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## When interpreting ambiguous terms, consistency prevails

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One of the fundamental canons of insurance policy interpretation is that in the event of an ambiguous term, a court will apply the meaning most favorable to the insured. Another prominent canon of construction provides that coverage clauses are construed broadly whereas exclusions are construed narrowly. A third (less-frequently referenced, but equally hornbook) canon of construction is that words used in one sense in one part of a contract of insurance are deemed to have the same meaning wherever in the policy they appear.

An interesting issue in applying these canons arises when an ambiguous term appears multiple times in the policy, especially where that ambiguous term appears in both the coverage clause and an exclusion. In such a case, a policyholder may want to argue for competing definitions - first a broad definition that brings the claim within the scope of coverage, and second a narrow definition that avoids an exclusion. But California courts, and courts elsewhere, have soundly rejected such arguments, favoring consistency and coherence over the policyholder's interest in obtaining coverage.

For instance, in *Mori v. Southern General Insurance Co.*, 196 Cal. App. 3d 99 (1987), the insuring clause promised to pay for damages because of "injury," but an exclusion precluded coverage for "injury" arising out of the use of a motor vehicle. The policy did not define "injury," although it did define "bodily injury" as any bodily injury including death. Based on the ambiguous nature of the term "injury," the policyholder argued that for

purposes of the insuring clause, “injury” should be broadly defined to include death, but that for purposes of the motor vehicle exclusion, the term “injury” should be narrowly construed not to include death. That construction would have resulted in coverage for a fatal car accident.

The California Court of Appeal agreed with the policyholder that the term “injury” in the insuring clause should have a broad construction, holding that the term necessarily included death given that the narrower, defined term “bodily injury” included death. But the court then rejected the policyholder’s argument that “injury” could mean something different in the exclusion. The court flatly rejected this “now-you-see-it-now-you-don’t construction” even if it “necessarily flow[ed] from the fundamental principle that all ambiguities in an insurance policy are construed against the insurer.”

In a recent memorandum disposition, *Intransit, Inc. v. Travelers Property and Casualty Company of America*, 13-35002 (9th Cir. July 25, 2014) (nonpub. opn.), the 9th U.S. Circuit Court of Appeals, applying Oregon law, reaffirmed the common-sense conclusion that a term, even if ambiguous, should be given a uniform meaning once the ambiguity is resolved. There, the insuring clause provided coverage for property losses when the property was being transported by a “carrier.” But an exclusion limited the amount of coverage available when the loss was occasioned by a criminal act committed by a “carrier.” When the policyholder’s shipment of cargo was stolen by the person hired to transport it - the person was only posing as a carrier and was, in fact, a thief - the policyholder claimed the term carrier was ambiguous with respect to whether it only included legitimate carriers. The policyholder then argued that the term carrier should be construed broadly and favorably towards it when determining the scope of coverage, so the term carrier in the insuring clause included the thief. The policyholder further argued, on the other hand, that carrier should be construed narrowly and against the insurer when determining the applicability of the exclusion, so the term “carrier” in the exclusion did not include the thief. Under such a creative interpretation of the policy, the policyholder would be entitled to coverage for the full value of the stolen cargo without reference to the exclusion’s limits.

Applying the canon of construction that ambiguities are interpreted favorably to the insured, the *Intransit* district court interpreted the ambiguous term carrier separately in each place it appeared, construed it favorably toward the policyholder, and found full coverage without any limitation based on the exclusion. But the policyholder’s victory was short-lived. The 9th Circuit sensibly reversed, holding that although the term carrier was ambiguous and was properly construed to apply to both legitimate and illegitimate carriers, the district court was bound to ascribe the same broad meaning to it in both the coverage and exclusion provisions.

Of course, sometimes context clearly indicates that a single term is intended to have different meanings. That was the situation in *Tento International, Inc. v. State Farm Fire and Casualty Co.*, 222 F.3d 660 (9th Cir. 2000). In *Tento*, the 9th Circuit interpreted the phrase “in this section” to refer only to the immediate subsection in which the phrase appeared, rather than to the entire “Section 1” of the policy, because the policy otherwise clearly referred to the “Section” when it meant the entire Section 1 and any other construction, under the circumstances, would have been illogical. But in cases like *Mori* and *Intransit*,

reading the same term differently is what produces illogical results - something that should be avoided.

In sum, unless context clearly requires otherwise, the rule requiring like terms to be read alike trumps the general rule that ambiguous terms must be interpreted most favorably to the insured. That is most consistent with another important rule of construction - that the policy should be read as a whole. And it is fully consistent with the policyholder's reasonable expectations. After all, no policyholder could reasonably expect that a single term used throughout a policy has a different meaning each time it appears.

The 9th Circuit's succinct analysis in *Intransit* is plainly correct, and should serve as a useful reminder to practitioners that it is important not only to identify the pertinent canons of construction, but also to explain how to prioritize the canons when they might be in conflict.

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