IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-01897-DDD-NYW

ADVANCE TRUST & LIFE ESCROW SERVICES, LTA,
as securities intermediary for
LIFE PARTNERS POSITION HOLDER TRUST,
on behalf of itself and all others similarly situated,

Plaintiff,

v.

SECURITY LIFE OF DENVER INSURANCE COMPANY,

Defendant.

PLAINTIFF'S RENEWED MOTION FOR CLASS CERTIFICATION

Plaintiff Advance Trust & Life Escrow Services ("ATLES"), moves for an order certifying the following class ("COI Overcharge Class") pursuant to Federal Rule of Civil Procedure 23(b)(3):

> All owners of Strategic Accumulator Universal Life ("SAUL") and Life Design Guarantee Universal Life ("GUL") policies subjected to Security Life of Denver Insurance Company's ("SLD") cost of insurance ("COI") rate increase announced in September 2015, excluding owners whose policies issued in Alaska, Arkansas, New Mexico, Virginia, and Washington, and SLD, its officers and directors, members of their immediate families, and their heirs, successors, or assigns.

Plaintiff alternatively moves for certification of the following classes:

> Five State Class. All members of the COI Overcharge Class whose policies were issued in Arizona, Colorado, Florida, New Jersey, and Wisconsin (*i.e.*, the states in which ATLES' policies were issued).
>
> Uniformity Class. All members of the COI Overcharge Class who are owners of SAUL.
>
> Non-Participation Class. All members of the COI Overcharge Class (but certified only as to the non-participation clause breach).

Plaintiff also moves for the appointments of ATLES as class representative and Susman Godfrey as class counsel.

INTRODUCTION

In ruling on Plaintiff's initial motion to certify, the Court found it "clear that factual issues predominate." (Doc. 81 ("Order") at 15.) As the Court noted, the case concerns "integrated, standard-form contracts"; "purchasers can't negotiate different terms"; and Plaintiff's breach-of-contract claim centers on a single decision by SLD to raise COI rates in one fell swoop. (*Id.* at 2, 14.) The evidence regarding SLD's breach is comprised of "common evidence about Security

Life's conduct and financial models and the standardized language used in each of the form policies at issue." (*Id.*) "Neither party," the Court concluded, "cited any potential evidence not common to the putative class." (*Id.* at 15.)

The only unresolved question relative to class certification was whether the law was "sufficiently manageable such that a class action is superior to other available methods for fairly adjudicating the controversy." (Order at 15.) The law governing the elements of breach of contract, the Court found, is sufficiently consistent across jurisdictions that "deciding if [the policies] were breached will likely be determined in a uniform way." (*Id.* at 11.) But the Court inquired whether different state rules regarding the "role of extrinsic evidence in interpreting" form contracts "would be manageable." (*Id.* at 15–16.)

They are. Across the country, courts apply a two-stage framework in interpreting form contracts, with discrete groups of states sharing the same extrinsic evidence rules. This brief and the accompanying declaration provide an extensive survey of these two stages and the role of extrinsic evidence. In Stage 1 (determining whether the form contract is ambiguous), the states cluster into three groups with respect to how extrinsic evidence is prohibited or permitted. In Stage 2 (resolving the ambiguity), the states also cluster into three groups with respect to the use of extrinsic evidence. Thus, this Court will be able to manage this class action by dividing the states into the three groups laid out below, at each stage, and applying the relevant rules. This case—where the class members' claims arise out of common conduct that violates an integrated form contract—is particularly well-suited to class treatment. *See* Doc. 57, at 12 (collecting cases

certifying COI increase classes). Accordingly, the Court should grant ATLES's renewed motion to certify.

I. Background Summary

Pursuant to the Court's May 19, 2020 Order (Doc. 86), ATLES incorporates by reference its briefs in support of class certification, including all the arguments, cases, declarations, and exhibits cited therein. (Docs. 56-57, 68-69). As defined in this renewed motion, the COI Overcharge Class owns 1,592 policies and has sustained over $58 million in damages. (Doc. 57-6, Exh. 10-13). ATLES already presented substantial class-wide evidence it would use to prove breach. (Doc. 57, at 6-8; Doc. 56-5; Doc. 57-5 ¶¶ 44, 52, 57-66; 67-80). All of this evidence, the Court recognized, is "common evidence" about SLD's "conduct and financial models and the standardized language used in each of the form policies at issue." (Order at 14.)

The vast majority of the evidence cited in the prior briefing relates to the fact of breach, not interpretation. As would be expected in a case involving integrated form contracts, the primary evidence bearing on the meaning of the contract is the contract itself. Extrinsic evidence, while not "necessary for [ATLES] to prove its case," does "support" it, and the parties' prior briefing makes clear that such additional evidence is limited and does not vary by signatory. (Order at 12, 15); *see also Transamerica COI*, 2017 WL 6496803, at *7 n.5 (C.D. Cal. Dec. 11, 2017) ("Transamerica offers no basis to conclude, at this juncture, that the standard terms of its policies were subject to individualized negotiation, or why extrinsic evidence regarding a particular policyholder's subjective understanding of the non-recoupment provision would be admissible.").

SLD has not suggested that the determination of the COI increase varied on a case-by-case basis. SLD gave binding corporate testimony that it was "not aware of any 'other documents besides the policies themselves that are relevant to' interpreting what they mean." (Order at 14.) The only argument that SLD advanced in its prior briefing outside the contracts that conceivably could relate to the contract's meaning was speculative access by unnamed "financial advisors" to various "publicly available materials" related to the term "cost of insurance," *but see* Doc. 69 at 4, the (in)admissibility of which is easily handled on a class basis and does not predominate.

As Judge Posner explained: "[P]redominance requires a qualitative assessment too; it is not bean counting. . . . [and] the 'predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Butler v. Sears, Roebuck and Co.,* 727 F. 3d 796, 801 (7th Cir. 2013) (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). Sufficient cohesion exists here, and the common issues far outweigh any alleged non-common issues.

II. The States' Rules on Extrinsic Evidence to Interpret Form Contracts Can Be Organized into a Small Number of Discrete Groups, Especially Given the Facts of this Case

The extrinsic evidence surveys presented here cover the 44 states (including Washington D.C.) at issue in the proposed class; no policies hit by the COI increase were issued in New York or Wyoming. Certain states in the four-corners group in Stage 1 allow consideration of extrinsic evidence to determine "latent" ambiguities. The textbook example of a latent ambiguity is the case of two ships named Peerless in *Raffles v. Wichelhaus*, 159 Eng. Rep. 375 (Ex. 1864). Latent ambiguities are not at issue here and thus not accounted for below nor in the surveys.

A. Stage 1 Inquiry: Can Extrinsic Evidence Be Used to Determine Whether Form Contracts with Integration Clauses Are Ambiguous?

For Stage 1, the states can be grouped into three basic camps that agree on the role of extrinsic evidence. *See* Ex. 1.[1] The first group is comprised of the 36 states that apply the "four corners" rule (the "Four Corners Group"). Under this strict textualist approach, a court will determine whether the contract is ambiguous using only the "four corners" of the document. Courts may take into account the general subject matter and nature of the agreement, and may consult dictionary definitions of disputed terms. *See* Ex. 2 (survey that every relevant jurisdiction permits use of dictionary definitions at Stage 1). Evidence outside the words of the contract—*i.e.*, "extrinsic evidence"—may not be considered.

The second and third groups at Stage 1 permit extrinsic evidence to determine whether an ambiguity exists, but differ by the *type* of extrinsic evidence permitted. The second group, comprised of 6 states (the "Objective Circumstances Group"), allows extrinsic evidence *only* if it is objective evidence of the circumstances under which the agreement was made, including evidence of custom and usage at the time. *See, e.g., Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 894 (Tex. 2017) ("The [parol evidence] rule does not prohibit consideration of surrounding circumstances that inform, rather than vary from or contradict, the contract text. Those circumstances include, according to Professor Williston's treatise, 'the commercial or other setting

[1] All exhibits are attached to the concurrently-filed declaration of Steven G. Slaver.

in which the contract was negotiated and other objectively determinable factors that give a context to the transaction between the parties.'").[2]

The third group, which consists only of Arizona and California (the "Additional Objective Evidence Group"), likewise prohibits extrinsic evidence of individuals' subjective understanding of the form contracts, but permits consideration of additional objective extrinsic evidence, such as post-execution course of performance. *See Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 682 P.2d 388, 391 (Ariz. 1984) (form insurance policies are "interpreted wherever reasonable as treating alike all those similarly situated, without regard to their knowledge or understanding of the standard terms of the writing" (quoting Restatement (Second) of Contracts § 211(2)); *Transamerica COI*, 2017 WL 6496803, at *11 & n.9 (same, citing California law).

Particularly given the evidentiary record of this case, these three groupings are manageable. As the Court already found, all the extrinsic evidence submitted by either side is common. (Order at 15.) Further, this evidence is limited. Because these are form contracts, there is no evidence of pre-contract negotiations, the exchange of redlined drafts, a prior course of dealing, nor other particularized evidence relating to contract formation.

The only practical difference, in this case, between the strict textualist group and the Objective Circumstances Group is that relevant and probative evidence of custom and usage may be used for the latter. As for the third group, the only additional evidence at issue is SLD's post-

[2] Unless otherwise stated, all citations and quotations within cases are omitted and emphasis added.

execution conduct—*e.g.*, SLD's redetermination policies and practices and board memorandum. (Docs. 57-13, 57-2.)

If—on the merits and after concluding the analysis in Stage 1—it is ultimately determined that the contract is unambiguous for all three groups, then there is no Stage 2. Rather, the jury will simply decide the question of breach, which, this Court already explained "will likely be determined in a uniform way." (Order at 11.)

B. Stage 2 Inquiry: Resolving the Ambiguity

If Stage 1 determines that any ambiguities exist, the case would proceed to Stage 2 where the rules regarding extrinsic evidence are likewise grouped into three categories. Nine jurisdictions permit no consideration of extrinsic evidence; they immediately apply the principle of contract interpretation known as *contra proferentem*; and automatically construe the ambiguity against the carrier. Twenty-two jurisdictions apply *contra proferentem* at the same time that extrinsic evidence is considered. The remaining 13 jurisdictions use the doctrine as a "rule of last resort" only if the extrinsic evidence fails to resolve the ambiguity. *See* Ex. 3. Notably, "the contra proferentem rule[] is followed in all fifty states and the District of Columbia." *Phillips v. Lincoln Nat'l Life Ins. Co.*, 978 F.2d 302, 312 (7th Cir. 1992). The kind of extrinsic evidence allowed at Stage 2 is susceptible to resolution on a class-basis especially where, as here, there is no evidence of any individual subjective intent necessary to resolve ambiguities.

To the extent Stage 2 is ever reached, these three groups are likewise manageable. As an initial matter, the scope of the issues that remain after Stage 1, if any, will be substantially narrowed through motion practice. "The difficulties in class management which may arise are not grounds

for refusing now to certify the class. Management problems which may arise in both pre-trial and trial proceedings may be the subject of further action by the court under Rules 16, 23(d)(2) [now 23(d)(1)], 42(b), and 56(d) [now 56(a)]." *In re Storage Tech. Corp. Sec. Litig.*, 113 F.R.D. 113, 119–20 (D. Colo. 1986). For example, certain extrinsic evidence offered at Stage 2 may not create a disputed question of material fact, such as: (i) evidence that SLD admitted it never relied upon, (Order at 14 (acknowledging SLD "is not aware of any 'other documents besides the policies themselves that are relevant to' interpreting what they mean.") (quoting Doc. 57-1 at 164:20-24).); and (ii) any expert testimony excluded under *Daubert*. And other potential trial issues may be resolved by stipulation, motions for summary judgment, or motions in limine. For example, there is no dispute of material fact between the parties about how to interpret the non-participation or uniformity clauses. (Doc. 69 at 8 n.12; Doc. 57-2 at 2.)

To the extent trial were required on all three clauses, the state law differences can be managed through accepted trial-management techniques, such as groupings at trial or special interrogatories to the fact-finder. *See infra*, at 9–10 (collecting cases). Because there are only three Stage 2 groups—and because this case involves only a single cause of action against a single defendant—these groupings can be addressed through jury instructions and special interrogatories. And, importantly, the Court would have to do the same thing even if ATLES's claims were tried individually, because ATLES owns policies within each of the three Stage 2 groups.

C. Summary of Groupings

The following tables lays out the three groups for each stage:

Stage 1 Groupings

Groups	Extrinsic Evidence Permitted?	Jurisdictions
(1) Four Corners	No	36
(2) Objective Circumstances	Yes (limited)	6
(3) Additional Objective Evidence	Yes (limited)	2

Stage 2 Groupings

Groups	Jurisdictions
(1) No Extrinsic Evidence	9
(2) Objective Extrinsic Evidence & *Contra Proferentem* Together	22
(3) Objective Extrinsic Evidence; *Contra Proferentem* as Last Resort	13

If the Court finds the contract unambiguous, it will not even reach the Stage 2 inquiry. The fact that the Court could manage resolution of the interpretive questions at Stage 1 alone suffices for certification. The key inquiry for certification is "the *capacity* of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (second emphasis in original). The merits question that answers whether the policies are ambiguous cannot be decided now. (Order at 12 n. 3 (citing *Hanks v. Lincoln Life & Annuity Co. of New York*, 330 F.R.D. 374 (S.D.N.Y. 2019) ("*Voya COI*")). If, on the merits, the Court determines that any (or all) of the contractual provisions are unambiguous, there is no doubt that common questions relating to breach will drive resolution of the remainder

of this litigation. Accordingly, the case should be certified now, and if, hypothetically, it is determined later on the merits that any of the contract provisions are ambiguous, then the court can use the groupings above in Stage 2 to manage the case, or potentially revisit certification depending on what states and theories of breach remain and arguments SLD advances. *See Voya COI,* 330 F.R.D. at 384.

The groupings presented here are similar to—but even simpler than—those in *Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67 (E.D.N.Y. 2004). There, the court found manageable four sets of contract-interpretation rules that it would apply at each stage of the analysis. *Id.*, at 77-78. Due to the different subject matter and evidence at issue in this dispute, this case involves only three groups per stage. The *Steinberg* approach was endorsed in *Cruson v. Jackson National Life Ins. Co.*, -- F.3d --, 2020 WL 1443531, at *10 (5th Cir. Mar. 25, 2020) (describing *Steinberg* as "one such rigorous predominance analysis" that showed "states could be grouped into four categories based on their varying contract interpretation laws" and any "state-law differences would be manageable in the class context").

Other courts, too, have found state law groupings suffice for manageability and predominance. *See, e.g.*, *TransAmerica COI*, 2017 WL 6496803, at *6 (C.D. Cal. Dec. 11, 2017) ("Any isolated or relatively minor variations in state law with respect to breach may be handled at trial by grouping similar state laws together."); *Voya COI*, 330 F.R.D. at 384 ("variations" in state contract law "may be handled by asking limited special interrogatories to the fact-finder on the outlying jurisdictions' requirements"); *Ellsworth v. U.S. Bank, N.A.*, 2014 WL 2734953, at *21 (N.D. Cal. June 13, 2014) ("Because the contract laws of the various states are capable of being

organized into groups with similar legal regimes, the court finds that common issues predominate in each subclass."); *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d 283, 315 (3d Cir. 1998) (rejecting "contention that predominance is defeated because the [settlement] class claims are subject to the laws of the fifty states" because "[c]ourts have expressed a willingness to certify nationwide classes on the ground that relatively minor differences in state law could be overcome at trial by grouping similar state laws together and applying them as a unit."); *see also* Principles of the Law of Aggregate Litigation § 2.05(b)(3) ("The court may authorize aggregate treatment of multiple claims . . . by way of a class action if the court determines that different claims or issues are subject to different bodies of law that are not the same in functional content but nonetheless present a limited number of patterns that the court . . . can manage by means of identified adjudicatory procedures.").

For similar reasons, the variations in state law also do not defeat superiority. Critically, all of this Stage 2 management would need to occur even if ATLES's claims were tried individually, as it owns at least one policy from each group. This comparison of the individual and class claims confirms why manageability is satisfied. As the Second Circuit explained: "Manageability is a component of the superiority analysis, which is explicitly comparative in nature: courts must ask whether 'a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.' Fed. R. Civ. P. 23(b)(3). . . . [F]ailure to certify an action under Rule 23(b)(3) on the sole ground that it would be unmanageable is disfavored and should be the exception rather than the rule." *In re Petrobras Secs.*, 862 F.3d 250, 268 (2d Cir. 2017). Further, the facts that no other individual action has been brought, and that this is a negative value suit where the costs of

litigation exceed the individual recoveries, also strongly support a finding of superiority. *See Menocal v. GEO Grp., Inc*., 882 F.3d 905, 915 (10th Cir. 2018) ("[T]he Rule 23(b)(3) class action is superior when it allows for the 'vindication of the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.'" (quoting *Amchem Prods*., 521 U.S. at 617)); *see also* Sklaver Decl. ¶ 5 (noting the volume of e-discovery that has already taken place).

In sum, the small number of groups required to account for minor variations in state law do not defeat either predominance or superiority, particularly when weighed against the multitude of common factual and legal issues, which include: (1) all objective facts bearing on interpretation; (2) all objective facts bearing on breach; (3) the methodology for and amount of damages; and (4) whether SLD's extrinsic evidence is admissible under federal evidentiary rules and *Daubert* and given SLD's positions in discovery. Further, the existence of an ambiguity, the resolution of any ambiguity, and the existence of a breach are themselves all common legal issues that "predominate over any questions affecting only individual members," Fed. R. Civ. P. 23(b)(3). The Court merely needs to account for variations among a small number of state groupings. ATLES therefore respectfully requests that Court certify the COI Overcharge Class.

III. The Proposed Alternative Classes Should be Certified

The Court alternatively should certify the three narrower classes defined above. There are 294 policies owned by members of the Five State Class, who have over $10.5 million in damages. (Doc. 57-6, Exhs. 10–13.) For Stage 1, this class has two groups: extrinsic evidence is permitted for one state (Arizona) and prohibited for the remaining four (Florida, Colorado, New Jersey and

Wisconsin). If any ambiguities exist, there are at most only three groups at Stage 2: extrinsic evidence is prohibited in one state (Florida) and permitted in the remining four, of which three (Colorado, New Jersey, and Wisconsin) consider it alongside the *contra proferentem* doctrine and one (Arizona) uses *contra proferentem* as a rule of last resort. The Court will have to manage the rules of those five states if certification is denied, and nothing about proceeding as a class action versus an individual action renders the proceedings as unmanageable.

If the Court were to determine that the extrinsic evidence relating to the "cost of insurance" clause is too difficult to manage notwithstanding the groupings above,[3] it should alternatively certify classes solely as to breaches of the uniformity clause and the non-participation clause. It is well established that courts can certify one breach of contract theory but not others. *See, e.g., In re Conseco Life Ins. Co. Life Trend Ins. Mktg. & Sales Practice Litig.*, 920 F. Supp. 2d 1050, 1064 (N.D. Cal. 2013) ("Conseco cannot use the possible lack of commonality with respect to one of plaintiffs' six breach of contract theories in order to defeat class certification on all claims . . . where there are multiple, viable breach of contract claims that have common issues under Rule 23."), *vacated due to settlement in In re Conseco Life Ins. Co. Lifetrend Ins. Sales & Mktg. Litig.*, 2013 WL 10349975 (N.D. Cal. Nov. 8, 2013).

[3] For the "cost of insurance" breach, as will be explained further on the merits, ATLES also alleges that COI rates cannot be adjusted to increase the insurer's profits, because profits are not costs, and the policies contain other provisions from which the carrier's profits are derived. Whether "cost" means "profit" (it doesn't; the terms are antonyms) should be an easy interpretative question to resolve.

The Uniformity Class has 291 members in 31 states and have been overcharged by $37.5 million. (Doc. 57-6 at ¶¶29–31, Exh. 10-11.) For this alternative class, neither party has proffered any extrinsic evidence that could be relevant to the interpretation of that clause, and SLD's 30(b)(6) deponent admitted that it has the *same* interpretation of that clause as Plaintiff. (Doc. 69 at 8 n.12 (quoting Doc. 69-7 at 106:5–107:12 (agreeing that SLD's position is that "the nonparticipating provision of the subject policies means the company may not attempt to recoup past losses from the policyholder") and 169:25–170:8 (uniformity means "when COI rates are determined," "all the policyholders within the same premium class and length of time will have the same COI rate").). As a theoretical matter, the Uniformity Class has the same three groupings per stage as the COI Overcharge Class, but smaller numbers of states within each group. For Stage 1, there are 26 states in the "Four Corners" group, 3 in the "Objective Circumstances" group, and two in the "Additional Objective Evidence" group. (Doc. 57-6 at Exh. 13.), and for Stage 2, there are five states in the "automatic *contra proferentem*" group, 17 in the group that considers extrinsic evidence along with *contra proferentem*, and nine that apply *contra proferentem* as a rule of last resort. But, again, these groupings are unlikely to make a practical difference for the management of this case, as ATLES and SLD *agree* on the interpretation of this provision.

Membership in and damages for the Non-Participation Class is identical to the COI Overcharge Class and the groupings therein but would be certified solely as to a breach of the non-participation clause. Each of ATLES, SLD's board, and SLD's corporate representative agree on the meaning of this clause. (Doc. 57-2 at 2; Doc. 57-1 at 85:15-17; Doc 69 at 8 n.12.) Given

those binding corporate admissions, all that's left to adjudicate is the question of breach, which the Court has already found can be resolved in one stroke.

CONCLUSION

For the foregoing reasons, the Court should certify the proposed class, or alternative classes, and appoint ATLES as class representative and Susman Godfrey as class counsel.

Dated: June 12, 2020

s/ Steven G. Sklaver

Steven G. Sklaver
Lora J. Krsulich
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
Tel: 310-789-3100
ssklaver@susmangodfrey.com
lkrsulich@susmangodfrey.com

Seth Ard
Ryan C. Kirkpatrick
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019-6023
Tel.: 212-336-8330
sard@susmangodfrey.com
rkirkpatrick@susmangodfrey.com

Edgar Sargent
SUSMAN GODFREY L.L.P.
1201 Third Avenue, Suite 3800
Seattle, WA 98101
Tel: 206-516-3880
esargent@susmangodfrey.com

Scott Fulford
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, TX 77002
Tel: 713-651-9366
sfulford@susmangodfrey.com

Paul H. Schwartz
SHOEMAKER GHISELLI + SCHWARTZ LLC
1811 Pearl Street
Boulder, CO 80302
Tel: 303-530-3452
pschwartz@sgslitigation.com

Plaintiff's Counsel

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

I hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III.A.1.

/s/ *Scott Fulford*

CERTIFICATE OF CONFERENCE

I hereby certify that that on June 11, 2020, Plaintiff's counsel conferred with counsel for Defendant concerning the relief sought in this motion. Defendant's counsel advised that Defendant would oppose this motion. (*See also* Doc. 57 at 17.)

/s/ *Scott Fulford*

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2020, a true and correct copy of the foregoing was served on all parties of record via the Court's CM-ECF system.

/s/ *Scott Fulford*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-01897-DDD-NYW

ADVANCE TRUST & LIFE ESCROW SERVICES, LTA,
as securities intermediary for
LIFE PARTNERS POSITION HOLDER TRUST,
on behalf of itself and all others similarly situated,

Plaintiff,

v.

SECURITY LIFE OF DENVER INSURANCE COMPANY,

Defendant.

DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF PLAINTIFF'S RENEWED MOTION FOR CLASS CERTIFICATION

I, Steven G. Sklaver, hereby declare as follows:

1. I am a member in good standing of the State Bar of Colorado, California, and Illinois, and a partner at the law firm of Susman Godfrey L.L.P., counsel of record for the plaintiff in the above-captioned action, and am admitted to practice in the United States District Court for the District of Colorado. I make this declaration in support of plaintiff's renewed motion for class certification. I have personal knowledge of the facts set forth herein, and if called as a witness, would testify competently thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of a chart titled "Stage 1 Survey: Determining Whether A Contract Is Ambiguous." The chart summarizes the rules in the 44 jurisdictions represented in the proposed classes with respect to whether extrinsic evidence

may be considered in determining whether a form, integrated insurance policy is ambiguous. Unless otherwise noted, all references to ambiguities herein refer to patent ambiguities, not latent ambiguities. As the chart shows, the jurisdictions fall into three groups: (1) the "Four Corners" group; (2) the "Objective Circumstances" group; and (3) the "Additional Objective Evidence" group.

3. Attached hereto as **Exhibit 2** is a true and correct copy of a chart titled "Stage 1 Dictionary Survey." The chart provides authority in the 44 jurisdictions represented in the proposed classes showing that courts may consult dictionaries in determining whether a contract, including a form integrated insurance policy, is ambiguous.

4. Attached hereto as **Exhibit 3** is a true and correct copy of a chart titled "Stage 2 Survey: Resolving Ambiguities." The chart summarizes the rules in the 44 jurisdictions represented in the proposed classes with respect to the role of extrinsic evidence in interpreting ambiguous terms in a form, integrated insurance policy. As the chart shows, the jurisdictions fall into three groups: (1) the "No Extrinsic Evidence" group; (2) the "Objective Extrinsic Evidence & *Contra Proferentem* Together" group; and (3) the "Objective Extrinsic Evidence; Contra Proferentem as Last Resort" group.

5. To date, Security Life of Denver has produced 83,768 pages of e-discovery, including 1,216 native excel spreadsheets containing complex actuarial analysis.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 12, 2020

s/ *Steven G. Sklaver*
Steven Gerald Sklaver

EXHIBIT 1

Stage 1 Survey: Determining Whether A Contract Is Ambiguous

Group 1: "Four Corners"

The following states and/or jurisdictions look to the plain language of the insurance policy to determine whether an ambiguity exists.

1. Alabama: "Alabama law does not allow courts to look beyond the four corners of an instrument *unless* the instrument contains an ambiguity." *Dupree v. PeoplesSouth Bank*, --- So.3d ----, 2020 WL 2297145, at *3 (Ala. May 8, 2020) (emphasis added; noting different rule for latent ambiguity); *see also Crest Homeowners Ass'n, Inc. v. Onsite Wastewater Maint., LLC*, 290 So. 3d 826, 828 (Ala. Civ. App. 2019) ("As our supreme court has stated: "Alabama law requires the trial court to determine whether a contract is ambiguous, and if it is not, to determine the force and effect of the terms of the contract as a matter of law. Extrinsic evidence may be admitted to interpret a contract *only if* the trial judge finds as a matter of law that the contract is ambiguous.") (quoting *Wigington v. Hill-Soberg Co.*, 396 So.2d 97, 98 (Ala. 1981) (emphasis added); *Jones v. Gen. Ins. Co. of Am.*, 2009 WL 1537866, at *13 n. 26 (S.D. Ala. May 29, 2009) ("[P]laintiff has made no showing of policy ambiguity that would allow these extrinsic materials to be considered in construing the Policy."); *McIntosh v. Livaudais*, 979 So.2d 92, 95 (Ala. Civ. App. 2007) ("Extrinsic evidence may be admitted to interpret a contract *only if* the court finds that the contract is ambiguous.") (emphasis added).

2. Colorado: "An ambiguity must appear in the four corners of the document before extrinsic evidence can be considered." *Am. Family Mut. Ins. Co. v. Hansen*, 375 P.3d 115, 117 (Colo. 2016) (emphasis in original) (citing *Ad Two, Inc. v. City & Cty. of Denver*, 9 P.3d 373, 376–77 (Colo. 2000)).

3. Connecticut: "In sum, [Connecticut] decisional law holds that if the language of the contract is clear and unambiguous, our courts must look only to the four corners of the contract to discern the parties' intent…. Accordingly, we reject the plaintiffs' argument that this court should embrace a more modern theory of contract interpretation that looks outside the four corners of the contract to discern the intention of the parties irrespective of whether the contract is ambiguous." *Konover v. Kolakowski*, 186 Conn. App. 706, 721-722, 200 A.3d 1177, 1187 (2018) (summarizing Connecticut Supreme Court cases), cert. denied, 330 Conn. 970, 200 A.3d 1151 (2019); *see also Hartford Acc. & Indem. Co. v. Ace Am. Reinsurance Co.*, 284 Conn. 744, 771, 936 A.2d 224, 240 (2007) ("As we have indicated, extrinsic evidence may be considered in determining contractual intent only if a contract is ambiguous."); *Buell Indus., Inc. v. Greater New York Mut. Ins. Co.*, 259 Conn. 527, 546, 791 A.2d 489,

501 (2002) ("Because we will not create ambiguity where none exists, reference to extrinsic documentation such as drafting history is inappropriate.").

4. Delaware: "The duty of the courts is to examine solely the language of the contractual provisions in question to determine whether the disputed terms are capable of two or more reasonable interpretations. In so doing, Delaware courts are obligated to confine themselves to the language of the document and not to look at extrinsic evidence to find ambiguity." *O'Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 289 (Del. 2001); *see also Cont'l Warranty, Inc. v. Warner*, 108 F. Supp. 3d 256, 260 (D. Del. 2015) ("Delaware law requires 'uncertainty in the meaning and application of contract language' before courts may consider extrinsic evidence. 'The true test 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.'") (quoting *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997); other internal citations omitted).

5. District of Columbia: "In brief: we adhere to an 'objective' law of contracts, meaning that 'the written language embodying the terms of an agreement will govern the rights and liabilities of the parties regardless of the intent of the parties at the time they entered into the contract unless the written language is not susceptible of a clear and definite undertaking, or unless there is fraud, duress, or mutual mistake.' Thus, '[w]here insurance contract language is not ambiguous . . . a written contract duly signed and executed speaks for itself and binds the parties without the necessity of extrinsic evidence.'." *May v. Cont'l Cas. Co.*, 936 A.2d 747, 751 (D.C. 2007) (citations omitted); *Hartford Fin. Servs. Grp., Inc. v. Hand*, 30 A.3d 180, 187 (D.C. 2011) ("That is, we adhere to an 'objective' law of contracts, meaning that the written language embodying the terms of an agreement will govern the rights and liabilities of the parties regardless of the intent of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite meaning.") (citations and internal quotations omitted); *see also Carlyle Inv. Mgmt. L.L.C. v. Ace Am. Ins. Co.*, 131 A.3d 886, 895 (D.C. 2016) ("Generally, we 'determine what a reasonable person in the position of the parties would have thought the disputed language meant.' We also 'examine the document on its face, giving the language used its plain meaning, unless, in context, it is evidence that the terms used have a technical or specialized meaning.'" (citations omitted)).

6. Florida: "Florida courts have consistently declined to allow the introduction of extrinsic evidence to construe such an ambiguity because to do so would allow a trial court to rewrite a contract with respect to a matter the parties clearly contemplated when they drew their agreement." *Emergency Assocs. of Tampa, P.A. v. Sassano*, 664 So. 2d 1000, 1002 (Fla. Dist. Ct. App. 1995). While, in non-insurance cases, "a trial court is nevertheless authorized to admit parol evidence to assist it in determining the parties' intent where the existence of some collateral or extraneous matter renders the contract's

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application uncertain," *id.* at 1002-1003, the Florida Supreme Court has held that this special exception for latent ambiguities does not apply to insurance contracts: "We now make clear 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….Because this Court's precedent has long set forth special rules regarding construction of insurance contracts, Florida case law cited by Washington National that allows extrinsic evidence to clarify latent ambiguity in contracts other than contracts of insurance does not govern the resolution of the question now before this Court." *Washington Nat'l Ins. Corp. v. Ruderman*, 117 So.3d 943, 949 & 950 n.3 (Fla. 2013).

7. Georgia: "Construction of ambiguous contracts is the duty of the court, and it is only after application thereto of the pertinent rules of construction, and they remain ambiguous, that extrinsic evidence is admissible to explain the ambiguity." *Davis v. United Amer. Life Ins. Co.*, 215 Ga. 521, 526, 111 S.E.2d 488 (1959); *see also Blue Cross & Blue Shield of Ga., Inc. v. Shirley*, 699 S.E.2d 616, 619 (Ga. Ct. App. 2010) ("At least initially, construction is a matter of law for the court. First, the trial court must decide whether the language is clear and unambiguous. If it is, the court simply enforces the contract according to its clear terms; the contract alone is looked to for its meaning." *Blue Cross & Blue Shield of Ga., Inc. v. Shirley*, 699 S.E.2d 616, 619 (Ga. Ct. App. 2010)); *In re Carter*, 586 B.R. 360, 369 (Bankr. M.D. Ga. 2018) ("James Carter also argues that AgGeorgia's request for consent in 2015 indicates AgGeorgia understood the agreement to require James Carter's consent. This argument fails because under Georgia Law a court must find ambiguity in the contract to consider extrinsic evidence.").

8. Hawaii: "Initially, we 'must respect the plain terms of the [insurance] policy and not create ambiguity where none exists.'" *Sentinel Ins. Co., Ltd. v. First Ins. Co. of Haw., Ltd.*, 875 P.2d 894, 915 (Haw. 1994) (quoting *Smith v. New England Mut. Life Ins. Co.*, 827 P.2d 635, 638 (Haw. 1992)). "The court should look no further than the four corners of the document to determine whether an ambiguity exists." *State Farm Fire & Cas. Co. v. Pac. Rent-All, Inc.*, 90 Haw. 315, 324, 978 P.2d 753, 762 (1999); *see also Kaiser Found. Health Plan, Inc. v. Hawaii Life Flight Corp.*, No. CV 16-00073 ACK-KSC, 2017 WL 1534193, at *22 (D. Haw. Apr. 27, 2017) ("In determining whether an ambiguity exists, '[t]he court should look no further than the four corners of the document.'") (citations omitted).

9. Idaho: "If possible, the intent of the parties should be ascertained from the language of the agreement as the best indication of their intent. Where the parties' intent cannot be understood from the language employed in the writing, intent becomes a question of fact to be determined in light of extrinsic evidence." *Opportunity, L.L.C. v. Ossewarde*, 38 P.3d 1258, 1263 (Idaho 2001) (citation omitted); *see also SE/Z Constr., L.L.C. v. Idaho State Univ.*, 89 P.3d 848, 852 (Idaho 2004) ("If possible, this

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Court should ascertain the intent of the parties from the words of the document at issue. . . . Where the parties' intent cannot be understood from the language employed in the writing, intent becomes a question of fact to be determined in light of extrinsic evidence."); *Ryan v. Mountain States Helicopter, Inc.*, 686 P.2d 95, 98–99 (Idaho Ct. App. 1984) ("Mountain States contends that our primary function, when interpreting a contract, should be to determine the intent of the parties. This contention is correct, as far as it goes. However, such intent is derived in the first instance from the language of the contract itself, unless that language is ambiguous. . . . [E]xtrinsic indicia of the parties' intent may be considered in construing a contract only if the language remaining in the contract . . . is ambiguous.").

10. Illinois: "In interpreting contracts such as the reinsurance certificates, we follow the 'four corners' approach, presuming the document speaks for itself and the intentions of the parties must be determined from the language they have used in drafting the agreement. *Air Safety, Inc. v. Teachers Realty Corp.*, . . . 706 N.E.2d 882 ([Ill.] 1999). An ambiguity does not exist in a contract simply because the parties disagree on the meaning of a provision, but when the contract contains language susceptible to more than one reasonable interpretation. *Ringgold Capital IV, LLC v. Finley*, . . . 993 N.E.2d 541 [(Ill. App. Ct. 2013)]. Only then may extrinsic evidence be considered to establish the intent of the parties." *Cont'l Cas. Co. v. MidStates Reinsurance Corp.*, 24 N.E.3d 122, 126 (Ill. App. Ct. 2014); *see also Camico Mut. Ins. Co. v. Citizens Bank*, 474 F.3d 989, 992–93 (7th Cir. 2007) ("Under Illinois law, which the parties agree governs, contracts are to be interpreted according to the 'four corners' rule[.]" (citing *Davis v. G.N. Mortg. Corp.*, 396 F.3d 869, 878 (7th Cir. 2005))); *Sharp v. Trans Union L.L.C.*, 845 N.E.2d 719, 726–27 (Ill. App. Ct. 2006) ("[T]he Court's primary objective in interpreting an insurance policy is to ascertain and give effect to the intentions of the parties, as expressed in the policy language. To do so, the court must examine the entire document, considering the plain language of the policy as well as its subject matter and purpose. The court may look to extrinsic materials only where the policy's language is ambiguous." (internal citations omitted)).

11. Indiana: "The four corners rule states that where the language of a contract is unambiguous, the parties' intent is to be determined by reviewing the language contained within the 'four corners' of the contract, and 'parol or extrinsic evidence is inadmissible to expand, vary, or explain the instrument unless there has been a showing of fraud, mistake, ambiguity, illegality, duress or undue influence.'" *Bar Plan Mut. Ins. Co. v. Likes Law Office, LLC*, 44 N.E.3d 1279, 1285 (Ind. Ct. App. 2015) (quoting *Adams v. Reinaker*, 808 N.E.2d 192, 196 (Ind. Ct. App. 2004)); *see also Univ. of S. Ind. Found. v. Baker*, 843 N.E.2d 528, 532 (Ind. 2006) ("Indiana follows 'the four corners rule' that 'extrinsic evidence is not admissible to add to, vary or explain the terms of a written instrument if the terms of the instrument are susceptible of a clear and unambiguous construction. Accordingly, where a trust is capable of clear and unambiguous construction, under this doctrine, the court must give effect to the trust's clear meaning without resort to extrinsic evidence." (citation omitted)); *Advanced Radiant Sys., Inc. v. Peerless Indem. Ins. Co.*, No. 1:14-CV-01943-JMS-DML, 2016 WL1117759, at *7 (S.D. Ind. Mar. 22, 2016) ("Thus, to the extent that

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ARS believes that the phrase 'new permanent location' is ambiguous because of the parties' conduct and subsequent disagreement regarding the proper interpretation of that phrase, the Court rejects that argument because '[e]xtrinsic evidence cannot be used to create an ambiguity.'" (quoting *Bar Plan*, 44 N.E.3d at 1285)).

12. Kansas: "The district court's analysis in denying Thoroughbred's first partial summary judgment motion was flawed because it looked to extrinsic evidence regarding the parties' actions to determine whether there was ambiguity in the contract language. But extrinsic evidence is only admissible if the four corners of the contract establish an ambiguity." *Thoroughbred Assocs., L.L.C. v. Kan. City Royalty Co., L.L.C.*, 308 P.3d 1238, 1248 (Kan. 2013) (citing *Barbara Oil Co. v. Kan. Gas Supply Corp.*, 827 P.2d 24, 35 (Kan. 1992)); *see also Strowing Props., Inc. v. Am. States Ins. Co.*, 80 P.3d 72, 74–75 (Kan. Ct. App. 2003) ("Whether a policy is ambiguous is a matter of law for the court to determine. Moreover, to determine if a contract is ambiguous, the court is limited to the four corners of the agreement." (citations omitted)); *Rhynerson v. Hardy*, No. 95, 282, 2006 WL 1976781, at *4 (Kan. Ct. App. July 14, 2006) ("We are not permitted to examine the extrinsic evidence to determine the existence of an ambiguity in an insurance contract.").

13. Kentucky: "However, '[i]n the absence of ambiguity a written instrument will be enforced strictly according to its terms,' and a court will interpret the contract's terms by assigning language its ordinary and without resort to extrinsic evidence." *Frear v. P.T.A. Indus., Inc.*, 103 S.W.3d 99, 106 (Ky. 2003) (quoting *O'Bryan v. Massey-Ferguson, Inc.*, 413 S.W.2d 891, 893 (Ky. 1966)); *see also Encompass Indem. Co. v. Halfhill*, No. 5:12-CV-117-TBR-LLK, 2013 WL 12233867, at *1 (W.D. Ky. May 13, 2013) ("This Court can look only at the 'four corners' of the policy to determine if an ambiguity exists." (citing *3D Enters. Contracting Corp. v. Louisville & Jefferson Cty. Metro. Sewer Dist.*, 174 S.W.3d 440, 448 (Ky. 2005))).

14. Louisiana: "Obviously, the initial determination of the parties' intent is found in the insurance policy itself. *See* La. Civ. Code. art. 2046. In analyzing a policy provision, the words, often being terms of art, must be given their technical meaning. *See id.* at art. 2047. When those technical words are unambiguous and the parties' intent is clear, the insurance contract will be enforced as written. *See* La. Civ. Code art. 2046;*Magnon* [*v. Collins*, 739 So.2d 191, 197 (La.1999)]. If, on the other hand, the contract cannot be construed simply, based on its language, because of an ambiguity, the court may look to extrinsic evidence to determine the parties' intent. *See Peterson* [*v. Schimek*, 729 So.2d 1024, 1029 (La. 1999)]." *Doerr v. Mobil Oil Corp.*, 774 So.2d 119, 124 (La. 2000); *see also Am. Elec. Power. Co. Inc. v. Affiliated FM Ins. Co.*, 556 F.3d 282, 285–86 (5th Cir. 2009) ("Under Louisiana law, '[i]nterpretation of a contract is the determination of the common intent of the parties.' La. Civ. Code Ann. Art. 2045. This involves a two-step process: The Court must first look to the plain text of the contract to determine whether its meaning is clear and unambiguous. *See* La. Civ. Code Ann. Art. 2047 ('The words of a contract must

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be given their generally prevailing meaning.')." (footnote omitted)); *Maldonado v. Kiewit La. Co.*, 146 So.3d 210, 218 (La. Ct. App. 2014) ("Courts look first to the insurance policy itself in order to determine the parties' intent. *See* La. Civ. Code art. 2046; *Doerr*[, 774 So.2d at 124]. Words and phrases in an insurance policy are to be construed using their plain, ordinary and generally prevailing meaning, unless the words have acquired a technical meaning. *See* La. Civ. Code art 2047[; s]*ee also Doerr*, 744 So.2d at 124. When a contract can be construed from the four corners of the policy without extrinsic evidence, the question of contractual interpretation is answered as a matter of law. *Brown v. Drillers, Inc.*, 630 So.2d 741, 749–[]50 (La. 1994). However, if the contract cannot be construed based on language contained therein due to an ambiguity, the court may look to extrinsic evidence to determine the parties' intent. *Doerr*, 744 So.2d at 124.").

15. Maine: "Determining whether or not a contract is ambiguous is a question of law, which we review *de novo*. . . . If we determine that the contract is unambiguous, then its interpretation is also a question of law. On the other hand, if the contract is ambiguous, then 'its interpretation is a question of fact for the factfinder.' The interpretation of an unambiguous contract 'must be determined from the plain meaning of the language used and from the four corners of the instrument without resort to extrinsic evidence.'" *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 814 A.2d 989, 993 (Me. 2003) (internal citations omitted); *see also Handy Boat Serv., Inc. v. Prof'l Servs. Inc.*, 711 A.2d 1306, 1309 (Me. 1998) ("Extrinsic evidence concerning a specific provision of an integrated agreement may not be considered unless the court determines the language of that provision to be ambiguous." (citing *McCarthy v. U.S.I. Corp.*, 678 A.2d 48, 51–52 (Me. 1996))); *Portland Valve, Inc. v. Rockwood Sys. Corp.*, 460. A.2d 1383, 1387 (Me. 1983) ("The issue of whether contract language is ambiguous is a question of law for the Court. . . . The interpretation of an unambiguous writing must be determined from the plain meaning of the language used and from the four corners of the instrument without resort to extrinsic evidence. *See City of Augusta v. Quirion*, 436 A.2d 388, 392 (Me. 1981); *T-M Oil Co. [v. Pasquale*, 388 A.2d 82, 85 (Me. 1978)]; *see also Ames v. Hilton*, 70 Me. 36, 43 (1879). Once an ambiguity is found then extrinsic evidence may be admitted and considered to show the intention of the parties. *Palmer v. Nissen*, 256 F. Supp. 497, 503 (D. Me. 1966) (quoting *Ames*, 70 Me. at 43); *T-M Oil Co.*, 388 A.2d at 85.")).

16. Maryland: "We interpret the exculpatory language in the insurance policy under the objective theory of contracts. 'Thus, our search to determine the meaning of [the] contract is focused on the four corners of the agreement.'" *100 Inv. Ltd. P'ship v. Columbia Town Ctr. Title Co.*, 60 A.3d 1, 22–23 (Md. 2013) (citations omitted); *see also Interstate Fire & Cas. Co. v. Dimensions Assur. Ltd.*, 843 F.3d 133, 138 (4th Cir. 2016) ("To determine whether a policy term is ambiguous, we look only to the policy itself; we may not look to extrinsic sources to create an ambiguity." (citations omitted)).

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17. Massachusetts: "By considering the language against the backdrop of a portion of the trial evidence, the judge relied, at least in part, on extrinsic evidence to conclude that there was no ambiguity in the contract to begin with. But extrinsic evidence may be used as an interpretive guide only after the judge or the court determines that the contract is ambiguous on its face or as applied. It is not to be used as the basis for concluding in the first instance that a contract is unambiguous as a matter of law." *Bank v. Thermo Elemental Inc.*, 888 N.E.2d 897, 908 (Mass. 2008) (citations omitted); *see Farmers Ins. Exch. v. RNK, Inc.*, 632 F.3d 777, 783 (1st Cir. 2011) ("A court interpreting a contract must first assess whether the contract is ambiguous. . . . 'To answer the ambiguity question, the court must first examine the language of the contract by itself, independent of extrinsic evidence concerning the drafting history of the intention of the parties.'" (quoting *Thermo Elemental*, 888 N.E.2d at 908)); *O'Hara v. Standard Fire Ins. Co.*, No. 16-CV-12378-GAO, 2017 WL 8315886, at *3 (D. Mass. Sept. 8, 2017) ("To answer the ambiguity question, the court must first examine the language of the contract by itself, independent of extrinsic evidence concerning the drafting history or the intention of the parties." (quoting *Consolo v. Bank of Am.*, No. 15-11840, 2017 WL 1739171, at *3 (D. Mass. May 2, 2017))).

18. Michigan: "Superior also points to extrinsic evidence, such as earlier drafts of the License Agreement and the City's course of conduct, to argue that the License Agreement gave it a right to upgrade its equipment. This extrinsic evidence, however, is wholly irrelevant to the question whether ambiguity exists in the License Agreement and could only be considered after finding that the contract *is* ambiguous." *Superior Commc'ns v. City of Riverview, Mich.*, 881 F.3d 432, 439 (6th Cir. 2018) (citing *Sheldon-Seatz, Inc. v. Cole*, 29 N.W.2d 832, 834–35 (Mich. 1947); *UAW-GM Human Res. Ctr. v. KSL Recreation Corp.*, 579 N.W. 2d 411, 414 (Mich. Ct. App. 1998)); *see also Lyzohub v. Salem*, No. 233291, 2003 WL 133035, at *2 (Mich. Ct. App. Jan. 7, 2003) ("A clear and unambiguous contract must be construed according to its plain meaning. Moreover, the plain meaning of an unambiguous contract may not be impeached with extrinsic evidence." (citing *Amtower v. William C. Roney & Co.*, 590 N.W.2d 580, 583–84 (Mich. Ct. App. 1998); *Zurich Ins. Co. v. CCR & Co.*, 576 N.W.2d 392, 395 (Mich. Ct. App. 1997))).

19. Minnesota: "Although extrinsic evidence may *support* a finding of ambiguity when insurance contract language is ambiguous on its face, we generally do not rely on extrinsic evidence to *establish* contractual ambiguity." *Wilcox v. State Farm Fire & Cas. Co.*, 874 N.W.2d 780, 784 (Minn. 2016) (citations omitted; *see also Fischer Sand & Aggregate, LLP v. Old Republic Nat'l Title Ins. Co.*, 2017 WL 1316130, at *3 (Minn. Ct. App. 2017) ("Interpretation of an insurance policy is a question of law that we review de novo. General principles of contract interpretation apply to insurance policies. The reviewing court must give effect to the intention of the parties as it appears from the entire contract. When its language is clear and unambiguous, the reviewing court must give effect to the policy's plain language. 'A clear and unambiguous contract is enforced in

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accordance with the plain language of the contract; a reviewing court considers parol evidence or matters outside of the contract only when the contract terms are ambiguous.' (quoting *Bobich v. Oja*, 104 N.W.2d 19, 24 (Minn. 1960); additional citations and internal quotation marks omitted)).

20. Mississippi: "The insurance contract in question is governed by Mississippi rules of contract interpretation. The Mississippi Supreme Court has explained as follows: 'This Court has set out a three-tiered approach to contract interpretation . . . . First, the 'four corners' test is applied, wherein the reviewing court looks to the language that the parties used in expressing their agreement.'" *Potomac Ins. Co. of Ill. v. Adams*, 997 So.2d 238, 239-40 (Miss. Ct. App. 2008) (quoting *One South, Inc. v. Hollowell*, 963 So.2d 1156, 1162 (Miss. 2007)); *see also Hicks v. N. Am. Co. for Life & Health Ins.*, 47 So.3d 181, 189 (Miss. Ct. App. 2010) ("In determining whether a contract is ambiguous, courts should consider the contract as a whole, and extrinsic evidence should only be considered upon a finding that the contract is ambiguous.") (citation omitted).

21. Missouri: "It is only where the contract is ambiguous and not clear that resort to extrinsic evidence is proper to resolve the ambiguity." *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 46 (Mo. 2017) (internal quotation marks omitted) (abrogated on other grounds by *Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432 (Mo. 2020)); *see also Spellman v. Sentry Ins.*, 66 S.W.3d 74, 76 (Mo. Ct. App. 2001) ("When determining whether an insurance policy or other contract contains ambiguous language, the court examines the four corners of the document.").

22. Nebraska: "Extrinsic evidence is not permitted to explain the terms of a contract that is not ambiguous." *In re Claims Against Pierce Elevator*, 868 N.W.2d 781, 801 (Neb. 2015) (internal quotation marks omitted); *see also Slosburg v. New England Life Ins. Co.*, 2009 WL 962328, at *3 (Neb. Ct. App. Apr. 7, 2009) (unpublished) ("In the instant case, Nebraska has also held that unless a contract is ambiguous, parol evidence can not be used to vary its terms.") (citing *Thrower v. Anson*, 752 N.W.2d 555 (Neb. 2008)).

23. Nevada: "We have concluded that a policy will be given its plain meaning unless an ambiguity is found. Only when an ambiguity exists should the court go beyond the language and consider 'the intent of the parties, the subject matter of the policy, [and] the circumstances surrounding issuance." *Farmers Ins. Exch. v. Young*, 832 P.2d 376, 379 n.3 (Nev. 1992) (quoting *Nat'l Union Fire Ins. v. Caesars palace*, 792 P.2d 1129, 1130 (Nev. 1990)).

24. New Hampshire: "Unless the agreement contains ambiguous terms, we limit our review to the four corners of the document itself." *Kessler v. Gleich*, 13 A.3d 109, 112 (N.H. 2010); *see also Windham Envtl. Corp. v. U.S. Fid. & Guar. Co.*, No. 06-cv-

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367-JM, 2008 WL 4534086, at *4 (D.N.H. Sept. 29, 2008) ("Furthermore, in the absence of an ambiguity, the parol evidence rule prohibits resort to plaintiff's extrinsic evidence.").

25. New Jersey: "In interpreting the meaning of a provision in an insurance contract, the plain language is ordinarily the most direct route. If the language is clear, that is the end of the inquiry. 'A court may look to extrinsic evidence as an aid to interpretation' only if there is ambiguity in the language of the insurance policy." *Jeffrey M. Brown Assocs., Inc. v. Interstate Fire & Cas. Co.*, 997 A.2d 1072, 1074 (N.J. App. Div. 2010) (quoting *Chubb Custom Ins. Co. v. Prudential Ins. Co.*, 948 A.2d 1285, 1289 (N.J. 2008)).

26. North Carolina: "Because the policy is not ambiguous, this Court must strictly construe the policy without resort to extrinsic evidence." *Metric Constructors, Inc. v. Indus. Risk Insurers*, 401 S.E.2d 126, 128 (N.C. Ct. App. 1991); *see also Root v. Allstate Ins. Co.*, 158 S.E.2d 829, 835 (N.C. 1968) ("The general rule is that when a written instrument is introduced into evidence, its terms may not be contradicted by parol or extrinsic evidence, and it is presumed that all prior negotiations are merged into the written instrument. A modification of the above stated rule is found in the case of *Orion Knitting Mills v. U.S. Fidelity & Guaranty Co.*, 137 N.C. 565 (N.C. 1905), where it is stated: 'The legal effect of a final instrument which defines and declares the intentions and rights of the parties cannot be modified or corrected by proof of any preliminary negotiations or agreement, nor is it permissible to show how the parties understood the transaction in order to explain or qualify what is in the final writing, in the absence of an allegation of fraud or mistake or Unless the terms of the instrument itself are ambiguous and require explanation.'" (citations omitted)).

27. North Dakota: "If a written contract is ambiguous, extrinsic evidence may be considered to show the parties' intention. If a contract is clear and unambiguous, we construe it from the four corners of the document." *Kerzman v. North Dakota Workers Comp. Bureau*, 590 N.W.2d 888, 892 (N.D. 1999) (citation omitted); *see also Olander v. State Farm Mut. Auto. Ins. Co.*, 317 F.3d 807, 809 (8th Cir. 2003) ("Whether a written contract is ambiguous must be determined from the four corners of the document, construing the contract as a whole." (applying North Dakota law)).

28. Ohio: "As a result, if the language of a contract is plain and unambiguous, we enforce the terms as written, and we may not turn to evidence outside the four corners of the contract to alter its meaning." *Beverage Holdings, L.L.C. v. 5701 Lombardo, L.L.C.*, 138 N.E.3d 1174, 2019 WL 6120064, at *3 (Ohio 2019) (citing *Aultman Hosp. Ass'n v. Community Mut. Ins. Co.*, 544 N.E.2d 920 (Ohio 1989)).

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29. Oklahoma: "In testing an unambiguous insurance policy this court must focus solely upon the agreement's terms rather than on any extrinsic evidence." *Am. Econ Ins. Co. v. Bogdahn*, 89 P.3d 1051, 1061 n.18 (Okla. 2004); *Hensley v. State Farm Fire & Cas. Co.*, 398 P.3d 11, 23 (Okla. 2017) ("The parol evidence rule teaches that unless fraud or mistake is involved, pre-contract negotiations and oral discussions are merged into, and superseded by, the terms of an executed writing. The practical construction of an agreement (to be derived from the acts and conduct of the parties) is an available tool only when ambiguity appears to be present." (footnotes omitted)); *Lewis v. Sac & Fox Tribe of Oklahoma Hous. Auth.*, 896 P.2d 503, 514 (Okla. 1994) ("The parol evidence rule teaches that unless fraud or mistake is involved, pre-contract negotiations and oral discussions are merged into, and superseded by, the terms of an executed writing. The practical construction of an agreement (to be derived from the acts and conduct of the parties) is an available tool only in case ambiguity appears to be present. Where, as here, a contract is complete in itself and, when viewed as a totality, is unambiguous, its language is the only legitimate evidence of what the parties intended. That intention cannot be determined from the surrounding circumstances, but must be gathered from a four-corners' examination of the instrument." (footnotes and emphases omitted)).

30. Oregon: "In all events, the interpretation of an insurance policy is a question of law that is confined to the four corners of the policy without regard to extrinsic evidence." *Rhiner v. Red Shield Ins. Co.*, 208 P.3d 1043, 1045 (Or. Ct. App. 2009) (citing *Andres v. Am. Standard Ins. Co.*, 134 P.3d 1061, 1063 (Or. Ct. App. 2009)); *N. Pac. Ins. Co. v. Hamilton*, 332 Or. 20, 25, 22 P.3d 739, 741 (Or. 2001) ("The interpretation of an insurance policy is a question of law. A court's goal in interpreting a policy is to determine the intent of the parties. Intent is determined by looking to the terms and conditions of the policy. The policy must be viewed by its four corners and considered as a whole. All parts and clauses of the policy must be construed to determine if and how far one clause is modified, limited or controlled by others." (internal citations and quotations omitted)); *H.D.D. Co., Inc. v. Navigators Specialty Ins. Co.*, 401 F. Supp. 3d 1176, 1179–80 (D. Or. 2019) ("The policy must be considered as a whole and viewed by its four corners, and all parts and clauses must be construed to determine whether any clause is modified, limited, or controlled by another." (citing *Hamilton*).

31. Pennsylvania: "When the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the document itself. When, however, an ambiguity exists, parol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances." *Ins. Adjustment Bureau, Inc. v. Allstate Ins. Co.*, 905 A.2d 462, 468 (Pa. 2006) (citations omitted); *see also Wert v. Manorcare of Carlisle PA, LLC*, 124 A.3d 1248, 1259–60 (Pa. 2015) ("Parol evidence is only admissible to resolve ambiguities, though ambiguities may be latent and created by extrinsic or collateral circumstances. An ambiguity is present if the contract may reasonably be construed in more than one way.") (internal citations and quotations

omitted)); *Pappas v. UNUM Life Ins. Co. of Am.*, 856 A.2d 183, 187 (Pa. Super Ct. 2004) ("Although the court may discern the contract's general purpose in view of surrounding circumstances, it may not receive extraneous evidence of the parties' intent unless the language of the policy is ambiguous." (citations omitted)).

32. Rhode Island: "If the contract terms are clear and unambiguous, judicial construction is at an end for the terms will be applied as written. We note that a determination of ambiguity, a question of law, is confined to the four corners of the agreements. An ambiguity occurs only when the contract term is reasonably and clearly susceptible of more than one interpretation." *Rivera v. Gagnon*, 847 A.2d 280, 284 (R.I. 2004) (internal citations and quotations omitted); *see also Twin River Worldwide Holdings, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 324 F. Supp. 3d 266, 270 (D.R.I. 2018) ("In determining whether a contract is clear and unambiguous, the document must be viewed in its entirety and its language be given its plain, ordinary and usual meaning. When no ambiguity exists in the terms of an agreement, judicial construction is at an end for the terms will be applied as written.") (citing *Rivera*).

33. South Carolina: "KIU also argues about the process of the contract formation. It explains that the General Conditions are in a PDF format, and that parties edit the General Conditions through the editable Microsoft Word versions of the Supplementary Conditions and Special Conditions, meaning that the Special Conditions should control over the General Conditions. However, when determining whether a contract is ambiguous, the court may only look at the four corners of the contract. Therefore, the court cannot consider this process and must only look to the Contract itself." *Mears Grp., Inc. v. Kiawah Island Util., Inc.*, 372 F. Supp. 3d 363, 372 (D.S.C. 2019) (citing *Silver v. Aabstract Pools & Spas, Inc.*, 658 S.E.2d 539, 542 (S.C. Ct. App. 2008)); *see also Harbin v. Williams*, 837 S.E.2d 491, 495 (S.C. Ct. App. 2019) ("In recent years, however, our supreme court has seemingly discarded the distinction between patent and latent ambiguities in determining whether the interpretation of a document is for the court or the jury. In interpreting an insurance policy, our supreme court did not distinguish between patent and latent ambiguities in *Williams v. Government Employees Insurance Co. (GEICO)*, 762 S.E.2d 705, 710 (S.C. 2014), and stated the following: 'It is a question of law for the court whether the language of a contract is ambiguous. The construction of a clear and unambiguous contract is a question of law for the court to determine. If the court decides the language is ambiguous, however, evidence may be admitted to show the intent of the parties, and the determination of the parties' intent becomes a question of fact for the fact-finder.' Likewise, in interpreting a deed in *South Carolina Department of Natural Resources v. Town of McLellanville*, 550 S.E.2d 200, 302–03 (S.C. 2001) (internal citations omitted), our supreme court discussed ambiguities without distinguishing between patent and latent, stating: 'It is a question of law for the court whether the language of a contract is ambiguous. Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties. The determination of the parties' intent is then a question of fact. On the other hand, the

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construction of a clear and unambiguous deed is a question of law for the court.' Following our supreme court's recent trend and its analyses in *Williams* and *Town of McClellanville*, we find the ambiguity in the Trust presented a question of fact, and the trial court did not err in submitting the ambiguity to the jury.").

34. South Dakota: "When contract language is unambiguous, extrinsic evidence is not considered because the intent of the parties can be derived from within the four corners of the contract. However, when the language is ambiguous, we may go beyond the four corners to ascertain the intent of the parties." *Vander Heide v. Boke Ranch, Inc.*, 736 N.W.2d 824, 835-36 (S.D. 2007); *see also Standard Fire Ins. Co. v. Cont'l Res., Inc.*, 898 N.W.2d 734, 738 (S.D. 2017) ("We may not go beyond the four corners of the contract unless we first determine that the settlement agreement is ambiguous." (internal quotation marks omitted)).

35. West Virginia: "In articulating our standard for determining ambiguity in insurance policies, this Court has consistently observed that '[w]henever the language of an insurance policy provision is reasonably susceptible of two different meanings or is of such doubtful meaning that reasonable minds might be uncertain or disagree as to its meaning, it is ambiguous.' As the Court observed in *Payne*, '[o]nly if the court makes the determination that the contract cannot be given a certain and definite legal meaning, and is therefore ambiguous, can a question of *fact* be submitted to the jury as to the meaning of the contract. It is only when the document has been found to be ambiguous that the determination of intent through extrinsic evidence become[s] a question of fact.'" *Erie Ins. Prop. & Cas. Co. v. Chaber*, 801 S.E.2d 207, 211 (W. Va. 2017) (citations omitted) (quoting *Payne v. Weston*, 466 S.E.2d 161, 166 (W. Va. 1995)); *see also Blake v. State Farm Mut. Auto. Ins. Co.*, 685 S.E.2d 895, 902 (W. Va. 2009) ("It is significant that there [is] no support for the proposition that conduct creates an ambiguity in policy language as generally extrinsic evidence only comes into play after an ambiguity is found to exist." (citing *Payne*, 466 S.E.2d at 166)).

36. Wisconsin: "We construe the contract language according to its plain or ordinary meaning. If the contract is unambiguous, our attempt to determine the parties' intent ends with the four corners of the contract, without consideration of extrinsic evidence. Only when the contract is ambiguous, meaning it is susceptible to more than one reasonable interpretation, may the court look beyond the face of the contract and consider extrinsic evidence to resolve the parties' intent. *Town Bank v. City Real Estate Dev., LLC*, 793 N.W.2d 476, 484 (Wis. 2010) (internal quotation marks and citations omitted); *see also EP-Direct, Inc. v. Fellman*, 743 N.W.2d 167 (Wis. Ct. App. 2007) (unpublished) ("It must be remembered that, in our search for 'plain meaning,' courts are not at liberty to consider the factual circumstances surrounding the sale."); *Stanhope v. Brown Cty.*, 280

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N.W.2d 711, 721 n.14 (Wis. 1979) ("The construction of an insurance policy is generally a matter of law for the court, although in a case of ambiguity where words or terms are to be construed by extrinsic evidence, the question is one for the fact-finder.").

Group 2: Extrinsic Evidence—Objective Circumstances Only
The following states and/or jurisdictions consider objective evidence of the circumstances surrounding the agreement in determining whether an ambiguity exists:

1. Iowa: "Long ago we abandoned the rule that extrinsic evidence cannot change the plain meaning of a contract. We now recognize the rule in the Restatement (Second) of Contracts that states the meaning of a contract 'can almost never be plain except in context.' Accordingly, '[a]ny determination of meaning or ambiguity should only be made in the light of relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties. *But after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention.*' In other words, although we allow extrinsic evidence to aid in the process of interpretation, the words of the agreement are still the most important evidence of the party's intentions at the time they entered into the contract. When the interpretation of a contract depends on the credibility of extrinsic evidence or on a choice among reasonable inferences that can be drawn from the extrinsic evidence, the question of interpretation is determined by the finder of fact." *Pillsbury Co., Inc. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 436 (Iowa 2008) (citations omitted, italics in original); *see also Murr v. Midland Nat'l Life Ins. Co.*, 758 F.3d 1016, 1023 (8th Cir. 2014) ("As the Supreme Court of Iowa has recognized, the court may use extrinsic evidence to determine what meanings of a term are reasonably possible and to choose among possible meanings, even absent a determination that an ambiguity exists. *Pillsbury Co., Inc. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 436 (Iowa 2008). '[T]he meaning of a contract 'can never be plain except in context.'"); *Southern Ins. Co. v. CJG Enters., Inc.*, No. 3:15-CV-00131-RGE-SBJ, 2017 WL 3449609, at *4 (S.D. Iowa May 11, 2017) ("Although 'the most important evidence of the parties' intentions at the time they entered into the contract is the words of the contract,' the Court 'may also look to extrinsic evidence such as, the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties'.'" (quoting *NevadaCare, Inc. v. Dep't of Human Servs.*, 783 N.W.2d 459, 466 (Iowa 2010))); *Gracey v. Heritage Mut. Ins. Co.*, 518 N.W.2d 372, 373 (Iowa 1994) ("[T]he mere fact parties disagree on the meaning of the terms used does not establish ambiguity. The test is an objective one: Is the language *fairly* susceptible to two interpretations?").

2. Montana: "[T]he circumstances under which an instrument was made may be considered to aid the court in determining, as a preliminary matter, whether the instrument 'contains an ambiguity.' We emphasized, however, that not all circumstances are admissible to determine whether the instrument contains an ambiguity, as the determination must be made on an objective basis. We stated 'an instrument does not contain an ambiguity simply because the parties have or suggest opposing

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interpretations thereof or disagree as to whether the language is reasonably open to just one interpretation.' On this point, we quoted the Seventh Circuit's holding that subjective evidence of ambiguity is 'the testimony of the parties themselves as to what they believe the contract means, which is invariably self-serving, inherently difficult to verify and thus, inadmissible' whereas objective evidence of ambiguity is evidence 'that can be supplied by disinterested third parties, such as custom or usage of the trade. This kind of evidence is admissible because the ability of one of the contracting parties to fabricate such evidence is limited. Accordingly, we held that a court could consider objective evidence of the circumstances under which an agreement was made to determine if the instrument contained an ambiguity." *Richards v. JTL Grp., Inc.*, 212 P.3d 264, 273–74 (Mont. 2009) (citations omitted); *see also Gotham Ins. Co. v. Allegiance Benefit Plan Mgmt., Inc.*, 2012 WL 12548979, at *2-3 (D. Mont. 2012) (quoting *Richards*).

3. Tennessee: "Looking at the broad range of Tennessee contracts cases, it is clear that Tennessee courts have sought, albeit imperfectly, to achieve balance in contract interpretation. The central principle endures, to interpret contracts so as to ascertain and give effect to the intent of the contracting parties. In effectuating this principle, our courts have noted that judges 'are entitled to place themselves in the same situation as the parties who made the contract, so as to view the circumstances as they viewed them, and so as to judge of the meaning of the words and of the correct application of the language to the things described.' Courts should not be 'shut out from the same light which the parties enjoyed when the contract was executed.' However, the strain of textualism in Tennessee caselaw demonstrates resolve to keep the written words as the lodestar of contract interpretation. Tennessee has rejected firmly any notion that courts are a fallback mechanism for parties to use to 'make a new contract' if their written contract purportedly fails to serve their 'true' intentions. Tennessee courts 'give primacy to the contract terms, because the words are the most reliable indicator—and the best evidence—of the parties' agreement when relations were harmonious, and where the parties were not jockeying for advantage in a contract dispute.' In short, Tennessee cases cite both textualist and contextualist principles; consideration of context evidence does not eclipse other canons of contract interpretation but rather cooperates with them. Thus, as in other states, Tennessee's jurisprudence on contract interpretation 'evades tidy classification as textualist or contextualist.'" *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tenn., Inc.*, 566 S.W.3d 671, 694 (Tenn. 2019) (citations omitted); *see id.* at 697 (quoting the Texas Supreme Court's decision in *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 765 (Tex. 2018), discussed below, and concluding: "When the parties' contracts are fully integrated, general extrinsic evidence of context may be used to interpret the contractual language in line with the parties' intent, but the parol evidence rule prohibits the use of evidence of pre-contract negotiations in order to vary, contradict, or supplement the contractual terms of a fully integrated agreement."); *see also Nesmith v. Clemmons*, 2019 WL 5847286, at *8 (Tenn. Ct. App. Nov. 7, 2019) ("In *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tennessee, Inc.*, our Supreme Court has held that while the words of a contract remain our 'lodestar' in

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interpretation, 566 S.W.3d 671, 694 (Tenn. 2019), courts are not prevented from considering parol evidence, so long as it is not used to modify or vary the terms of the contract . . . .").

4. Texas: "A written contract must be construed to give effect to the parties' intent expressed in the text as understood in light of the facts and circumstances surrounding the contract's execution, subject to the parol evidence rule. . . . The rule does not prohibit consideration of surrounding circumstances that inform, rather than vary from or contradict, the contract text. Those circumstances include, according to Professor Williston's treatise, 'the commercial or other setting in which the contract was negotiated and other objectively determinable factors that give a context to the transaction between the parties.'" *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 894 (Tex. 2017) (quoting *Houston Expl. Co. v. Wellington Underwriting Agencies, Ltd.*, 352 S.W.3d 462, 469 (Tex. 2011)); *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc*., 590 S.W.3d 471, 483 (Tex. 2019) (stating that "[e]ven if a contract is unambiguous as a matter of law, a court may still consider the surrounding facts and circumstances as an aid in the construction of the contract's language," but "surrounding facts and circumstances cannot be employed to make the language say what it unambiguously does not say or to show that the parties probably meant, or could have meant, something other than what their agreement stated") (citations and all internal quotations omitted); *id.* at 485 (stating that "[i]ndustry custom and usage may inform the meaning of words that may carry their plain meaning in some contexts, but may also carry a special meaning in the context of a particular industry"; however, it "cannot be used to add, alter, or change the contracts agreed-to term."); *see also URI, Inc. v. Kleberg Cty.*, 543 S.W.3d 755, 768 (Tex. 2018) ("Because objective intent controls the inquiry, only circumstantial evidence that is objective in nature may be consulted. We have accordingly described surrounding circumstances as including 'the commercial or other setting in which the contract was negotiated and other objectively determinable factors that give a context to the transaction between the parties.'" (quoting *Hous. Expl. Co. v. Wellington Underwriting Agencies, Ltd*., 352 S.W.3d 462, 469 (Tex. 2011)); *Zurich Am. Ins. Co. v. Hunt Petroleum (AEC), Inc*., 157 S.W.3d 462, 465 (Tex. App. 2004) ("In determining whether a contract is ambiguous, we look to the contract as a whole, in light of the circumstances present when the contract was executed…These circumstances include the commonly understood meaning in the industry of a specialized term, which may be proven by extrinsic evidence such as expert testimony or reference material.") (internal citations omitted).

5. Utah: "The question we must address is whether both of these readings are reasonable. If so, the clause is ambiguous, and we would construe that ambiguity in favor of coverage. In making the determination as to whether an ambiguity exists—that is, whether both of these proposed readings of 'for a fee' are reasonable—we look to the language of the contract as well as the circumstances surrounding its formation." *Compton v. Houston Cas. Co.*, 393 P.3d 305, 311 (Utah 2017) (citing *Watkins v. Henry Day Ford*, 304 P.3d 841, 847 (Utah 2013)); *see also id.*, at 312-13 (considering customs of real estate industry in

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determining whether clause of insurance policy is ambiguous); *Ward v. Intermountain Farms Ass'n*, 907 P.2d 264, 268 (Utah 1995) ("While there is Utah case law that espouses a stricter application of the rule and would restrict a determination of whether ambiguity exists to a judge's determination of the meaning of the terms of the writing itself, the better-reasoned approach is to consider the writing in light of the surrounding circumstances." (citations omitted)); *Mind & Motion Utah Invs., LLC v. Celtic Bank Corp.*, 367 P.3d 994, 1005-06 (Utah. 2016) (refusing to consider subjective evidence in the context of an alleged latent ambiguity and quoting *AM Int'l, Inc. v. Graphic Mgmt. Assocs., Inc.*, 44 F.3d 572, 575 (7th Cir. 1995) (Posner, J.)).

6. Vermont: "Given this background, we believe it appropriate, when inquiring into the existence of ambiguity, for a court to consider the circumstances surrounding the making of the agreement. Ambiguity will be found where a writing in and of itself supports a different interpretation from that which appears when it is read in light of the surrounding circumstances, and both interpretations are reasonable." *Isbrandtsen v. N. Branch Corp.*, 556 A.2d 81, 84 (Vt. 1988); *see also Commercial Constr. Endeavors, Inc. v. Ohio Sec. Ins. Co.*, 225 A.3d 247, 251 (Vt. 2019) ("Rather, we will find ambiguity only where a policy 'in and of itself supports a different interpretation from that which appears when it is read in light of the surrounding circumstances, and both interpretations are reasonable.'") (quoting *Webb v. U.S. Fidelity & Guar. Co.*, 605 A.2d 1344, 1346 (Vt. 1992)); *B&C Mgmt. Vt., Inc. v. John*, 122 A.3d 511, 515 (Vt. 2015) (noting that determination of ambiguity should made in light of "usages of trade" (quoting Restatement (Second) of Contracts § 212 cmt. b (1981)).

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Group 3: Extrinsic Evidence—Additional Objective Evidence

The following states and/or jurisdictions permit consideration of additional objective extrinsic evidence at Stage 1:

1. Arizona: "Recognizing these problems, we are hesitant to endorse, without explanation, the often repeated and usually over-simplified construct that ambiguity must exist before parol evidence is admissible. We have previously criticized the ambiguity prerequisite in the context of non-negotiated agreements. Moreover, a contract may be susceptible to multiple interpretations and therefore truly ambiguous yet, given the context in which it was negotiated, not susceptible to a clearly contradicting and wholly unpersuasive interpretation asserted by the proponent of extrinsic evidence. In such a case, it seems clear that a court should exclude that evidence as violating the parol evidence rule despite the presence of some contract ambiguity. Finally, and most important, the ambiguity determination distracts the court from its primary objective—to enforce the contract as intended by the parties. Consequently, although relevant, contract ambiguity is not the only linchpin of a court's decision to admit parol evidence. The better rule is that the judge first considers the offered evidence and, if he or she finds that the contract language is 'reasonably susceptible to the interpretation asserted by its proponent, the evidence is admissible to determine the meaning intended by the parties. The meaning that appears plain and unambiguous on the first reading of a document may not appear nearly so plain once the judge considers the evidence . In such a case, the parol evidence rule is not violated because the evidence is not being offered to contradict or vary the meaning of the agreement. To the contrary, it is being offered to explain what the parties truly may have intended." *Taylor v. State Farm Mut. Auto Ins. Co.*, 854 P.2d 1134, 1140 (Ariz. 1993) (citations omitted). "*Sparks* [*v. Republic Nat'l Life Ins. Co.*, 647 P.2d 1127 (Ariz. 1982)] and *Zuckerman v. Transamerica Ins. Co.*, 650 P.2d 441 (Ariz. 1982)] reflect this court's attempt to bring some degree of logic and predictability into the field of insurance. What is needed, however, is recognition of a general rule of contract law. We believe that the current formulation of the Restatement (Second) of Contracts contains a workable resolution of the problem. The Restatement approach is basically a modification of the parol evidence rule when dealing with contracts containing boiler-plate provisions which are not negotiated, and often not even read by the parties. 'Standardized Agreements . . . . (2) Such a writing is interpreted wherever reasonable as treating alike all those similarly situated, without regard to their knowledge or understanding of the standard terms of the writing. . . . ' Restatement (Second) of Contracts § 211. We believe that the comments to this section of the Restatement support the wisdom of the rule formulated." *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 682 P.2d 388, 391 (Ariz. 1984); *see also Syntelco Ltd. v. Reish,* No. CV-17-00598-PHX-JZB, 2019 WL 1254664, at *3 (D. Ariz. Mar. 19, 2019) ("In general, Arizona's parol evidence rule prohibits the introduction of extrinsic evidence to vary or contradict, but not to interpret, an agreement. Id. Arizona law requires a court to 'first consider the allegations made by the proponent of the extrinsic evidence as to the appropriate interpretation of the writing in light of the extrinsic evidence alleged.' The court must then consider the language of the writing to determine if it is reasonably susceptible

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to the suggested interpretation. Id. If it is reasonably susceptible, the court must consider the extrinsic evidence; otherwise, the court should disregard the evidence.") (citations omitted); *Ervco, Inc. v. Texaco Ref. & Mktg., Inc.*, 422 F. Supp. 2d 1084, 1087 (D. Ariz. 2006) ("Arizona adheres to the 'Corbin approach,' which allows the court to look at extrinsic evidence to determine the intent of the parties without a preliminary finding of ambiguity.").

2. California: "A court determining whether a contract is ambiguous must first consider extrinsic evidence offered to prove the parties' mutual intention. If the court determines that the contract is reasonably susceptible of an interpretation supported by extrinsic evidence, the court must admit that evidence for purposes of interpreting the contract. A court cannot determine based on only the four corners of a document, without provisionally considering any extrinsic evidence offered by the parties, that the meaning of the document is clear and unambiguous. Instead, a court must provisionally consider extrinsic evidence offered by the parties in the manner we have stated." "In interpreting a standardized provision, the provision 'is interpreted as treating alike all those similarly situated, *without regard to their knowledge or understanding of the standard terms of the writing*.'" *Feller v. Transamerica Life Ins. Co.*, 2017 WL 6496803, at *11 & n.9 (C.D. Cal. Dec. 11, 2017) (quoting Restatement (Second) of Contracts § 211(2)) (emphasis in original (applying California law)); *see also Fremont Indem. Co. v. Fremont Gen. Corp.*, 55 Cal. Rptr. 3d 621, 633–34 (Cal. Ct. App. 2007) (citing *Pacific Gas & E. Co. v. G.W. Thomas Drayage & Rigging Co.*, 442 P.2d 641 (Cal. 1968)); *George v. Auto. Club of S. California*, 135 Cal. Rptr. 3d 480, 485 (Cal. Ct. App. 2011) ("After *Pacific Gas*, there is no doubt that parol evidence must be conditionally considered to determine mutual intention with respect to specified policy terms or provisions that are reasonably susceptible of more than one meaning.").

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EXHIBIT 2

Stage 1 Dictionary Survey

The following states and/or jurisdictions permit consideration of dictionary definitions at Stage 1 of the analysis:

1. Alabama: "'Regularly' is defined by the Webster's Encyclopedic Unabridged Dictionary of the English Language (1989), as the adverbial form of 'regular,' which is defined as 'usual, normal or customary.' The Third Circuit Court of Appeals, considering the same phrase, held: 'It appears to us that Nationwide heeded the Superior Court's suggestion ... that insurers add 'words of refinement' if they intend the term 'residence' to mean something more than its common law definition.' *Budd–Baldwin*, 947 F.2d at 1102. Because the phrase 'regularly lives in your household' is an unambiguous contract term, this Court must give that phrase its common, everyday meaning and interpret it as a reasonably prudent person in the insured's position would have. *See Alabama Farm Bureau Mut. Cas. Ins. Co. v. Goodman*, 279 Ala. 538, 541, 188 So.2d 268, 270 (1966). We hold that the phrase 'regularly lives in your household' is unambiguous, meaning someone who usually, normally, or customarily lives in the insured's household." *Nationwide Ins. Co. v. Rhodes*, 870 So. 2d 695, 698 (Ala. 2003); *see also Ex parte Dan Tucker Auto Sales, Inc.*, 718 So.2d 33, 36 (Ala. 1998) ("The word 'claimant' is defined in Black's Law Dictionary (6th ed. 1990) as '[o]ne who claims or asserts a right, demand or claim.' The word 'respondent' is defined in Black's as 'one who makes an answer to a bill or other proceeding in equity' or one 'who contends against an appeal.' Considering these words in light of their plain meaning, we conclude that the 'claimant' is the party who makes a demand upon another party and that the 'respondent' is the party who must answer the allegations.").

2. Arizona: "We start with the policy's language. Broadly stated, an 'animal' is 'any living creature (besides plants) other than a human being.' *See, e.g.*, Animal, Black's Law Dictionary (10th ed. 2014). And the adjective 'domestic' means "[o]f, relating to, or involving the family or the household." *See, e.g.*, Domestic, Black's Law Dictionary (10th ed. 2014). Used together, the two words presumably refer to animals that relate to or involve the family or the household—pets and other animals kept in or around a household—as some dictionaries confirm. *See, e.g.*, Domestic Animal, Cambridge Advanced Learner's Dictionary (4th ed. 2013) ("[A]n animal that is not wild and is kept as a pet or to produce food."); Domestic, New Oxford American Dictionary (3d ed. 2010) ('(of an animal) tame and kept by humans ....')." *Goldberger v. State Farm Fire & Cas. Co.*, 448 P.3d 302, 305 (Ariz. Ct. App. 2019) (citations omitted).

3. California: "It is well settled that in order to construe words in an insurance policy in their 'ordinary and popular sense,' a court may resort to a dictionary." *Jordan v. Allstate Ins. Co.*, 11 Cal. Rptr. 3d 169, 176–77 (Cal. Ct. App. 2004) (citations omitted); *see also County of San Mateo v. California State Bd. of Equalization*, 2002 WL 1204451, at *8 (Cal. Ct. App. 2002)

(unpublished) ("The words 'principal' and 'negotiation' in their plain meanings are not complicated. The word 'negotiate' is defined identically in a standard Webster's dictionary and in Black's Law Dictionary, as meaning 'to confer with another so as to come to terms or reach an agreement.'").

4. Colorado: "We begin by giving words used in an insurance policy their plain and ordinary meaning unless the intent of the parties, as expressed in the policy, indicates that an alternative interpretation is intended. Courts should not rewrite clear and unambiguous contract provisions. Dictionaries may be used to assist in the determination of the plain and ordinary meaning of words, and any ambiguities are construed against the insurer." *Miller v. Hartford Cas. Ins. Co.*, 160 P.3d 408, 410 (Col. Ct. App. 2007) (citing *Chacon v. Am. Family Mut. Ins. Co.*, 788 P.2d 748 (Colo. 1990) and *Hecla Mining Co. v. New Hampshire Ins. Co.*, 811 P.2d 1083 (Colo. 1991)); *see also id.*, at 411 (quoting Webster's II New College Dictionary and Black's Law Dictionary).

5. Connecticut: "Connecticut courts have consistently referred to dictionary definitions to interpret words used in insurance contracts. Thus, to determine the common, natural, and ordinary meaning of an undefined term, it is proper to turn to the definition found in a dictionary." *Truck Ins. Co. v. Corraro*, 2019 WL 4898705, at *4 (Conn. Super. Ct. Sept. 6, 2019) (citing *New London County Mut. Ins. Co. v. Zachem*, 74 A.3d 525 (Conn. 2013)); *see also General Star Indem. Co. v. Millington*, 2006 WL 1680985, at *6 (unpublished) (Conn. Super. Ct. 2006) (relying on Black's Law Dictionary and Merriam-Webster's Collegiate Dictionary).

6. Delaware: "When the contract is clear and unambiguous, Delaware courts will give effect to the plain-meaning of the contract's terms and provisions. A term is not ambiguous simply because it is not defined. Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined in a contract." *Fortis Advisors LLC v. Allergan W.C. Holding Inc*., 2019 WL 5588876, at *5 (unpublished) (Del. Ch. Oct. 30, 2019) (quoting *Lorillard Tobacco Co. v. Am. Legacy Found*., 903 A.2d 728, 738 (Del. 2006); footnotes, internal quotation marks, and additional citations omitted); *see also Horton v. Organogenesis, Inc.*, 2019 WL 3284737, at *4 (unpublished) ("Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined in a contract. Black's Law Dictionary defines incur as '[t]o suffer or bring on oneself (a liability or expense).'" (footnotes and additional citations omitted)).

7. District of Columbia: "We deal here with an insurance contract, and the first step in the construction of an insurance contract is to determine what a reasonable person in the position of the parties would have thought the disputed language meant. In conducting that inquiry, District of Columbia courts routinely consult dictionary definitions of disputed terms." *Interstate Fire*

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& Cas. Co. v. Washington Hosp. Ctr. Corp., 758 F.3d 378, 383 (D.C. Cir. 2014) (citing *Hartford Fin. Servs. Grp. v. Hand*, 30 A.3d 180, 187 n.13 (D.C. 2011) (consulting Black's Law Dictionary); additional citations omitted).

8. Florida: "'In interpreting an insurance contract, we are bound by the plain meaning of the contract's text.' We 'may consult references' such as dictionaries to discern the plain meaning of an insurance policy's language." *Bioscience W., Inc. v. Gulfstream Prop. & Cas. Ins. Co.*, 185 So. 3d 638, 640 (Fla. Dist. Ct. App. 2016) (citing *State Farm Mut. Auto. Ins. Co. v. Menendez*, 70 So.3d 566, 569 (Fla.2011) and *Garcia v. Fed. Ins. Co.*, 969 So.2d 288, 292 (Fla. 2007).); *see also id.*, at 641 (consulting Black's Law Dictionary).

9. Georgia: "In support of this argument appellants cite *Claussen v. Aetna Cas.*, etc., Co., 259 Ga. 333 (1989), in which the Supreme Court, in interpreting a word not otherwise defined in an insurance policy, held that the primary dictionary definition of the word did not control because the secondary dictionary definition was reasonable and commonly used and led to a construction advantageous to the insured as the party who did not draft the contract. *Id.* at 380 S.E.2d 686. However, even construing 'damages for bodily injury sustained by a person' most strongly against appellee, the party executing the instrument, OCGA § 13–2–2(5), and looking to all reasonable definitions applicable to those words, *Claussen*, *supra*, we cannot agree with appellants that a loss of consortium injury sustained by a person constitutes a 'bodily' injury. Webster's Second New International Dictionary 300 (1959, unabridged) defines 'bodily' as '[h]aving a body' and '[o]f or pertaining to the body.' *See also* The Random House Dictionary 232 (2nd ed. 1987, unabridged) ('bodily' defined as 'of or pertaining to the body' and 'corporeal or material'). Black's Law Dictionary 159 (5th ed. 1979) likewise defines 'bodily' as '[p]ertaining to or concerning the body; of or belonging to the body or the physical constitution; not mental but corporeal' and defines 'bodily injury' as '[g]enerally refer[ring] only to injury to the body, or to sickness or disease contracted by the injured as a result of injury.' *Id.*" *Bartlett v. Am. All. Ins. Co.,* 424 S.E.2d 825, 826–27 (Ga. Ct. App. 1992).

10. Hawaii: "Absent an ambiguity, contract terms should be interpreted according to their plain, ordinary, and accepted sense in common speech. Resort to legal or other well accepted dictionaries is one way to determine the ordinary meaning of certain terms." *Sierra Club v. Hawaii Tourism Auth. ex rel. Board of Directors*, 59 P.3d 877, 888 (Haw. 2002) (citations and internal quotation marks omitted); *see also id.*, at 881, 888 (relying on Hawai'ian Dictionary and Webster's Dictionary).

11. Idaho: "This Court has stated that '[w]ords in an insurance policy that have a settled legal meaning are not ambiguous merely because the policy does not contain a definition.' *North Pacific Ins. Co. v. Mai*, 130 Idaho 251, 253 (1997). Moreover, 'not every word and phrase in an insurance contract needs to be defined in the contract.' *Perry v. Farm Bureau Mut. Ins. Co. of*

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Idaho, 130 Idaho 100, 102 (Ct. App. 1997). 'Where the policy language is clear and unambiguous, however, coverage must be determined in accordance with the plain meaning of the words used.' *Mutual of Enumclaw Ins. Co. v. Roberts*, 128 Idaho 232, 235 (1996). Duty is defined as 'obligatory tasks, conduct, service, or functions that arise from one's position (as in life or in a group).' MERRIAM–WEBSTER'S COLLEGIATE DICTIONARY[] 360 (10th ed. 1993). The latest version of BLACK'S LAW DICTIONARY 543 (8th ed. 2004), defines 'duty' as '[a] legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.'" *Nat'l Union Fire Ins. Co. of Pittsburgh, P.A. v. Dixon*, 112 P.3d 825, 828–29 (Idaho 2005).

12. Illinois: "We are cognizant that when interpreting a contract, the words used are given their plain and ordinary meaning. The plain and ordinary meaning of the word 'limit' is the 'prescribed maximum or minimum amount, quantity, or number.' Webster's Third New International Dictionary 1312 (1993). The word 'maximum' is defined as 'the greatest quantity or value attainable in a given case.' Webster's Third New International Dictionary 1396 (1993). The word 'liability' is defined as 'the quality or state of being liable.' Webster's Third New International Dictionary 1302 (1993). 'Liable' is defined as 'bound or obligated according to law or equity.' Webster's Third New International Dictionary, 1302 (1993). Based on the plain and ordinary definition of the words 'limit,' 'maximum' and 'liability,' we agree with Allstate and the trial court's interpretation that Allstate's liability under the policy is actual cash value and the greatest amount of its liability is $30,000 or actual cash value. *Young v. Allstate Ins. Co.*, 351 Ill. App. 3d 151, 158–59, 812 N.E.2d 741, 749 (2004) (citations omitted); *see also Covinsky v. Hannah Marine Corp.*, 903 N.E.2d 422, 484 (Ill. Ct. App. 2009) ("The employment contract does not define the word 'termination.' Therefore, we must give it its common and generally accepted meaning. Black's Law Dictionary defines 'termination' as the 'act of ending something' and 'termination of employment' as '[t]he complete severance of an employer-employee relationship.' Black's Law Dictionary 1482 (7th ed. 1999). Webster's Dictionary defines 'termination' as 'CLOSE, CESSATION, CONCLUSION' and 'the act of terminating' as 'bringing to an end or concluding' as in 'voluntary [termination] of an agreement.' Webster's Third New International Dictionary 2359 (1986)." (certain citations omitted)).

13. Indiana: "As the contract at issue does not define the term 'prevailing party,' we will turn to sources that reflect the ordinary meaning of the term at the time the contract was executed. At the time of contract execution, Black's Law Dictionary defined 'prevailing party' as: The party to a suit who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not necessarily to the extent of his original contention. The one in whose favor the decision or verdict is rendered and judgment entered. Black's Law Dictionary 1188 (6th ed.1990). This definition appears to contemplate a trial on the merits and entry of a favorable judgment in order to obtain prevailing party status." *Reuille v. E.E. Brandenberger Const., Inc.*, 888 N.E.2d 770, 771–72 (Ind. 2008).

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14. Iowa: "More specifically, in searching for the ordinary meanings of undefined terms in insurance policies, Iowa courts commonly refer to dictionaries." *Progressive Cas. Ins. Co. v. F.D.I.C.*, 80 F. Supp. 3d 923, 942 (N.D. Iowa 2015) (internal citations, alterations, and quotation marks omitted); *see also Progressive Ins. Co. v. Reed*, 2006 WL 3436310, at *2 (unpublished) (Iowa Ct. App. 2006) ("A release is defined as '[t]he relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been demanded or enforced.' *Korsmo v. Waverly Ski Club*, 435 N.W.2d 746, 748 (Iowa Ct. App. 1988) (citing Black's Law Dictionary 1453 (4th ed.1968)).").

15. Kansas: "Our task is to determine the intent of the parties. If the terms of the contract are clear, we must determine the intent of the parties from the language of the contract without applying rules of construction. The common, ordinary meaning of an exit is 'a passage out of an enclosed place or space.' Webster's Third New International Dictionary 797 (2002). Our examination of the rental contract leads us to conclude that Logan's agreement to provide 'security at all exits' clearly means security at the exits themselves, the places of egress from the building, not the areas beyond. If the parties anticipated that security would be provided beyond the actual places of egress from the theater, we would expect some description of how far beyond the actual exits this duty extends. There is none. The plain meaning of the contract defeats appellants' argument on this issue." *Coleman v. Logan*, 186 P.3d 213, 2008 WL 2571814, at *2 (Kan. Ct. App. 2008) (citations omitted); *see also Crescent Oil Co., Inc. v. Federated Mut. Ins. Co.*, 888 P.2d 869, 871 ("Terms within an insurance contract are to be given their plain, ordinary and popular meanings where the policy is clear and unambiguous. According to Black's Law Dictionary 318 (6th ed. 1990), 'contamination' is a '[c]ondition of impurity resulting from mixture or contact with foreign substance.'" (certain citations omitted)).

16. Kentucky: "Although courts cannot reference extrinsic facts or aids, to determine the meaning of an unambiguous contract, Kentucky courts, both federal and state, routinely look to dictionaries for guidance on the interpretation of an unambiguous contractual term. *See, e.g.*, *Jones v. Bank of Harlan*, 2012 WL 115586, at *4–5 (E.D.Ky. Jan. 12, 2012) (noting that the court must 'interpret the contract's terms by assigning language its ordinary meaning and without resort to extrinsic evidence,' just before referencing Black's Law Dictionary to determine the meaning of an unambiguous contractual phrase); *Davis*, 399 F.Supp.2d at 791–92 (referencing Random House Unabridged Dictionary to interpret the meaning of a contractual term characterized by the court as "absolutely clear and unambiguous"); *First Home*, 2012 WL 95560, at *9 (noting that courts 'are required to interpret and strictly enforce the [contract] according to its terms, without reference to extrinsic evidence,' just before referencing Webster's Collegiate Dictionary to ascertain the meaning of a disputed contractual term that the court found

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to be unambiguous); *Discovery Mgmt. Servs., Inc. v. Fackler*, 2005 WL 387018, at *2 (Ky.Ct.App. Feb.18, 2005) (referencing Webster's New World Dictionary to interpret the meaning of an unambiguous contractual term); see also *U.S. Fire Ins. Co. v. Ky. Truck Sales, Inc.*, 786 F.2d 736, 739–40 (6th Cir.1986) (recognizing the Kentucky Supreme Court's approval of reference to Webster's Dictionary to interpret the plain meaning of nonlegal terms in an insurance policy)." *Encompass Indem. Co. v. Halfhill*, 2013 WL 6800682, at *4 n.1 (W.D. Ky. Dec. 20, 2013) (internal quotation marks omitted).

17. Louisiana: "Tompkins first argues that the language contained within the eligibility provisions of the incentive program is ambiguous and because of this ambiguity should be interpreted against Schering. Tompkins' contention apparently would have us interpret the eligibility provision to mean that because he was in the employ of Schering for the first half of the commission period, that he is entitled to benefits until the time of his termination. The particular word which Tompkins apparently relies on as being controlling is 'employed.' Employed is defined by Black's Law Dictionary: Term signifies both the act of doing a thing and the being under contract or orders to do it. To give employment to; to have employment. Accordingly, 'employed' may be synonomous [sic] with 'hired.'" *Tompkins v. Schering Corp.*, 441 So. 2d 455, 458 (La. Ct. App. 1983).

18. Maine: "We interpret language in a contract by its generally prevailing meaning. Both parties have supplied the court with numerous dictionary definitions of 'wire.' Dictionaries support Guilford's position that wire is made of metal. *See, e.g.*, Random House Unabridged Dictionary 2080–81 (2d ed.1993) ('1. a slender, stringlike piece or filament of relatively rigid or flexible metal'); American Heritage Dictionary 2048 (1992) ('1. A usually pliable metallic strand or rod made in many lengths . . . used chiefly for structural support or to conduct electricity.') There are dictionary definitions, however, that support CMP's position that 'wire' includes communication cable. *See, e.g.*, Chambers Science and Technology Dictionary 972 (1988) ('(Telecomm.) A continuous connection through a system, particularly a telephone exchange, whether automatic or manual)'; Oxford American Dictionary 798 (1980) ('2, a cable used to carry telephone or telegraph messages.') . . . There appear to be 'generally prevailing meanings' of 'wire' that would support the meaning urged by Guilford and the meaning urged by CMP. We conclude that the contract term 'wires' is susceptible to differing, but reasonable, interpretations." *Guilford Transp. Indus. v. Pub. Utilities Comm'n*, 746 A.2d 910, 914–15 (Me. 2000) (internal quotation marks and citations omitted).

19. Maryland: "Under Maryland's objective theory of contracts, a contract is ambiguous when a reasonably prudent person would consider the contract subject to more than one reasonable interpretation. And, importantly for this analysis, it is appropriate to consult dictionaries to interpret words or phrases in contractual provisions." *Sec. Square Holding, LLC v. Sec. Wards, LLC*, 2015 WL 7421072, at *7 (Md. Ct. Spec. App. Nov. 20, 2015) (internal citations and quotation marks omitted); *see also id.*, at

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*9 (citing Random House Dictionary of The English Language, Merriam–Webster's Collegiate Dictionary, Garner's Dictionary of Legal Usage, and The Wordsworth Dictionary of Modern English Grammar).

20. Massachusetts: "We interpret unambiguous contract language according to its plain meaning. The term 'foreclosure' is unambiguous. 'Foreclosure' means '[a] legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property." Black's Law Dictionary 789 (11th ed. 2019)." *Goodwill Enterprises, Inc. v. Kavanagh*, 132 N.E.3d 129, 136 (Mass. App. Ct. 2019) (citations omitted).

21. Michigan: "The mere fact that a term is not defined in a policy does not render that term ambiguous. Rather, reviewing courts must interpret the terms of the contract in accordance with their commonly used meanings. When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate. The terms 'vacant' and 'unoccupied' have commonly used meanings and are easily understood. According to Black's Law Dictionary, the term 'vacant' means 'empty; unoccupied.' Black's Law Dictionary (8th ed).'" *Vushaj v. Farm Bureau Gen. Ins. Co. of Michigan*, 284 Mich. App. 513, 515, 773 N.W.2d 758, 759 (Mich. Ct. App. 2009) (certain internal quotation marks and citations omitted).

22. Minnesota: "When a contract's language is clear and unambiguous, we interpret it according to the plain, ordinary sense so as to effectuate the intention of the parties. Language in a contract is ambiguous when it is susceptible to two or more reasonable interpretations. In construing contract language, we may also look to dictionary definitions." *Lhb Properties, LLC v. E.Y.*, 2015 WL 1960896, at *2 (Minn. Ct. App. May 4, 2015) (internal citations, quotation marks, and alterations omitted); *see also Unimin Corp. v. Flood*, 1993 WL 500521, at *2 (Minn. Ct. App. Dec. 7, 1993) ("Second, the terms of a contract are to be given their plain and ordinary meaning. An 'advance payment' is one 'made in anticipation of a contingent or fixed future liability.' Black's Law Dictionary 48 (5th ed. 1979)." (citations omitted)).

23. Mississippi: "The 'latent defect' definition cited in *In re Chinese Drywall Litigation* and *Ross*, i.e., as 'a defect that is hidden or concealed from knowledge, as well as from sight, and which a reasonable customary inspection would not reveal,' *Ross*, 70 So.3d at 953, is typical. *See* Black's Law Dictionary, 794 (5th ed. 1979) (defining 'latent defect' as '[a] hidden or concealed defect . . . which could not be discovered by reasonable and customary inspection,'); Couch on Ins. § 153:77 (3d ed. 2010) (defining 'latent defect' as 'an imperfection in the materials used which could not be discovered by any known and customary test') (citations omitted)." *Bishop v. Alfa Mut. Ins. Co.,* 796 F. Supp. 2d 814, 820–21 (S.D. Miss. 2011).

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24. Missouri: "Under Missouri law, in contract cases the language of the contract is our first – and often, our only – resort. We interpret contracts as a layperson would understand them and use dictionaries to determine the meanings of terms when the insurance contract does not provide a definition." *Ferguson v. St. Paul Fire & Marine Ins. Co.*, 597 S.W.3d 249, 259 (Mo. Ct. App. 2019); *see also J.H. Berra Constr. Co., Inc. v. City of Wash.*, 510 S.W.3d 871, 875 (Mo. Ct. App. 2017) ("The first question before this Court is whether, within the four corners of the contract, the term 'working day' is ambiguous, and we find that it is. The term 'working day' has at least two meanings used in the contract. In one portion of the contract, 'working day' appears to reference a typical business day, which is ordinarily understood to mean a day that most institutions, such as banks and governments, are open for business. See BLACK'S LAW DICTIONARY 402 (7th ed. 1999).").

25. Montana: "On this point, the District Court concluded that Trader's proposed interpretation of the term 'employee' is too restrictive. The court, instead, adopted a 'usual and common sense' definition of an employee as one employed by another or, more specifically, 'one engaged in services for wages or salary by another.' According to the court, the reference to 'leased workers in the CGL policy's 'employee' definition indicates only that leased workers are included within the broader definition. Relying on Webster's Dictionary, Tenth Edition, the court further noted that the usual and common sense meaning of the term 'include' is to 'take in or comprise as part of a whole.' . . . We agree with the District Court in its interpretation of the exclusion provision and, specifically, the use and meaning of the term 'employee.'" *Farmers Union Mut. Ins. Co. v. Horton*, 67 P.3d 285, 288–89 (Mont. 2003); *Erickson v. Dairyland Ins. Co.*, 785 P.2d 705, 707 (Mont. 1990) ("The plain language of the declarations page which is part of the policy, is not ambiguous in stating that Mr. Erickson's coverage was for 'bodily injury liability.' Reference to the 'Liability' section of the policy further clarifies this coverage. It states, 'We promise to pay damages for bodily injury ... for which the law holds you responsible ...' Under the definitions section the policy defines 'damages' as the 'cost of compensating those who suffer bodily injury ...'Additionally, the commonly understood meaning of 'liable' is '[b]ound or obliged in law or equity; responsible' Black's Law Dictionary 1060 (4th Ed.1968). 'In interpreting and applying insurance contracts, the common rather than technical usage and meaning of definitional terms and policies should be used.'").

26. Nebraska: "When interpreting the plain meaning of the terms of an insurance policy, we have stated that the natural and obvious meaning of the provisions in a policy is to be adopted in preference to a fanciful, curious, or hidden meaning. We have further stated that while for the purpose of judicial decision dictionary definitions often are not controlling, they are at least persuasive that meanings which they do not embrace are not common." *Katskee v. Blue Cross/Blue Shield of Nebraska*, 515 N.W.2d 645, 649 (Neb. 1994) (internal citations, alterations, and quotation marks omitted); *see also id.*, at 649-50 (citing

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Webster's Third New International Dictionary, Black's Law Dictionary, Dorland's Illustrated Medical Dictionary, and The Sloane–Dorland Annotated Medical–Legal Dictionary).

27. Nevada: "'Refund' has a plain meaning. According to Black's Law Dictionary (Ninth edition), the first meaning of the term 'refund' is: 'the return of money to a person who overpaid, such as a taxpayer who overestimated tax liability or whose employer withheld too much tax from earnings.' The second meaning is similar: 'the money returned to a person who overpaid.'" *Sierra Dev. Co. v. Chartwell Advisory Grp., Ltd.*, 2017 WL 132843, at *3 (D. Nev. Jan. 13, 2017) (applying Nevada law).

28. New Hampshire: "Because 'construction' can commonly mean either a structure or the act or process of building a structure, the phrase 'total construction' does not lend itself to one plain meaning." *Cont'l W. Ins. Co. v. Opechee Const. Corp.*, 2015 WL 5838408, at *3 (D.N.H. Oct. 6, 2015) (applying New Hampshire law); *see also id.*, at *3 n.3 ("*See* The American Heritage Dictionary of the English Language 395 (4th ed.2000) (defining construction as '1 (a) The act or process of constructing, (b) The art, trade, or work of building . . . (2) A structure, such as a building, framework or model.'); *Sabinson v. Trustees of Dartmouth Coll.*, 160 N.H. 452, 458, 999 A.2d 380, 386 (2010) (using dictionary definition to determine the common and plain meaning of contract term)."); *Hudson v. Farm Family Mut. Ins. Co.*, 697 A.2d 501, 504 (N.H. 1997) ("In a different context, a leading text on insurance law instructs that 'sudden' is not to be construed as synonymous with instantaneous." 10A M. Rhodes, Couch on Insurance 2d § 42:396 (Rev. ed. 1982) ('When coverage is limited to a sudden 'breaking' of machinery the word 'sudden' should be given its primary meaning as a happening without previous notice'). While not determinative, such an interpretation suggests that the term 'sudden and accidental' is at least reasonably susceptible to an interpretation consistent with 'unexpected and unintended.'").

29. New Jersey: "An ambiguity in a contract exists if the terms of the contract are susceptible to at least two reasonable alternative interpretations. Generally, the terms of an agreement are to be given their plain and ordinary meaning. The term 'additional' is defined in Webster's Third New International Dictionary 24 (1971) as 'existing or coming by way of addition.' Webster's defines the term 'addition' as '[t]he result of adding: anything added: INCREASE, AUGMENTATION.' By its plain meaning, the phrase 'claim for additional compensation' means a claim for 'increased' or 'augmented' compensation." *M.J. Paquet, Inc. v. New Jersey Dep't of Transp.*, 794 A.2d 141, 152 (N.J. 2002) (internal citations and quotation marks omitted); *see also Najmee v. Brownstones at Essex Fells, LLC*, 2014 WL 349486, at *2 (unpublished) (N.J. Super. Ct. 2014) ("Plaintiffs next claim that by agreeing to arbitrate 'disputes,' they did not agree to arbitrate legal claims or causes of action. 'Dispute' is a

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broad term encompassing a 'verbal controversy' or 'quarrel,' Webster's II New College Dictionary 335 (1995), and a 'conflict or controversy, esp[ecially] one that has given rise to a particular law suit,' Black's Law Dictionary 505 (8th ed. 2004).").

30. North Carolina: "Furthermore, unless circumstances show otherwise, words in an unambiguous contract will be given their common or normal meaning. Dictionaries can be used to determine the common and ordinary meaning of words and phrases." *Marcuson v. Clifton*, 571 S.E.2d 599, 601 (N.C. Ct. App. 2002) (internal citations and quotation marks omitted); *see also Inland Am. Winston Hotels, Inc. v. Crockett*, 712 S.E.2d 366, 354 (N.C. Ct. App. 2011) ("We hold that that the terms in the non-compete agreements are unambiguous. Accordingly, we look to the plain meaning of these terms. 'Solicit' is defined as (1) 'to make petition to[;]' (2) 'to approach with a request or plea[;]' (3) 'to urge (as one's cause) strongly[;]' (4) 'to entice or lure esp. into evil[;]' (5) 'to proposition ... [;]' and (6) 'to try to obtain by [usually] urgent requests or pleas[.]' Merriam–Webster's Collegiate Dictionary 1187 (11th ed. 2005). Similarly Black's Law Dictionary defines solicitation as '[t]he act or an instance of requesting or seeking to obtain something; a request or petition [.]' Black's Law Dictionary 1520 (8th ed.2009).").

31. North Dakota: "When an insurance policy fails to define a term, the court will often turn to the dictionary to determine the plain, ordinary meaning of that term." *Ctr. Ins. Co. v. Blake*, 370 F. Supp. 2d 951, 954–55 (D.N.D. 2005) (applying North Dakota law); *see also Eckes v. Richland Cty. Social Servs.*, 621 N.W.2d 851, 858 (N.D. 2001) ("When a term in an instrument is undefined, we usually look to the clear ordinary meaning which a non-law-trained person would attach to the term. The term 'substantial' is ordinarily defined as 'of considerable worth or value; important.' Webster's New World Dictionary 1420 (2d coll. ed. 1980). The legal definition of 'substantial' bears the same meaning: '[o]f real worth and importance; of considerable value; valuable.' Black's Law Dictionary 1428 (6th ed.1990). As the ordinary meaning and legal meaning of 'substantial' are in agreement, we conclude the term is not ambiguous." (certain citations omitted)).

32. Ohio: "As stated above, this Court interprets the language of a contract in accordance with its plain and ordinary meaning. This Court has consistently resorted to the use of dictionaries to establish the plain and ordinary meaning. A waiver is the 'voluntary relinquishment * * * of a legal right or advantage.' Black's Law Dictionary (1999), 1574." *Co Le'Mon, L.L.C. v. Host Marriott Corp.*, 2006 WL 1485235, at *5 (Ohio Ct. App. May 31, 2006) (certain internal quotation marks and citations omitted).

33. Oklahoma: "Courts interpreting insurance policies under Oklahoma law routinely refer to dictionary definitions in determining the plain and ordinary meaning of an unambiguous term." *Argonaut Ins. Co. v. Earnest*, 861 F. Supp. 2d 1313, 1318 n.4 (N.D.

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Okla. 2012); *see also Cummings v. Minnesota Life Ins. Co.*, 711 F. Supp. 2d 1287, 1294 & n.4 (N.D. Okla. 2010) (considering Merriam–Webster's Collegiate Dictionary, Merriam–Webster's On–Line Dictionary, and Black's Law Dictionary).

34. Oregon: "Dictionary definitions may be used in the first step of the analysis to determine whether a provision is ambiguous." *Westar Elec. Co. v. Westar Acquisition Corp.*, 33 P.3d 718, 722 (Or. Ct. App. 2001); *see also Farmers Ins. Exch. v. Crutchfield*, 113 P.3d 972, 977 ("We begin with the disputed term's ordinary meaning. To 'own' means 'to have or hold as property or appurtenance: have a rightful title to, whether legal or natural: POSSESS.' Webster's Third New Int'l Dictionary 1612 (unabridged ed. 2002); see Black's Law Dictionary 1137 (8th ed. 2004) ('[t]o rightfully have or possess as property; to have legal title to').").

35. Pennsylvania: "The Harleysville policy does not define the terms in question. Words of common usage in an insurance policy are to be construed in their natural, plain, and ordinary sense, and we may inform our understanding of these terms by considering their dictionary definitions." *Madison Const. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 108 (Pa. 1999) (citations omitted); *see also Profit Wize Marketing v. Wiest*, 812 A.2d 1270, 1275 (Pa. Super. Ct. 2002) ("As the parties failed to define the term 'prevails' in the contract itself, we must look to the plain and ordinary meaning of 'prevail' to discern the contractual intent of the parties. In common parlance, to 'prevail' means 'to gain ascendancy through strength or superiority: TRIUMPH.' Merriam Webster's Collegiate Dictionary, 7th Ed. at 924. Additionally, Black's Law Dictionary has defined the verb, prevail, as 'to obtain the relief sought in an action; to win a lawsuit <the plaintiff prevailed in the Supreme Court>.' Black's Law Dictionary, 7th ed. at 1206." (certain citations omitted)).

36. Rhode Island: "When interpreting a contract, the Court initially examines the precise language of the agreement in order to ascertain whether the meaning and intent of the parties is clear. Contract language is assigned its ordinary, dictionary meaning." *Allstate Drilling Co. v. Martinelli*, 2004 WL 253526, at *2 (R.I. Super. Ct. Jan. 15, 2004); *see also Dubis v. E. Greenwich Fire Dist.*, 754 A.2d 98, 100 (R.I. 2000) ("Unless plain and unambiguous intent to the contrary is manifested, words used in contract language are assigned their ordinary meaning. Black's law dictionary defines a cost of living clause in a contract as a 'provision * * * that gives an automatic wage, rent, or benefit increase tied in some way to cost-of-living rises in the economy.' Black's Law Dictionary, 351 (7th ed.1999)." (certain citations and internal quotation marks omitted)).

37. South Carolina: "Farm Bureau's insurance policy does not define 'abuse.' Therefore, we look to the common meaning of 'abuse' in conjunction with the other language of the contract to determine its meaning within the policy. *See also Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 552 S.E.2d 42, 46 (S.Ct. Ct. App. 2001) (holding dictionaries can be helpful tools

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for the purpose of defining terms). Black's Law Dictionary defines 'abuse' as '[a] depart[ure] from legal or reasonable use in dealing with (a person or thing); to misuse . . . . To injure (a person) physically or mentally.' Black's Law Dictionary 8 (7th ed. 2000); *see also* The American Heritage Dictionary of the English Language 6 (1973) (stating abuse means '[t]o hurt or injure by maltreatment')." *S.C. Farm Bureau Mut. Ins. Co. v. Oates*, 356 S.C. 378, 382–83, 588 S.E.2d 643, 646 (S.C. Ct. App. 2003) (citations omitted).

38. South Dakota: "This issue requires us to interpret the meanings of 'professional service' and 'any' in the endorsement. The CGL policy does not define professional service, but we have previously defined the term in CGL policies to mean those acts or services 'entailing the performance of a vocation, calling, or occupation requiring learning and intellectual skill.' Further, we may use statutes and dictionary definitions to determine the plain and ordinary meaning of undefined words in a contract." *W. Nat'l Mut. Ins. Co. v. TSP, Inc.*, 904 N.W.2d 52, 57 (S.D. 2017) (citations, alterations, and certain internal quotation marks omitted); *see also Baker v. Masco Builder Cabinet Grp., Inc.*, 912 F. Supp. 2d 814, 824 (D.S.D. 2012) ("The plain meaning of the word 'close' as used in the contract and defined by Webster's Dictionary is 'to suspend or stop the services, sessions, or operations of.' Webster's Third New International Dictionary, 426 (2002). Black's Law Dictionary defines 'close' as '[t]o conclude; to bring to an end [.]' Black's Law Dictionary, 290 (9th ed. 2009). The court finds the term 'close' is not ambiguous.").

39. Tennessee: "In *American Sur. Co. of N.Y. v. City of Clarksville*, 315 S.W.2d 509, 513 (Tenn. 1958), our Supreme Court was similarly faced with interpreting the term 'employee' in an insurance policy when the policy itself did not define the term. The Court found the term unambiguous, explaining that '[t]he ordinary and usual meaning of the word 'employe' is one who is employed by another and works for wages or salary without regard to whether the employment be legal or illegal.' *Id.* Although *American Surety Co.* is an older case, its construction of the term 'employee' is consistent with the ordinary understanding of the word today. When called upon to interpret a term used in an insurance policy that is not defined therein, courts in Tennessee sometimes refer to dictionary definitions." *Tennessee Farmers Mut. Ins. Co. v. Cherry*, 2008 WL 933479, at *7 (Tenn. Ct. App. Apr. 7, 2008); *see also Garrison v. Bickford*, 377 S.W.3d 659, 669 (Tenn. 2012) ("The commonly understood meaning of the words 'bodily injury to a person and sickness, disease, or death that results from it' as used in the policy, or the words 'bodily injury, sickness or disease, including death' as used in the statute, are unambiguous. These words, when used to define 'bodily injury,' refer to physical, not emotional, conditions of the body. See Webster's Third New International Dictionary 245 (3d ed. 1976) (equating 'bodily' with 'physical,' as 'contrast[ed] with mental'); Black's Law Dictionary 801 (8th ed. 2004)." (footnotes and certain citations omitted)).

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40. Texas: "Because the policy does not define the term 'liability,' we must give the term its common, ordinary meaning, while reading the term in context and in light of the rules of grammar and common usage. To determine a term's common, ordinary meaning, we typically look first to dictionary definitions and then consider the term's usage in other authorities." *Anadarko Petroleum Corp. v. Houston Cas. Co.*, 573 S.W.3d 187, 192 (Tex. 2019) (citations and certain internal quotation marks omitted); *see also Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 121-22 (Tex. 1996) ("Royalty is commonly defined as the landowner's share of production, free of expenses of production. *See Delta Drilling Co. v. Simmons*, 338 S.W.2d 143, 147 (1960); *Alamo Nat'l Bank v. Hurd*, 485 S.W.2d 335, 338 (Tex. Civ. App.—San Antonio 1972, *writ ref'd n.r.e.*); 8 WILLIAMS & MEYERS, OIL & GAS LAW, 856–57 (1987); 3 KUNTZ, OIL & GAS LAW, § 42.2 (1989).").

41. Utah: "As we have discussed, when interpreting a contract, we generally give each term its plain and ordinary meaning. And here, Black's Law Dictionary defines 'shall' as 'a duty to,' 'is required to,' or "mandatory." *Mind & Motion Utah Invs., LLC v. Celtic Bank Corp.*, 367 P.3d 994, 1001-02 (Utah 2016) (footnotes omitted).

42. Vermont: "It is settled law that in the interpretation of insurance contracts, when a pivotal word is not defined either in the policy or the application it is permissible for the court to take judicial notice of its meaning as given in standard works, such as dictionaries." *Simpson v. State Mut. Life Assur. Co. of Am.*, 382 A.2d 198, 200 (1977) (internal quotation marks and alterations omitted).

43. West Virginia: "First, the term 'employee' is unambiguous. To determine its meaning, we look to the common and customary meaning of the term. For instance, Black's Law Dictionary defines 'employee' as '[a] person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.'" *Lancer Ins. Co. v. VIP Limousine Serv., Ltd.*, 2013 WL 937735, at *5 (N.D.W. Va. Mar. 11, 2013) (internal citations and quotation marks omitted).

44. Wisconsin: "Words in a contract are generally given their plain and ordinary meaning. In *Fee v. Heritage Mutual Ins. Co.*, 117 N.W.2d 269 (Wisc. 1962), this court defined the word damages as meaning 'A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property or rights, through the unlawful act or omission ... of another.' (citing Black's Law Dictionary 466 (4th ed. 1968)." *Harris v. Metropolitan Mall*, 334 N.W.2d 519, 527 (Wisc. 1983) (certain citations omitted); *see also Sawyer v. West Bend Mut. Ins. Co.*, 821 N.W.2d 250, 256 (Wisc. Ct. App. 2012) ("As noted, words in an insurance policy are given their common and ordinary meaning to determine whether they are ambiguous, and if a word in an insurance contract is susceptible to more than one

reasonable meaning, it is considered ambiguous and should be construed in favor of coverage. The policy does not define the word 'person,' so we must give it its common and ordinary meaning. And, as Sawyer correctly notes, 'person' is defined as a business in many contexts. For example, WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1686 (3d ed. 1993) includes in its definition of 'person' 'a human being, a body of persons, or a corporation, partnership, or other legal entity that is recognized by law as the subject of rights and duties,' and BLACK'S LAW DICTIONARY 1178 (8th ed. 2004) includes in its definition of 'person' 'an entity, (such as a corporation) that is recognized by law as having the rights and duties of a human being.'" (certain citations and internal quotation marks omitted)).

EXHIBIT 3

Stage 2 Survey: Resolving Ambiguities

Group 1: No Extrinsic Evidence

The following states and/or jurisdictions construe ambiguous insurance policies against the insurer without considering extrinsic evidence:

1. Florida: "We hold that under Florida law applicable to construction of insurance policies, because the policy is ambiguous it must be construed against the insurer and in favor of coverage without resort to consideration of extrinsic evidence." *Wash. Nat'l Ins. Corp. v. Ruderman*, 117 So.3d 943, 945 (Fla. 2013); *see also Berkshire Life Insurance Co. v. Adelberg*, 698 So.2d 828, 830 (Fla. 1997) ("It has long been a tenet of Florida insurance law that an insurer, as the writer of an insurance policy, is bound by the language of the policy, which is to be construed liberally in favor of the insured and strictly against the insurer.").

2. Georgia: "Insurance in Georgia is a matter of contract and the parties to the contract of insurance are bound by its plain and unambiguous terms. However, if a provision of an insurance contract is susceptible of two or more constructions, even when the multiple constructions are all logical and reasonable, it is ambiguous, and the statutory rules of contract construction will be applied. Pursuant to the rule of construction set forth at OCGA § 13-2-2(5), the contract will be construed strictly against the insurer/drafter and in favor of the insured. Since the insurance contract does not contain a definition of the word 'entitled,' we conclude that the exclusion at issue is susceptible of three logical and reasonable interpretations . . . . The number of reasonable and logical interpretations makes the clause ambiguous, and the statutory rules of construction require that we construe the ambiguous clause against the insurer. Accordingly, we adopt the interpretation least favorable to the insurer and determine that the clause excludes from coverage only those non-owner drivers who use a vehicle without a reasonable belief that they had the permission of the owner or apparent owner to do so." *Hurst v. Grange Mut. Cas. Co.*, 470 S.E.2d 659, 663–64 (Ga. 1996) (citations omitted); *see also Georgia Farm Bureau Mut. Ins. Co. v. Smith*, 784 S.E.2d 422, 424–25 (Ga. 2016) ("However, when a policy provision is susceptible to more than one meaning, even if each meaning is logical and reasonable, the provision is ambiguous and, pursuant to OCGA § 13–2–2(5), will be construed strictly against the insurer/drafter and in favor of the insured.") (citing *Hurst*); *Michna v. Blue Cross & Blue Shield of Georgia, Inc.*, 653 S.E.2d 377, 379 (Ga. Ct. App. 2007) ("Under our law, when a provision in a policy is susceptible to more than one meaning, even if each meaning is logical and reasonable, that provision is ambiguous. Such contracts must be construed against the insurer and in favor of the insured.") (citing *Hurst*); *see id.*, at 113 ("'At least initially, construction is a matter of law for the court. First, the trial court must decide whether the language is clear and unambiguous. If it is, the court simply enforces the contract according to its clear terms; the

contract alone is looked to for its meaning. Next, if the contract is ambiguous in some respect, the court must apply the rules of contract construction to resolve the ambiguity." (quoting *Schwartz v. Harris Waste Mgmt. Grp.*, 516 S.E.2d 371 (Ga. 1999)).

3. Hawaii: "We have observed that 'insurers have the same rights as individuals to limit their liability[ ] and to impose whatever conditions they please on their obligation, provided they are not in contravention of statutory inhibitions or public policy.' *First Ins. Co. of Hawai'i, Inc. v. State*, 665 P.2d 648, 655 (Haw. 1983) (internal citations and quotation marks omitted). On the other hand, however, we have long held that any ambiguities in an insurance contract regarding coverage are resolved in favor of the insured as against the insurer. *See Tri–S Corp. v. W. World Ins. Co.*, 135 P.3d 82, 98 (Haw. 2006) (explaining that ambiguities must be resolved in favor of the insured and 'policies are to be construed in accord with the reasonable expectations of a layperson'); *Allstate Ins. Co. v. Ponce*, 99 P.3d 96, 109 (Haw. 2004) (holding that the ambiguity in the term of the insurance contract should be resolved in favor of the insured); *Estate of Doe v. Paul Revere Ins. Group*, 948 P.2d 1103, 1118 (Haw. 1997) (stating that this court must 'resolve any contractual ambiguities against the insurer'); *see also Allstate Ins. Co. v. Pruett*, 186 P.3d 609 (Haw. 2008) (applying these principles in interpreting ambiguous language in an insurance contract exclusion)." *Nautilus Ins. Co. v. Lexington Ins. Co.*, 321 P.3d 634, 643–44 (Haw. 2014); *see, e.g., Allstate Ins. Co. v. Ponce*, 99 P.3d 96, 108–09 (Haw. 2004) (refusing to consider an identification card issued with the policy, stating: "Our construction of an insurance contract is therefore guided by the terms of the policy, not the no-fault identification card. Moreover, [w]e have acknowledged that '[b]ecause insurance policies are contracts of adhesion and are premised on standard forms prepared by the insurer's attorneys, we have long subscribed to the principle that they must be construed liberally in favor of the insured and [any] ambiguities [must be] resolved against the insurer.') (citations omitted); *see also State Farm Mut. Auto. Ins. Co. v. Fermahin*, 836 P.2d 1074, 1077 (Haw. 1992) ("Because insurance contracts are contracts of adhesion, they must be construed liberally in favor of the insured and all ambiguities are resolved against the insurer.") (citing *Sturla, Inc. v. Fireman's Fund Ins. Co.*, 684 P.2d 960, 964 (Haw. 1984)); *Guajardo v. AIG Hawai'i Ins. Co.*, 187 P.3d 580, 586 (Haw. 2008) ("[B]ecause insurance policies are contracts of adhesion and are premised on standard forms prepared by the insurer's attorneys, we have long subscribed to the principle that they must be construed liberally in favor of the insured and any ambiguities must be resolved against the insurer.").

4. Massachusetts: "When the language is ambiguous, it is construed against the drafter, 'if the circumstances surrounding its use . . . do not indicate the intended meaning of the language.' *Merrimack Valley Nat'l Bank v. Baird*, . . . 363 N.E.2d 688[, 691] ([Mass.] 1977). 'The author of the ambiguous term is held to any reasonable interpretation attributed to that term which is relied on by the other party.' *Id.* [at 691–92]. Finally, we construe a contract as a whole, so as 'to give reasonable effect to each of its provisions.' *J.A. Sullivan Corp. v. Commonwealth*, . . . 494 N.E.2d 374[, 378] ([Mass.] 1986). These familiar

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principles are supplemented with more specific rules of construction where, as here, the contracts at issue are standardized contracts of adhesion. Although typically when confronted with ambiguous language a court will examine extrinsic evidence to determine what the parties meant the contract to say, *see Bank v. Thermo Elemental Inc.*, . . . 888 N.E.2d 897[, 907–08] ([Mass.] 2008), such an inquiry is impracticable where the nondrafting party had no ability to influence the language of the contract." *James B. Nutter & Co. v. Estate of Murphy*, 88 N.E.3d 1133, 1139 (Mass. 2018); *see also DaSilva v. Border Transfer of MA, Inc.*, 377 F. Supp. 3d 74, 91 (D. Mass. 2019) ("When faced with an ambiguous standardized contract that 'the nondrafting party had no ability to influence,' a court must 'construe it against the party that drafted it' and 'seek to effectuate . . . the meaning an objectively reasonable person in the nondrafting party's position would give to the language.'" (quoting *James B. Nutter*, 88 N.E.3d at 1139–40)); *Brown v. Savings Bank Life Ins. Co.*, 107 N.E.3d 1163, 1171 (Mass. Ct. App. 2018) ("An insurance contract is a contract of adhesion, which must be construed against the drafter and in favor of the insured. Setting to one side the questions of public policy raised by a shortened limitations period, the 'on or in respect to' language of the contract here is, at best, ambiguous." (quoting *James B. Nutter, 88 N.E.3d at 1133*; additional citation omitted)).

5. Missouri: "Moreover, '[i]n construing the terms of an insurance policy, this Court applies the meaning which would be attached by an ordinary person of average understanding if purchasing insurance, and resolves ambiguities in favor of the insured.' … This rule, often referred to as the doctrine of 'contra proferentem,' is applied 'more rigorously in insurance contracts than in other contracts' in Missouri." *Burns v. Smith*, 303 S.W.3d 505, 509 (Mo. 2010) (citations omitted); *id.* at 512 ("A court, therefore, will not resort to 'extrinsic evidence [offered] to demonstrate their positions of coverage and non[-]coverage. Since the language used is uncertain, the well[-]established rule applies that it will be construed against the insurer.") (citations omitted); *see also Krombach v. Mayflower Ins. Co.*, 827 S.W.2d 208, 211 (Mo. 1992) ("As noted by Judge Learned Hand, '[T]he canon contra proferentem is more rigorously applied in insurance than in other contracts, in recognition of the difference between the parties in their acquaintance with the subject matter ... Insurers who seek to impose upon words of common speech an esoteric significance intelligible only to their craft, must bear the burden of any resulting confusion.'") (quoting Gaunt v. John Hancock Mutual Life Ins. Co., 160 F.2d 599, 602 (2d Cir. 1947)); *Schmitz v. Great Am. Assurance Co.*, 337 S.W.3d 700, 706 (Mo. 2011) ("If the policy is ambiguous, it will be construed against the insurer.").

6. North Dakota: "The interpretation of an insurance policy, including whether it is ambiguous, is a question of law, which is fully reviewable on appeal . . . . However, any ambiguity or reasonable doubt as to the meaning of an insurance policy is strictly construed against the insurer and in favor of the insured." *Fisher v. Am. Family Mut. Ins. Co.*, 579 N.W. 2d 599, 602

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(N.D. 1998) (citing *Johnson v. Center Mut. Ins. Co.*, 529 N.W.2d 568, 570 (N.D. 1995) and *Aid Ins. Svcs., Inc. v. Geiger*, 294 N.W.2d 411, 414 (N.D. 1980)).

7. Oregon: "If only one interpretation of the provision is reasonable, that interpretation controls. Alternatively, if more than one purported interpretation is reasonable, then the term must be interpreted against the drafter of the language. Oregon courts do not consider extrinsic evidence when interpreting insurance policy language." *Alterra Am. Ins. Co. v. James W. Fowler Co.*, 347 F. Supp. 3d 604, 612 (D. Or. 2018) (citing *Hoffman Const. Co. of Alaska v. Fred S. James & Co. of Oregon*, 836 P.2d 703 (Or. 1992), *Travelers Indem. Co. v. U.S.*, 543 F.2d 71 (9th Cir. 1976), and *Rhiner v. Red Shield Ins. Co.*, 208 P.3d 1043 (Or. Ct. App. 2009)); *see also Andres v. Am. Standard Ins. Co. of Wis.*, 134 P.3d 1061, 1063 (Or. Ct. App. 2006) ("Whatever the reason, the court has been clear since *Hoffman Construction Co.* that the interpretation of insurance policies is a question of law, not one that is resolved by reference to evidence extrinsic to the policy itself.").

8. Tennessee: "When there is doubt or ambiguity as to its meaning, an insurance contract must be construed favorably to provide coverage to the insured." *Naifeh v. Valley Forge Life Ins. Co.*, 204 S.W.3d 758, 768 (Tenn. 2006); *see also Am. Justice Ins. Reciprocal v. Hutchison*, 15 S.W.3d 811, 815 (Tenn. 2000) ("[T]he term 'volunteer,' as it is used in the policy, is ambiguous. As such, we resolve the ambiguity by construing the term 'volunteer' in favor of the insured, and conclude that the Knox County defendants were volunteers within the meaning of the liability insurance policy . . . ."); *Tennessee Clutch & Supply, Inc. v. Auto-Owners (Mut.) Ins. Co.*, 556 S.W.3d 203, 207 (Tenn. Ct. App. 2017) ("If an insurer drafts a policy that is ambiguous we construe any ambiguity in favor of the insured.").

9. Vermont: "Insurance contracts are construed according to their terms and the evident intent of the parties as gathered from the language used. The cardinal rule of construction promotes a reading of the phrase at issue in its plain, ordinary, and popular sense. When the language is ambiguous, the ambiguity is resolved in favor of the insured party. The contract is to be strictly construed against the insurer. . . . The definition of 'bodily injury' as 'bodily harm, sickness or disease' is insufficiently specific on its face to determine whether exposure to the toxic gas released from the insulation and consequent emotional distress are intended to be covered by the policy. Specifically, the definition does not tell us whether the harm must be outwardly manifested or whether it may remain undetected for a time. We construe the ambiguity, as we must, in the insureds' favor, and hold that American must provide a defense against the underlying claims for damages from exposure to formaldehyde gas and associated psychological harm, and indemnify the McMahans under the insurance contract should they be found liable on counts I and III of the Livak complaint." *Am. Prot. Ins. Co. v. McMahan*, 562 A.2d 462, 464 (Vt. 1989) (internal citations,

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alterations, and quotation marks omitted); *see also Commercial Constr. Endeavors, Inc. v. Ohio Sec. Ins. Co.*, 225 A.3d 247, 251 (Vt. 2019) ("Because policies are interpreted according to their terms and the intent of the parties as expressed through policy language, 'disputed terms are to be given their plain, ordinary[,] and popular meaning.' However, '[a]ny ambiguity in an insurance contract must be construed in favor of the insured.'" (quoting *Waters v. Concord Grp. Ins. Cos.*, 725 A.2d 923, 926 (Vt. 1999) and *Chamberlain v. Metro. Prop. & Cas. Ins. Co.*, 756 A.2d 1246, 1248 (Vt. 2000)).

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Group 2: Objective Extrinsic Evidence & Contra Proferentem Together
The following states and/or jurisdictions construe insurance policies against the insurer and use extrinsic evidence to aid in the resolution:

1. Alabama: "[I]f the trial court finds the contract to be ambiguous, it must employ established rules of contract construction to resolve the ambiguity. If the application of such rules is not sufficient to resolve the ambiguity, factual issues arise: If one must go beyond the four corners of the agreement in construing an ambiguous agreement, the surrounding circumstances, including the practical construction put on the language of the agreement by the parties to the agreement, are controlling in resolving the ambiguity. Where factual issues arise, the resolution of the ambiguity becomes a task for the jury." *Certain Underwriters at Lloyd's, London v. Southern Natural Gas Co.*, 142 So.3d 436, 454 (Ala. 2013) (internal quotation marks and citations omitted)). "[A]mbiguities in an insurance contract are to be resolved in favor of the insured and … exceptions to coverage must be interpreted as narrowly as possible in order to provide maximum coverage to the insured." *Tate v. Allstate Ins. Co.*, 692 So.2d 822, 824 (Ala. 1997); *see also Jackson v. Prudential Ins. Co. of Am.*, 474 So. 2d 1071, 1073 (Ala. 1985) ("Any ambiguity contained in an insurance policy must be resolved in favor of the insured."); *Mega Life and Health Ins. Co. v. Pieniozek*, 516 F.3d 985 (11th Cir. 2008) ("Any ambiguity in an insurance contract should be strictly construed against the drafter and liberally in favor of the insured.") (applying Alabama law).

2. Colorado: "[E]xtrinsic evidence cannot create ambiguity; it is an aid to ascertaining the intent of the parties once an ambiguity is found." *Am. Family Mut. Ins. Co. v. Hansen*, 375 P.3d 115, 121 (Colo. 2016). "We also recognize that unlike a negotiated contract, an insurance policy is often imposed on a 'take-it-or-leave-it' basis. Therefore, we assume a 'heightened responsibility' in reviewing insurance policy terms to ensure that they comply with 'public policy and principles of fairness.' Accordingly, ambiguous terms in an insurance policy are construed against the insurer." *Thompson v. Maryland Cas. Co.*, 84 P.3d 496, 501–02 (Colo. 2004) (quoting *Huizar v. Allstate Ins. Co.*, 952 P.2d 342, 344 (Colo. 1998) and citing *State Farm Mut. Auto. Ins. Co. v. Nissen*, 851 P.2d 165, 166 (Colo.1993)).

3. Idaho: "However, it is fundamental that not only are insurance contracts strictly construed against the drafter, *Linscott v. Rainier Nat'l Life Ins. Co.*, . . . 606 P.2d 958 ([Idaho] 1980); *Abbie Uriguen Oldsmobile Buick, Inc. v. U.S. Fire Ins. Co.*, . . . 511 P.2d 783 ([Idaho] 1973); *Stephens v. N.H. Ins. Co.*, . . . 447 P.2d 14 ([Idaho] 1968), but also where there is ambiguity in interpreting insurance exclusions, any doubt must be resolved against the insurer. *Farmers Ins. Grp. v. Sessions*, . . . 607 P.2d 422 ([Idaho] 1980), citing [*Abbie Uriguen* and *Stephens*]. Moreover, the converse of [*Casey v. Highlands Ins. Co.*, 600 P.2d

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1387, 1391 (Idaho 1975)] is applicable, that where there is ambiguity, the court is not confined to the wording of the contract, but should consider extrinsic matters such as the intent of the parties, the purpose sought to be accomplished, the subject matter of the contract, and circumstances surrounding the issuance of the policy." *Bonner Cty. v. Panhandle Rodeo Ass'n, Inc.*, 620 P.2d 1102, 1106 (Idaho 1980); *see also Auto. Club Ins. Co., Inc. v. Tyrer*, 560 F.Supp. 755, 758–59 (D. Idaho 1983) ("The Idaho Court has held that where there is an ambiguity, the court is not confined to the wording of the contract, but should consider extrinsic matters such as the intent of the parties, the purpose sought to be accomplished, the subject matter of the contract, and the circumstances surrounding the issuance of the policy." (citing *Bonner Cty.*, 620 P.2d at 1106)); *Cascade Auto Glass, Inc. v. Idaho Farm Bureau Ins. Co.*, 115 P.3d 751, 754 (Idaho 2005) ("If the Court finds any ambiguities in the insurance policy, they must be construed against the insurer. If a policy is found to be ambiguous, then its interpretation is a question of fact." (internal citations omitted)).

4. Illinois: "We agree with the trial court that the phrase 'United States Employees' on its face is ambiguous and does not have one clear and unambiguous meaning and that neither interpretation advanced by the parties is compelled. Under such circumstances it is well settled, not only in Illinois but in other jurisdictions, that where a contract in issue is *not* unambiguous on its face, it is necessary for the district court to consider all the circumstances that gave rise to its existence before attempting to interpret it. *Buschmann v. Prof'l Men's Assoc]*, . . . 405 F.2d 659, 663 ([7th Cir.] 1969). It has been held that where any doubt does arise as to the sense or meaning of a contract, resort may properly be had to the circumstances surrounding its execution. *Green v. Aerosol Research Co.*, . . . 374 F.2d 791, 794 ([7th Cir.] 1967); *see Buchanan v. Swift*, . . . 130 F.2d 483, 485 ([7th Cir.] 1942). It is also well established that the provisions of the insurance policy are to be construed strictly against the insurer, as their drafter, and ambiguities are to be resolved in favor of the insured. *Helmich v. Nw. Mut. Ins. Co.*, . . . 376 F.2d 420, 423 ([7th Cir.] 1967)." *Zelinsky v. Assoc. Aviation Underwriters*, 478 F.2d 832, 834 (7th Cir. 1973); *see also Ill. Emcasco Ins. Co. v. Tufano*, 63 N.E.3d 985, 990 (Ill. App. Ct. 2016) ("When a provision in an insurance policy is ambiguous or is susceptible of at least two reasonable interpretations, it should be construed in favor of the insured." (citing *Hall v. Burger*, 660 N.E.2d 1328, 1331 (Ill. App. Ct. 1996))); *LB Steel, LLC v. Carlo Steel Corp.*, 122 N.E.3d 274, 286 (Ill. App. Ct. 2018) ("A court may consider extrinsic material 'only where the policy's language is ambiguous[.]'" (quoting *Sharp v. Trans Union LLC*, 845 N.E.2d 719, 726–27 (Ill. App. Ct. 2006))).

5. Indiana: "'If, on the other hand, a contract is ambiguous, its meaning must be determined by examining extrinsic evidence and its construction is a matter for the fact finder'. . . . Finally, pursuant to the *contra proferentem* rule of contract interpretation, if an insurance policy's terms are ambiguous, the language is construed strictly against the insurer." *Emmis*

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Commc'ns Corp. v. Ill. Nat'l Ins. Co., 323 F. Supp. 3d 1012, 1022–23 (S.D. Ind. 2018) (quoting *Whitaker v. Brunner*, 814 N.E.2d 288, 293 (Ind. Ct. App. 2004) and citing *Bradshaw v. Chandler*, 916 N.E.2d 163, 166 (Ind. 2009)); *see Cinergy Corp. v. Assoc. Elec. & Gas Ins. Servs., Ltd.*, 865 N.E.2d 571, 574 (Ind. 2007) ("If summary judgment turns on the interpretation of a written document, any ambiguity that arises must be resolvable without the aid of the fact-finder. . . . [W]here the policy language is ambiguous, insurance contracts are to be construed strictly against the insurer and the language must be viewed from the standpoint of the insured. [*Allstate Ins. Co. v. Dana Corp.*, 759 N.E.2d 1049, 1056 (Ind. 2001)]. Thus, ambiguous terms will be construed in favor of the insured, but for purposes of summary judgment, only if the ambiguity exists by reason of the language used and not because of extrinsic facts. *See McCae Mgmt. Corp. v. Merchants Nat'l Bank*, 553 N.E.2d 884, 887 (Ind. Ct. App. 1990)[.]"); *Tate v. Secura Ins.*, 587 N.E.2d 665, 668 (Ind. 1992) ("It is only where a contract is ambiguous and its interpretation requires extrinsic evidence that the fact finder must determine the facts upon which the contract rests. *Kordick v. Merchnats Nat'l Bank & Trust Co.* . . . , 496 N.E.2d 119 ([Ind. Ct. App.] 1986); *Wilson, Adm'x v. Kauffman* . . . , 296 N.E.2d 432 ([Ind. Ct. App.] 1973) . . . . If there is an ambiguity, the policy should be interpreted most favorably to the insured. *Miller v. Dilts* . . . , 463 N.E.2d 257 ([Ind.] 1984).").

6. Iowa: "Our rules of contract interpretation and construction peculiar to insurance policies apply. *Ferguson v. Allied Mut. Ins. Co.*, 512 N.W.2d 296, 298 (Iowa 1994). . . . Interpretation requires a court to determine the meaning of contractual words. *Id.* [at 299]. This is a question of law for the court unless the meaning of the language depends on extrinsic evidence or a choice among reasonable inferences to be drawn. *Id.*; *see also A.Y. McDonald Indus., Inc. v. Ins. Co. of N. Am.*, 475 N.W.2d 607, 618 (Iowa 1991). . . . The cardinal principle in the construction and interpretation of insurance policies is that the intent of the parties at the time the policy was sold must control. [*Ferguson*, 512 N.W.2d at 299]; *A.Y. McDonald*, 475 N.W.2d at 618. Except in cases of ambiguity, the intent of the parties is determined by the language of the policy. *A.Y. McDonald*, 475 N.W.2d at 618 (citing *Cairns v. Grinnell Mut. Reins. Co.*, 398 N.W.2d 821, 823 (Iowa 1987); Iowa R. App. P. 14(f)(14)) . . . . Because of the adhesive nature of insurance policies, their provisions are construed in the light most favorable to the insured. *Ferguson*, 512 N.W.2d at 299; *A.Y. McDonald*, 475 N.W.2d at 619." *LeMars Mut. Ins. Co. v. Joffer*, 574 N.W.2d 303, 306-07 (Iowa 1998); *see also Liberty Mut. Ins. Co. v. Pella Corp.*, 633 F. Supp. 2d 714, 720 (S.D. Iowa 2009) ("Interpretation requires a court to determine the meaning of contractual words. . . . Interpretation 'is an issue for the court unless it depends on extrinsic evidence or on a choice among reasonable inferences from extrinsic evidence.' . . . . 'Because of the adhesive nature of insurance policies, their provisions are construed in the light most favorable to the insured.'" (quoting *Joffer*, 574 N.W.2d at 306–07 and *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988))).

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7. Kansas: "Upon a finding of ambiguity, however, the court may look outside the contract to extrinsic or parol evidence in interpreting the contract's language. . . . Because an insurer prepares its own contracts, it has a duty to make the meaning clear and, where the terms of an insurance policy are 'ambiguous or uncertain, conflicting, or susceptible of more than one construction, the construction most favorable to the insured must prevail.'" *Antrim v. Standard Sec. Life Ins. Co. of N.Y.*, No. 5:18-cv-04092-HLT-GEB, 2019 WL 148463, at *2 (D. Kan. Jan. 9, 2019) (citing *Waste Connections of Kan., Inc. v. Ritchie Corp.*, 298 P.3d 250, 264 (Kan. 2013) and *Catholic Diocese of Dodge City v. Raymer*, 840 P.2d 456, 459 (Kan. 1992)); *see also Short v. Blue Cross & Blue Shield of Kan., Inc.*, 441 P.3d 1058, 1061, 1065 (Kan. Ct. App. 2019) ("If the contract is unambiguous, we determine the parties' intent by the language of the contract alone. But if a contract has ambiguous language, we may consider extrinsic evidence to construe it. . . . Short asks this court to apply one of two principles of construction. First is the doctrine of 'reasonable expectations' and second is the 'rule of liberal construction.' . . . . Because the BCBS insurance policy was not ambiguous, this court cannot apply these particular doctrines of construction." (citing *Penalosa Co-Op Exch. v. Farmland Mut. Ins. Co.*, 789 P.2d 1196 (Kan. Ct. App. 1990))).

8. Kentucky: "If an ambiguity exists, the court may look to extrinsic evidence to determine the intent of the parties. [*Frear v. P.T.A. Indus., Inc.*, 103 S.W.3d 99, 106 & n.14 (Ky. 2003)]. Where an insurance policy is ambiguous, Kentucky law is clear that all questions are to be resolved in favor of the insured, *St. Paul Fire & Marine Ins. Co. v. Powell-Walton-Milward, Inc.*, 870 S.W.2d 223, 227 (Ky. 1994), and exceptions and exclusions are to be strictly construed so as to render the insurance effective, *Eyler v. Nationwide Mut. Fire Ins. Co.*, 824 S.W.2d 855, 859 (Ky. 1992)." *Principal Life Ins. Co. v. Doctors Vision Center I, PLLC*, No. 5:12-cv-00125-JHM, 2014 WL 6751201, at *5–6 (W.D. Ky. Dec. 1, 2014); *see also Journey Acquisition-II, L.P. v. EQT Prod. Co.*, 830 F.3d 444, 452, 455–56 (6th Cir. 2016) ("If the [contract] is deemed ambiguous, then we may resolve the ambiguity by using extrinsic evidence, such as 'the situation of the parties and the conditions under which the contract was written.' *See* [*Frear*, 103 S.W.3d at 105–06]. . . . [Moreover,] if a contractual term is ambiguous, then the term should be construed against the party that drafted it. *Weinberg v. Gharai*, 338 S.W.3d 307, 313 (Ky. Ct. App. 2011).").

9. Minnesota: "'But if the language is ambiguous—that is, susceptible to more than one reasonable interpretation—parol evidence may be considered to determine the intent of the parties.' . . . . '[W]here the language used in an insurance policy, which is chosen by the insurance company, is ambiguous or susceptible of two meanings, it must be given that meaning which is favorable to the insured.'" *Grill v. N. Star Mut. Ins. Co.*, No. A13-1012, 2014 WL 274089, at *2 (Minn. Ct. App. Jan. 27, 2014) (quoting *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 832 (Minn. 2012) and *Garrick v. Northland Ins. Co.*, 469 N.W.2d 709, 713 (Minn. 1991)).

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10. Mississippi: "'[T]he policy itself is the sole manifestation of the parties' intent and no extrinsic evidence is permitted absent a finding by a court that the language is ambiguous and cannot be understood from a reading of the policy as a whole.' 'Insurance contracts are construed strictly against the insurer and in favor of the policyholder.'" *Guideone Am. Ins. Co. v. Parker*, No. 1:13-cv-00005-GHD-DAS, 2014 WL 2154296, at *3 (N.D. Miss. May 22, 2014) (quoting *Cherry v. Anthony, Gibbs & Sage*, 501 So.2d 416, 419 (Miss. 1987) and *Johnson v. Preferred Risk Auto. Ins. Co.*, 659 So.2d 866, 871 (Miss. 1995)).

11. Nebraska: "While an ambiguous insurance policy will be construed in favor of the insured, ambiguity will not be read into policy language which is plain and unambiguous in order to construe it against the preparer of the contract. Thus, we stated that a court may consider extrinsic evidence to determine the meaning of an ambiguous contract." *Boutilier v. Lincoln Benefit Life Ins. Co.*, 681 N.W.2d 746, 750 (Neb. 2004) (citing *Poulton v. State Farm Fire & Cas. Cos.*, 675 N.W.2d 665, 673 (Neb. 2004) and *Plambeck v. Union Pac. RR Co.*, 509 N.W.2d 17 (Neb. 1993)).

12. Nevada: "When ambiguity in the language of a policy exists, the court should consider not merely the language, but also the intent of the parties, the subject matter of the policy, and circumstances surrounding its issuance. . . . When a policy has been issued which purportedly provides coverage but whose exclusionary provisions as interpreted by the insurer would narrow the coverage to defeat the purpose of the insurance, the policy must be construed against the insurer." *Nat'l Union Fire Ins. Co. of State of Pa., Inc. v. Reno's Executive Air, Inc.*, 682 P.2d 1380, 1383–84 (Nev. 1984) (citations omitted); *see also Fourth St. Place v. Travelers Indem. Co.*, 270 P.3d 1235, 1239 (Nev. 2011) ("If a term in an insurance policy is ambiguous, it will be construed against the insurer, because the insurer was the drafter of the policy.").

13. New Jersey: "When the provision at issue is subject to more than one reasonable interpretation, it is ambiguous, and the 'court may look to extrinsic evidence as an aid to interpretation.' Only where there is a genuine ambiguity, that is, 'where the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage,' should the reviewing court read the policy in favor of the insured." *Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 129 A.3d 1069, 1075 (N.J. 2016) (quoting *Progressive Cas. Ins. Co. v. Hurley*, 765 A.2d 195, 202 (N.J. 2001)); *see also Doto v. Russo*, 659 A.2d 1371, 1376 (N.J. 1995) ("Because of the unique nature of contracts of insurance, courts assume a particularly vigilant role in ensuring their conformity to public policy and principles of fairness. To further that end, New Jersey courts

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often have construed ambiguous language in insurance policies in favor of the insured and against the insurer." (internal citations and quotation marks omitted)).

14. North Carolina: "Following the reasoning of [*Root*], parol evidence is only admissible when the terms of the contract of insurance are susceptible to more than one interpretation, or an ambiguity arises, or the intent or object of the instrument cannot be ascertained from the language employed by the parties." *QBE Spec. Ins. Co. v. FSI, Inc.*, No. 3:09-cv-435, 2011 WL 1655591, at *3 (W.D.N.C. May 2, 2011) (citing *Root v. Allstate Ins. Co.*, 158 S.E.2d 829, 835 (N.C. 1968)); *Register v. White*, 587 S.E.2d 95, 97 (N.C. Ct. App. 2003) ("Any ambiguity in the policy language must be resolved against the insurance company and in favor of the insured." (internal citations and quotation marks omitted)).

15. Ohio: "If a court concludes that a provision is susceptible to more than one reasonable interpretation, then it is entitled to resort to extrinsic evidence to determine the provision's meaning. And '[w]here provisions of a contract of insurance are reasonably susceptible of more than one interpretation, they will be construed strictly against the insurer and liberally in favor of the insured.'" *Cincinnati Ins. Co. v. ACE INA Holdings, Inc.*, 886 N.E.2d 876, 882 (Ohio Ct. App. 2007) (quoting *U.S. Fid. & Guar. Co. v. Lightning Rod Mut. Ins. Co.*, 687 N.E.2d 717, 719 (Ohio 1997)); *see also M&M Bar Corp. v. Northfield Ins. Co.*, 260 F.Supp.3d 895, 899 (N.D. Ohio 2017) ("Insurance policies are considered contracts of adhesion because the terms are dictated exclusively by the insurers. Because of the parties' unequal bargaining power, the terms of a policy must be strictly construed against the insurer." (citing *Sekeres v. Arbaugh*, 508 N.E.2d 941 (Ohio 1987) and *Sharonville v. Am. Employers Co.*, 846 N.E.2d 833 (Ohio 2006)).

16. Oklahoma: "Many of these rules are a part of Oklahoma law. For instance: 1) ambiguities are construed most strongly against the insurer; 2) in cases of doubt, words of inclusion are liberally applied in favor of the insured and words of exclusion are strictly construed against the insurer; 3) an interpretation which makes a contract fair and reasonable is selected over that which yields a harsh or unreasonable result; 4) insurance contracts are construed to give effect to the parties' intentions; 5) the scope of an agreement is not determined in a vacuum, but instead with reference to extrinsic circumstances; and 6) words are given effect according to their ordinary or popular meaning." *Max True Plastering Co. v. U.S. Fid & Guar. Co.*, 912 P.2d 861, 865 (Okla. 1996) (citing, *inter alia*, *Littlefield v. State Farm Fire & Casualty Co.*, 857 P.2d 65, 69 (Okla. 1993) and *Continental Casualty Co. v. Goodnature*, 41 P.2d 77, 79–80 (Okla. 1935)); *see also Yaffe Companies, Inc. v. Great Am. Ins. Co.*, 499 F.3d 1182, 1185–86 (10th Cir.2007) ("In considering ambiguous insurance contracts, courts 'examine the policy

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language objectively to determine whether an insured could reasonably have expected coverage.... [A]mbiguities are construed most strongly against the insurer.'" (*quoting Max True*, 912 P.2d at 865) (applying Oklahoma law)).

17. Rhode Island: "If a policy is ambiguous, that is susceptible to more than one reasonable interpretation, the general rule is that the policy must be strictly construed in favor of the insured and against the insurer. This rule, however, does not preclude a court from first attempting to resolve the ambiguity through the aid of extrinsic evidence. If after examining a policy in its entirety the Court determines the policy is ambiguous, it may resort to extrinsic evidence to aid in construing the policy to ascertain the parties' intent. (stating intent is irrelevant only when contract language is unambiguous)." *Wagenmaker v. Amica Mut. Ins. Co.*, 601 F. Supp. 2d 411, 416 (D.R.I. 2009) (citing *Employers Mut. Cas. Co. v. Pires*, 723 A.2d 295, 298 (R.I. 1999), *Merrimack Mut. Fire Ins. Co. v. Dufault*, 958 A.2d 620, 624–25 (R.I. 2008), and *Cathay Cathay, Inc. v. Vindalu, LLC*, 962 A.2d 740, 746 (R.I .2009); additional citations omitted).

18. South Dakota: "However, if the contract is ambiguous, then 'parol and extrinsic evidence may be utilized to show what [the parties] meant by what they said . . . .' [*Pauley v. Simonson*, 2006 S.D. 73, ¶ 8, 720 N.W.2d at 668 (S.D. 2006)] (quoting *Jensen v. Pure Plant Food Internatl., Ltd.*, 274 N.W.2d 261, 264 (S.D. 1979)). . . . If an insurance contract is ambiguous, it is construed liberally in favor of the insured and strictly against the insurer. *Ass Kickin Ranch, LLC*, 2012 S.D. 73, ¶ 9; 822 N.W.2d at 727 (S.D. 2012); *Pete Lien & Sons, Inc. v. First American Title Ins., Co.*, 478 N.W.2d 824, 827 (S.D.1991)." *O'Daniel v. Hartford Life Ins. Co.*, No. CIV. 11-5088-JLV, 2013 WL 9564158, at *25 (D.S.D. Sept. 20, 2013).

19. Texas: "Once the document is found to be ambiguous, the determination of the parties' intent through extrinsic evidence is a question of fact. We must interpret and construe insurance policies liberally in favor of the insured, especially when dealing with exceptions and words of limitation." *Cicciarella v. Amica Mut. Ins. Co.*, 66 F.3d 764, 768 (5th Cir. 1995) (citing *Yancey v. Floyd West & Co.*, 755 S.W.2d 914, 917 (Tex. App.—Fort Worth 1988, writ denied) and *Kelly Assocs., Ltd. v. Aetna Cas. & Sur. Co.*, 681 S.W 2d 593, 596 (Tex. 1984)).

20. Utah: "When an insurance policy, including its exclusions and limitations, is unambiguous, a court is restricted from considering extrinsic evidence to determine the parties' intent. On the other hand, when a policy provision is ambiguous, extrinsic evidence is admissible to help "resolve the ambiguity." *Headwaters Res., Inc. v. Illinois Union Ins. Co.*, 770 F.3d 885, 892 (10th Cir. 2014) (quoting *Fire Ins. Exch. v. Oltmanns*, 285 P.3d 802, 805 (Utah Ct. App. 2012); additional citations and quotation marks omitted) (applying Utah law); *see also Employers Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153,

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1171 n.14 (10th Cir. 2010) ("Utah courts appear to examine extrinsic evidence when the insurance policy is ambiguous."). "When faced with ambiguity in a written contract, courts do not interpret the provision to comport with what they think is the most sensible or is most likely what one of the parties 'really' meant or is what leads to the fairest result. Rather, they recognize the need to consider extrinsic evidence in an effort to resolve the ambiguity. If the extrinsic evidence is not conclusive, then the last resort in contract interpretation is to construe the provision *against* the drafter. As a practical matter, though, there is a different protocol in the case of insurance and surety contracts, where it is seen as appropriate to jump immediately to what is usually viewed as the 'last resort,' 'tie-breaker' rule of interpretation, namely construction against the drafter. This is due to the probable dearth of relevant extrinsic evidence in these contexts." *Fire Ins. Exch. v. Oltmanns*, 285 P.3d 802, 805 (Utah Ct. App. 2012) (citations omitted); *see also Home Sav. & Loan v. Aetna Cas. & Sur. Co.*, 817 P.2d 341, 347 (Utah Ct. App. 1991) ("Generally, ambiguous provisions will be construed against the drafter of the contract only if extrinsic evidence fails to clarify the intent of the parties. However, where an insurance contract is concerned, ambiguous provisions are usually construed against the insurer without resort to extrinsic evidence, because insurance contracts are ordinarily standard forms, whose language is not negotiated by the parties." (citing *Wilburn v. Interstate Elec.*, 748 P.2d 582, 585 & n.2 (Utah. Ct. App. 1988))).

21. West Virginia: "Only if the court makes the determination that the contract cannot be given a certain and definite legal meaning, and is therefore ambiguous, can a question of *fact* be submitted to the jury as to the meaning of the contract. It is only when the document has been found to be ambiguous that the determination of intent through extrinsic evidence become[s] a question of fact. Where a provision of an insurance policy is ambiguous, it is construed against the drafter, especially when dealing with exceptions and words of limitation." *Payne v. Weston*, 466 S.E.2d 161, 166 (W. Va. 1995) (citing *W. Va. Ins. Co. v. Lambert*, 458 S.E.2d 774 (1995)); *see also Blake v. State Farm Mut. Auto. Ins. Co.*, 685 S.E.2d 895, 901 (W. Va. 2009) (quoting *Payne* for this proposition).
22. Wisconsin: "When ambiguous language appears in an insurance contract, we must construe the ambiguity in favor of the insured and against the insurance company that drafted the ambiguous language. . . . This court may examine extrinsic evidence as an aid to determining the meaning of contract language when an insurance contract is ambiguous." *Just v. Land Reclamation, Ltd.*, 456 N.W.2d 570, 573 (Wis. 1990) (citations omitted); *see Superior Water, Light & Power Co. v. Certain Underwriters at Lloyds, London*, 937 N.W.2d 298, at *3 (Wis. Ct. App. Nov. 19, 2019) ("'If the language within the [insurance policy] is ambiguous, two . . . rules are applicable: (1) evidence extrinsic to the contract itself may be used to determine the parties' intent; and (2) ambiguous contracts are interpreted against the drafter.' The latter rule refers to the doctrine of *contra proferentem*." (internal citation omitted) (quoting *Coppins v. Allstate Indem. Co.*, 857 N.W.2d 896, 904 (Wis. Ct. App. 2014))).

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Group 3: Objective Extrinsic Evidence; Contra Proferentem as Last Resort
The following states and/or jurisdictions look to extrinsic evidence and construe insurance policies against the insurer only if an ambiguity still remains:

1. Arizona: "The court of appeals erred in saying that we have 'abandoned' the rule that ambiguities are construed against the insurer. That rule remains; we simply do not resort to it unless other interpretive guides fail to elucidate a clause's meaning." *First Am. Title Ins. Co. v. Action Acquisitions, LLC*, 187 P.3d 1107, 1110 (Ariz. 2008) (citing *Transamerica Ins. Grp. v. Meere*, 694 P.2d 181, 185 (Ariz. 1984)); *see also First Am. Title Ins. Co. v. Johnson Bank*, 372 P.3d 292, 296 (Ariz. 2016) (same).

2. California: "If the terms are ambiguous [i.e., susceptible of more than one reasonable interpretation], we interpret them to protect 'the objectively reasonable expectations of the insured.' Only if these rules do not resolve a claimed ambiguity do we resort to the rule that ambiguities are to be resolved against the insurer." *Minkler v. Safeco Ins. Co. of Am.*, 232 P.3d 612, 617 (Cal. 2010); *see Hervey v. Mercury Cas. Co.*, 110 Cal. Rptr. 3d 890, 895 (Cal. Ct. App. 2010) ("[P]arol evidence is properly admitted to construe a written instrument when its language is ambiguous." (quoting *Winet v. Price*, 6 Cal. Rptr. 2d 554, 557 (Cal. Ct. App. 1992))).

3. Connecticut: "After the court has examined all of the other factors that affect the search for the parties' intended meaning ... and the only remaining question is which of two possible and reasonable meanings should be adopted, the court will often adopt the meaning that is less favorable in its legal effect to the party who chose the words. This technique is known as contra proferentum. . . . The . . . rule has been described as being applicable only as a last resort, when other techniques of interpretation and construction have not resolved the question of which of two or more possible meanings the court should choose. One court wrote that the rule is a tie breaker when there is no other sound basis for choosing one contract interpretation over another. The rule is not applicable at all if only one reasonable meaning is possible." *Cruz v. Visual Perceptions, LLC*, 84 A.3d 828, 837 (Conn. 2014) (citing *Montoya v. Montoya*, 881 A.2d 319, 331 (Conn. App. Ct. 2005), *rev'd on other grounds*, 909 A.2d 947 (Conn. 2006)).

4. Delaware: "That ambiguity permits a court to consider extrinsic evidence of the parties' intent. In this case, the extrinsic evidence reveals that the Lot or Batch Provision was negotiated. We therefore remand this case for the Superior Court to consider extrinsic evidence of what the parties intended when agreeing to Endorsement # 3. If the extrinsic evidence does not reveal the parties' intent as to the Lot or Batch Provision, then the Superior Court should apply the 'last resort' rule of *contra*

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proferentem and interpret it in favor of ConAgra." *ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 72 (Del. 2011) (collecting cases).

5. District of Columbia: "And even assuming that the policy is ambiguous and that the Smith affidavit affords *some* indication of an intent to exclude agency nurses from coverage, any such indication would be offset by the general rule that 'ambiguities in an insurance contract should be construed against the insurer who drafted the contract . . . where other factors are not decisive." *Interstate Fire & Cas. Co. v. Wash. Hosp. Ctr. Corp.*, 758 F.3d 378, 387 (D.C. Cir. 2014) (quoting *May v. Cont'l Cas. Co.*, 936 A.2d 747, 751 n.4 (D.C. 2007)); *see May*, 936 A.2d at 751 ("Rather, a contract is ambiguous if, on its face, it has more than one reasonable interpretation. In that event, 'the court—after admitting probative extrinsic evidence—must determine what a reasonable person in the position of the parties would have thought the disputed language meant.'" (citing *Tillery v. D.C. Contract Appeals Bd.*, 912 A.2d 1169, 1176 (D.C. 2006))).

6. Louisiana: "Where a contract provision is ambiguous, it should be interpreted in light of the custom and usages of the industry, as well as the conduct of the parties and any prior agreements between them. La. Civ. Code art. 2053. As a last resort, ambiguous terms should be construed against the drafter. La. Civ. Code art. 2056. 'It is a generally-accepted principle of the rule of construing ambiguous contract terms against the drafting party that, once the Court has determined that the contract is ambiguous, interpreting the agreement from the words of the contract and extrinsic evidence is a task for the trier of fact.'" *Rainbow USA, Inc. v. Crum & Forster Specialty Ins. Co.*, 711 F. Supp. 2d 655, 667 (E.D. La. 2010) (quoting *Lytal Enters., Inc. v. Newfield Exploration Co.*, Civ. No. 06-0033, 2007 WL 1239130, at *6 (E.D. La. 2007)); *see also In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 207 (5th Cir. 2007) ("'If after applying the other general rules of construction an ambiguity remains, the ambiguous contractual provision is to be construed against the drafter, or, as originating in the insurance context, in favor of the insured.' *La. Ins. Guar. Ass'n* [*v. Interstate Fire & Cas. Co.*], 630 So.2d [759, 764 (La. 1994)]. Article 2056 of the Louisiana Civil Code provides: 'In case of doubt that cannot be otherwise resolved, a provision in a contract must be interpreted against the party who furnished its text. A contract executed in a standard form of one party must be interpreted, in case of doubt, in favor of the other party.'").

7. Maine: "If an ambiguity in the language of a contract does not disappear when it is examined in the context of the other provisions of the document, extrinsic evidence may be considered to cast light on the parties' intent. *See Apgar* [*v. Commercial Union Ins. Co.*, 683 A.2d 497, 501 (Me. 1996)]; *T-M Oil Co. v. Pasquale*, 388 A.2d 82, 85 (Me. 1978). Any ambiguities that persist are to be resolved against the insurer and in favor of coverage. *See, e.g., Geyerhahn v. U.S. Fid[. &]*

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Guar. Co., 724 A.2d 1258, 1261 (Me. 1999); *Cambridge Mut. Fire Ins. Co. v. Vallee*, 687 A.2d 956, 957 (Me. 1996)." *Twombly v. AIG life Ins. Co.*, 199 F.3d 20, 23 (1st Cir. 1999); *Tinker v. Cont'l Ins. Co.*, 410 A.2d 550, 554 (Me. 1980) ("The rule of strict construction, therefore, 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." (citing *T-M Oil Co.*, 388 A.2d at 86)).

8. Maryland: "Rather, following the rule applicable to the construction of contracts generally, we hold that the intention of the parties is to be ascertained if reasonably possible from the policy as a whole. In the event of an ambiguity, however, extrinsic and parol evidence may be considered. If no extrinsic or parol evidence is introduced, or if the ambiguity remains after consideration of extrinsic or parol evidence that is introduced, it will be construed against the insurer as the drafter of the instrument." *Cheney v. Bell Nat'l Life Ins. Co.*, 556 A.2d 1135, 1138 (Md. 1989) (citing *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 488 A.2d 486, 488–89 (Md. 1985); *C & H Plumbing & Heating, Inc. v. Employers Mut. Cas. Co.*, 287 A.2d 238, 239 (Md. 1972); *Mateer v. Reliance Ins. Co.*, 233 A.2d 797, 800 (Md. 1967)); *see also United Capitol Ins. Co. v. Kapiloff*, 155 F.3d 488, 495 (4th Cir. 1998) ("In the event of ambiguity, Maryland courts consult extrinsic evidence ,and only if this extrinsic evidence fails to clear up the ambiguity is the contract construed against the insurer." (citing *Cheney*, 556 A.2d at 1138)); *Brawner Builders, Inc. v. N. Assur. Co. of Am.*, No. CCB-13-1042, 2014 WL 3421535, at *5 n.8 (D. Md. 2014) ("Maryland does not follow the rule that an insurance policy must always be construed against the insurer. *Bausch & Lomb* [*Inc. v. Utica Mut. Ins. Co.*, 625 A.2d 1021, 1031 (Md. 1993)]. Instead, the contract is only construed against the insurer where it is ambiguous and there is no extrinsic evidence or the extrinsic evidence does not resolve the ambiguity." (citing *Cheney*, 556 A.2d at 1138)).

9. Michigan: "In interpreting a contract whose language is ambiguous, the jury should also consider that ambiguities are to be construed against the drafter of the contract. *Herweyer v. Clark Hwy. Servs., Inc.*, . . . 564 N.W.2d 857 ([Mich.] 1997). This is known as the rule of contra proferentem. However, this rule is only to be applied if all conventional means of contract interpretation, including the consideration of relevant extrinsic evidence, have left the jury unable to determine what the parties intended their contract to mean." *Klapp v. United Ins. Grp. Agency, Inc.*, 663 N.W.2d 447, 471 (Mich. 2003) (footnotes omitted); *see also Keeth v. State Farm Fire & Cas. Co.*, No. 1:11-CV-141, 2012 WL13018745, at *5 (W.D. Mich. Mar. 29, 2012) ("Where the contract is ambiguous, the ambiguity must be construed against the drafter of the contract, but only if 'all conventional means of contract interpretation, including the consideration of relevant extrinsic evidence, have left the jury unable to determine what the parties intended their contract to mean.'" (quoting *Klapp*, 663 N.W.2d at 471)); *Transp. Ins. Co. v. Citizens Ins. Co. of Am.*, No. 08-15018, 2010 WL 3245418, at *4 (E.D. Mich. Aug. 17, 2010) ("Although contracts are to

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be construed against the drafting party, this principle is applicable only if 'all conventional means of contract interpretation, including the consideration of relevant extrinsic evidence, have left the jury unable to determine what the parties intended their contract to mean.'" (quoting *Klapp*, 663 N.W.2d at 471)).

10. Montana: "Montana courts may look to extrinsic evidence both to determine whether an ambiguity actually exists and then to resolve that ambiguity. . . . If the intent is still uncertain in light of the objective extrinsic evidence, then 'the provisions should properly be construed against the party causing the uncertainty.'" *Hillerich & Bradsby Co. v. ACE Am. Ins. Co.*, No. CV-11-75-H-DWM, 2012 WL 4327075, at *2 (D. Mont. 2012) (quoting *Ellingson Agency, Inc. v. Baltrusch*, 742 P.2d 1009, 1012 (Mont. 1987)).

11. New Hampshire: "Further, when a genuine ambiguity exists on the face of a policy, we construe the policy against the insurer in favor of coverage. We conclude, however, that where the intent of the contracting parties can be conclusively resolved by objective extrinsic evidence, as in this case, we will not ignore that evidence in favor of dogmatic adherence to insurance maxims." *Tech-Built 153, Inc. v. Va. Sur. Co., Inc.*, 898 A.2d 1007, 1010 (N.H. 2006) (citing *Catholic Med. Ctr. v. Executive Risk Indem., Inc.*, 867 A.2d 453 (N.H. 2005) and *In re Rose Invs. Inc.*, No. 93 B 13926, 1996 WL 596359, at *13–14 (Bankr. N.D. Ill. Sept. 16, 1996)).

12. Pennsylvania: "It is well-settled that '[w]here a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement.' However, 'it is equally clear that the rule is not intended as a talismanic solution to the construction of ambiguous language. Rules of construction serve the legitimate purpose of aiding courts in their quest to ascertain and give effect to the intention of parties to an instrument. They are not meant to be applied as a substitute for that quest. Where a document is found to be ambiguous, inquiry should always be made into the circumstances surrounding the execution of the document in an effort to clarify the meaning that the parties sought to express in the language which they chose. It is only when such an inquiry fails to clarify the ambiguity that the rule of construction . . . should be used to conclude the matter against that party responsible for the ambiguity, the drafter of the document.'" *Windows v. Erie Ins. Exch.*, 161 A.3d 953, 957–58 (Pa. Super. Ct. 2017) (quoting *Prudential Prop. & Cas. Ins. Co. v. Sartno*, 903 A.2d 1170, 1174 (Pa. 2006) and *Burns Mfg. Co. v. Boehm*, 356 A.2d 763, 767 n.3 (Pa. 1976)); *see also DiFabio v. Centaur Ins. Co.*, 531 A.2d 1141, 1143 (Pa. Super. Ct. 1987) ("Only in the absence of useful extrinsic evidence will the court construe ambiguous contract language against the drafter as a matter of law." (citations omitted)).

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13. South Carolina: "'Where there is ambiguity, uncertainty, or doubt as to proper construction of [an insurance] contract, intention of the parties becomes a question of fact for the jury to determine.' After a consideration of extrinsic, evidence, the jury is to resolve all remaining ambiguity in favor of the insured, in this case, the late Brenda Waters." *Waters v. S. Farm Bureau Life Ins. Co.*, 617 S.E.2d 385, 388 (S.C. Ct. App. 2005) (quoting *Garrett v. Pilot Life Ins. Co.*, 128 S.E.2d 171, 174 (S.C. 1962)); *see also Williams v. Gov't Employees Ins. Co. (GEICO)*, 409 S.C. 586, 594–95, 762 S.E.2d 705, 710 (S.C. 2014) ("If the court decides the language is ambiguous, however, evidence may be admitted to show the intent of the parties, and the determination of the parties' intent becomes a question of fact for the fact-finder. Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." (citations and quotations omitted)).

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