some egregious blunder committed." Second, precedent may be overruled when there is a showing that the precedent has been superseded by significant changes in the law or facts.

Id. at 64 (citations omitted). The Court found that neither exception applied to its earlier decisions upholding the constitutionality of the statutory limit on non-economic damages. In that the earlier decisions were not "clearly wrong," and had not been superseded by "significant changes," sound public policy required the Court to "stand by" those decisions. *Id.* at 69.

Applying these tests to the present case compels the same result. The application of the rules of contract construction to insurance policies is not "clearly wrong," and no "significant changes" have occurred to supersede the many prior decisions of this Court applying the rules of contract construction to insurance policies. Moreover, the

established rules of contract construction as applied to insurance policies are not "unsound" or "unsuitable." In short, there is no compelling reason to abandon the established rule that insurance policies are to be construed as ordinary contracts. This is simply not the extraordinary case that warrants departure from the rule of *stare decisis*.

CONCLUSION

For the foregoing reasons, in the event the Court reaches the issue raised in this Brief, the Court should affirm the longstanding and well-settled principle that insurance policies issued and delivered in Maryland are construed as ordinary contracts and reject the argument advanced by PICD that Maryland should adopt the minority view and construe insurance policies as a matter of course strongly against the insurer.

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Dated: August 26, 2014

Md. Code Ann., Insurance Article

§ 27-303. Unfair claim settlement practices -- In general

It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization to:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;

(2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

(3) attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;

(4) fail to include with each claim paid to an insured or beneficiary a statement of the coverage under which payment is being made;

(5) fail to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;

(6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim;

(7) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service;

(8) fail to comply with the provisions of Title 15, Subtitle 10A of this article;

(9) fail to act in good faith, as defined under § 27-1001 of this title, in settling a first-party claim under a policy of property and casualty insurance; or

(10) fail to comply with the provisions of § 16-118 of this article.

Md. Code Ann., Insurance Article

§ 27-1001. Actions under § 3-1701 of the Courts Article

(a) "Good faith" defined. -- In this section, "good faith" means an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim.

(b) Scope. -- This section applies only to actions under § 3-1701 of the Courts Article.

(c) Prerequisite to action filed under § 3-1701 of Courts Article; exceptions. --

(1) Except as provided in paragraph (2) of this subsection, a person may not bring or pursue an action under § 3-1701 of the Courts Article in a court unless the person complies with this section.

(2) Paragraph (1) of this subsection does not apply to an action:

(i) within the small claim jurisdiction of the District Court under § 4-405 of the Courts Article;

(ii) if the insured and the insurer agree to waive the requirement under paragraph (1) of this subsection; or

(iii) under a commercial insurance policy on a claim with respect to which the applicable limit of liability exceeds $ 1,000,000.

(d) Procedure. --

(1) A complaint stating a cause of action under § 3-1701 of the Courts Article shall first be filed with the Administration.

(2) The complaint shall:

(i) be accompanied by each document that the insured has submitted to the insurer for proof of loss;

(ii) specify the applicable insurance coverage and the amount of the claim under the applicable coverage; and

(iii) state the amount of actual damages, and the claim for expenses and litigation costs described under subsection (e)(2) of this section.

(3) The Administration shall forward the filing to the insurer.

(4) Within 30 days after the date the filing is forwarded to the insurer by the Administration, the insurer shall:

(i) file with the Administration, except for good cause shown, a written response together with a copy of each document from the insurer's claim file that enables reconstruction of the insurer's activities relative to the insured's claim, including documentation of each pertinent communication, transaction, note, work paper, claim form, bill, and explanation of benefits form relative to the claim; and

(ii) mail to the insured a copy of the response and, except for good cause shown, each document from the insurer's claim file that enables reconstruction of the insurer's activities relative to the insured's claim, including documentation of each pertinent communication, transaction, note, work paper, claim form, bill, and explanation of benefits form relative to the claim.

(e) Decision by Administration. --

(1) (i) Within 90 days after the date the filing was received by the Administration, the Administration shall issue a decision that determines:

1. whether the insurer is obligated under the applicable policy to cover the underlying first-party claim;

2. the amount the insured was entitled to receive from the insurer under the applicable policy on the underlying covered first-party claim;

3. whether the insurer breached its obligation under the applicable policy to cover and pay the underlying covered first-party claim, as determined by the Administration;

4. whether an insurer that breached its obligation failed to act in good faith; and

5. the amount of damages, expenses, litigation costs, and interest, as applicable and as authorized under paragraph (2) of this subsection.

(ii) The failure of the Administration to issue a decision within the time specified in subparagraph (i) of this paragraph shall be considered a determination that the insurer did not breach any obligation to the insured.

(2) With respect to the determination of damages under paragraph (1)(i)5 of this subsection:

(i) if the Administration finds that the insurer breached an obligation to the insured, the Administration shall determine the obligation of the insurer to pay:

1. actual damages, which actual damages may not exceed the limits of any applicable policy; and

2. interest on all actual damages incurred by the insured computed:

A. at the rate allowed under § 11-107(a) of the Courts Article; and

B. from the date on which the insured's claim should have been paid; and

(ii) if the Administration also finds that the insurer failed to act in good faith, the Administration shall also determine the obligation of the insurer to pay:

1. expenses and litigation costs incurred by the insured, including reasonable attorney's fees, in pursuing recovery under this subtitle; and

2. interest on all expenses and litigation costs incurred by the insured computed:

A. at the rate allowed under § 11-107(a) of the Courts Article; and

B. from the applicable date or dates on which the insured's expenses and costs were incurred.

(3) An insurer may not be found to have failed to act in good faith under this section solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.

(4) The amount of the attorney's fees determined to be payable to an insured under paragraph (2) of this subsection may not exceed one-third of the actual damages payable to the insured.

(5) The Administration shall serve a copy of the decision on the insured and the insurer in accordance with § 2-204(c) of this article.

(f) Request for hearing. --

(1) If a party receives an adverse decision, the party shall have 30 days after the date of service of the Administration's decision to request a hearing.

(2) All hearings requested under this section shall:

(i) be referred by the Commissioner to the Office of Administrative Hearings for a final decision under Title 10, Subtitle 2 of the State Government Article;

(ii) be heard de novo;

(iii) result in a final decision that makes the determinations set forth in subsection (e) of this section.

(3) If no administrative hearing is requested in accordance with paragraph (1) of this subsection, the decision issued by the Administration shall become a final decision.

(g) Appeals. --

(1) If a party receives an adverse decision, the party may appeal a final decision by the Administration or an administrative law judge under this section to a circuit court in accordance with § 2-215 of this article and Title 10, Subtitle 2 of the State Government Article.

(2)

(i) This paragraph applies only if more than one party receives an adverse decision from the Administration.

(ii) If a party requests a hearing before the Office of Administrative Hearings and another party files an appeal to a circuit court:

1. jurisdiction over the request for hearing is transferred to the circuit court;

2. the request for hearing, the Administration's decision, and the Administration's case file, including the complaint, response, and all documents submitted to the Administration, shall be transmitted promptly to the circuit court; and

3. the request for hearing shall be docketed in the circuit court and consolidated for trial with the appeal.

(3) Notwithstanding any other provision of law, an appeal to a circuit court under this section shall be heard de novo.

(h) Reports. -- On or before January 1 of each year beginning in 2009, in accordance with § 2-1246 of the State Government Article, the Administration shall report to the General Assembly on the following for the prior fiscal year:

(1) the number and types of complaints under this section or § 3-1701 of the Courts Article from insureds regarding first-party insurance claims under property and casualty insurance policies;

(2) the administrative and judicial dispositions of the complaints described in item (1) of this subsection;

(3) the number and types of regulatory enforcement actions instituted by the Administration for unfair claim settlement practices under § 27-303(9) or § 27-304(18) of this title; and

(4) the administrative and judicial dispositions of the regulatory enforcement actions for unfair claim settlement practices described under item (3) of this subsection.

APPENDIX A

Jurisdictions (26) That Enforce Unambiguous Policy Terms And
Resolve Ambiguous Policy Terms In Favor Of The Insured
Only After Considering Any Available Extrinsic Or Parol Evidence

JURISDICTION	AUTHORITY
Alabama	*Ala. Plating Co. v. U.S. Fid. & Guar. Co.*, 690 So. 2d 331, 335 (Ala. 1996).
Arkansas	*State Auto. Prop. & Cas. Ins. Co. v. Ark. Dep't of Envtl. Quality*, 258 S.W.3d 736, 742 (Ark. 2007).
California	*Garcia v. Truck Ins. Exch.*, 682 P.2d 1100, 1104 (Cal. 1984).
Connecticut	*Metro. Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 765 A.2d 891, 897 (Conn. 2001).
Delaware	*Eagle Indus. v. DeVilbiss Health Care*, 702 A.2d 1228, 1232 (Del. 1997).
District of Columbia	*United Servs. Life Ins. Co. v. Ringsdorf*, 91 A.2d 717, 719 (Mun. Ct. App. D.C. 1952).
Georgia	*Davis v. United Am. Life Ins. Co.*, 111 S.E.2d 488, 491-92 (Ga. 1959).
Illinois	*State Farm Mut. Auto. Ins. Co. v. Rodriguez*, 987 N.E.2d 896, 905 (Ill. App. Ct. 1st Dist. 2013).
Kentucky	*Wehr Constructors, Inc. v. Assur. Co. of Am. (*In re *Wehr Constructors, Inc.)*, No. 2012-SC-000221-CL, 2012 Ky. LEXIS 495, at *20 (Ky. Oct. 25, 2012).
Louisiana	*Atlas Lubricant Corp. v. Fed. Ins. Co.*, 293 So. 2d 550, 553 (La. App. 4 Cir. 1974).
Maine	*Tinker v. Cont'l Ins. Co.*, 410 A.2d 550, 553-54 (Me. 1980).
Maryland	*MAMSI Life & Health Ins. Co. v. Callaway*, 375 Md. 261, 279 (2003).

Massachusetts	*Affiliated FM Ins. Co. v. Constitution Reinsurance Corp.*, 626 N.E.2d 878, 881 (Mass. 1994).
Michigan	*Klapp v. United Ins. Grp. Agency, Inc.*, 663 N.W.2d 447, 455 (Mich. 2003).
Montana	*Truck Ins. Exch. v. Nelson*, 743 P.2d 572, 574 (Mont. 1987).
Nebraska	*Boutilier v. Lincoln Benefit Life Ins. Co.*, 681 N.W.2d 746, 750 (Neb. 2004).
New Mexico	*Ponder v. State Farm Mut. Auto. Ins. Co.*, 12 P.3d 960, 965 (N.M. 2000).
New York	*State v. Home Indem. Co.*, 486 N.E.2d 827, 829 (N.Y. 1985).
North Dakota	*Hart Constr. Co. v. Am. Family Mut. Ins. Co.*, 514 N.W.2d 384, 388 (N.D. 1994).
Ohio	*Westfield Ins. Co. v. Galatis*, 797 N.E.2d 1256, 1261 (Ohio 2003).
Rhode Island	*Merrimack Mut. Fire Ins. Co. v. Dufault*, 958 A.2d 620, 624-25 (R.I. 2008).
South Carolina	*Progressive Max Ins. Co. v. Floating Caps, Inc.*, 747 S.E.2d 178, 184 (S.C. 2013).
South Dakota	*N. River Ins. Co. v. Golden Rule Constr., Inc.*, 296 N.W.2d 910, 913 (S.D. 1980).
Tennessee	*Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 612 (Tenn. 2006).
Vermont	*Breslauer v. Fayston Sch. Dist.*, 659 A.2d 1129, 1135 (Vt. 1995).
Washington	*Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 15 P.3d 115, 122 (Wash. 2000).

APPENDIX B

Jurisdictions (18) That Enforce Unambiguous Policy Terms
But Resolve Ambiguous Policy Terms In Favor Of The Insured
Without First Considering Any Available Extrinsic Or Parol Evidence

JURISDICTION	AUTHORITY
Florida	*Wash. Nat'l. Ins. Corp. v. Ruderman*, 117 So. 3d 943, 952 (Fla. 2013).
Idaho	*Moss v. Mid-American Fire & Marine Ins. Co.*, 647 P.2d 754, 756 (Idaho 1982).
Indiana	*Eli Lilly & Co. v. Home Ins. Co.*, 482 N.E.2d 467, 470 (Ind. 1985).
Kansas	*O'Bryan v. Columbia Ins. Grp.*, 56 P.3d 789, 792 (Kan. 2002).
Mississippi	*McLeod v. Allstate Ins. Co*., 789 So. 2d 806, 810 (Miss. 2001).
Missouri	*Burns v. Smith*, 303 S.W.3d 505, 512 (Mo. 2010).
Nevada	*Powell v. Liberty Mut. Fire Ins. Co.*, 252 P.3d 668, 672 (Nev. 2011).
New Hampshire	*Kelly v. Prudential Prop. & Cas. Ins. Co.*, 796 A.2d 156, 157 (N.H. 2002).
New Jersey	*Flomerfelt v. Cardiello*, 997 A.2d 991, 996 (N.J. 2010).
North Carolina	*N. C. Farm Bureau Mut. Ins. Co. v. Stox*, 412 S.E.2d 318, 325 (N.C. 1992).
Oregon	*St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co.*, 923 P.2d 1200, 1218 (Or. 1996).
Pennsylvania	*401 Fourth St., Inc. v. Investors Ins. Grp.*, 879 A.2d 166, 174 (Pa. 2005).
Texas	*Gonzalez v. Mission Am. Ins. Co.*, 795 S.W.2d 734, 737 (Tex. 1990).
Utah	*Home Sav. & Loan v. Aetna Cas. & Sur. Co*., 817 P.2d 341, 344 (Utah Ct. App. 1991).
Virginia	*TravCo Ins. Co. v. Ward*, 736 S.E.2d 321, 325 (Va. 2012).
West Virginia	*Bowyer v. Hi-Lad, Inc.*, 609 S.E.2d 895, 912 (W. Va. 2004).

Wisconsin	*Katze v. Randolph & Scott Mut. Fire Ins. Co.*, 341 N.W.2d 689, 691 (Wis. 1984).
Wyoming	*Evans v. Farmers Ins. Exch.*, 34 P.3d 284, 286 (Wyo. 2001).

APPENDIX C

Jurisdictions (7) That Enforce The Reasonable Expectations
Of The Insured Even If Policy Terms Unambiguously Favor The Insurer

JURISDICTION	AUTHORITY	EXPLANATION
Alaska	*C.P. ex rel. M.L. v. Allstate Ins. Co.*, 996 P.2d 1216, 1222 (Alaska 2000).	"Construction of an insurance policy under the principle of reasonable expectations does not depend on a prior determination of policy ambiguity."
Arizona	*Averett ex rel. Averett v. Farmers Ins. Co.*, 869 P.2d 505, 507 (Ariz. 1994).	"Arizona courts will not enforce even unambiguous boilerplate terms in standardized insurance contracts in a limited variety of situations[.]"
Colorado	*Bailey v. Lincoln Gen. Ins. Co.*, 255 P.3d 1039, 1050 (Colo. 2011).	"[R]easonable expectations applies when policy coverage-provisions may not be ambiguous in a technical sense, and hence subject to the rule that ambiguities must be construed against the drafter[.]"
Hawaii	*Del Monte Fresh Produce, Inc. v. Fireman's Fund Ins. Co.*, 183 P.3d 734, 745 (Haw. 2007) (alterations in original).	"It is well settled in Hawai'i that '[t]he objectively reasonable expectations of [policyholders] and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations."

Iowa	*Rodman v. State Farm Mut. Auto. Ins.*, 208 N.W.2d 903, 906 (Iowa 1973).	"[M]ost courts apply the doctrine of reasonable expectations as an interpretive tool where the language of a policy is deemed ambiguous. However, we have employed the concept in its broader meaning as an independent and fundamental approach to insurance policy interpretation[.]"
Minnesota	*Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 49 (Minn. 2008).	"[T]he doctrine of reasonable expectations [is] … a tool for resolving ambiguity and for correcting extreme situations where a party's coverage is significantly different from what the party reasonably believes it has paid for and where the only notice the party has of that difference is in an obscure and unexpected provision."
Oklahoma	*Max True Plastering Co. v. U.S. Fid. & Guar. Co.*, 912 P.2d 861, 870 (Okla. 1996).	"[U]nder Oklahoma law, the reasonable expectations doctrine may be applied … to ambiguous [insurance] contract language or to exclusions which are masked by technical or obscure language or which are hidden in a policy's provisions."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 26th day of August, 2014, two copies of the foregoing Brief of Amici Curiae were mailed first class, postage prepaid, to:

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STATEMENT PURSUANT TO MARYLAND RULE 8-504(a)(9)

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