

IN THE SUPREME COURT OF OHIO

Federal Insurance Company,
American Alternative Insurance Corp.,

Appellees,

vs.

Executive Coach Luxury Travel, Inc., *et al.*,

Defendants,

and

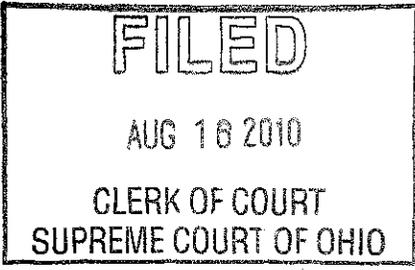
Feroen J. Betts, etc., *et al.*,

Appellants.

: Case No. 2009-2307

:
: On Appeal from the Allen County
: Court of Appeals, Third Appellate District

: Court of Appeals
: Case Nos. 1-09-17 & 1-09-18



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ARGUMENT

Appellees' briefs are founded on the premise that Bluffton University could not have intended to provide coverage for Jerome Niemeyer because Bluffton has no liability for Niemeyer's actions. Or, as AAIC asks:

[W]hat policyholder would want to insure a third party for that third party's own negligence ***?

(AAIC Merit Brief, p. 14). But the answer to this question is simple: Bluffton University. How do we know Bluffton intended to provide coverage for third parties? By examining the Hartford Policy.

This Court has long utilized three basic tenets of contract interpretation when confronted with the problem of discerning the meaning of insurance policy language:

- The intent of the parties to the contract is reflected in the language used in the policy.
- Where the language of the written contract is clear, the Court will look no further than the writing itself to find the intent of the parties.
- This Court will look to the plain and ordinary meaning of the words used in an insurance policy, unless another meaning is clearly apparent from the contents of the policy.

Appellants' position remains true to all three principles. Under the plain language of the Hartford Policy, Appellants must prevail because Bluffton "hired" the charter bus used to transport its baseball team to Florida in March 2007 and the bus driver was using the hired bus within the scope of the "permission" granted to him by the university, as well as his own employer.

1. The Intent of the Parties, As Reflected By the Terms of the Hartford Policy, Favors Coverage.

“When confronted with an issue of contractual interpretation, the role of a court is to give effect to the intent of the parties to the agreement.” *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶11, citing *Hamilton Ins. Servs., Inc. v. Nationwide Ins. Cos.* (1999), 86 Ohio St.3d 270, 273. The Court must examine the insurance policy as a whole, and determine the intent of the parties from the language of the policy itself. *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, paragraph one of the syllabus.

Throughout their briefs, Appellees frequently purport to know the intent of Bluffton and Hartford, the parties to the contract at issue. But there is no extrinsic evidence in the record of the parties’ intent. From the confidence with which Appellees assert Bluffton’s intent, one would expect to find an affidavit from Bluffton University’s risk manager or a deposition of a Hartford underwriter in the record. But no such evidence exists. In fact, Appellants were forbidden from conducting discovery of Hartford’s underwriting file and claims file by the trial court.

AAIC cobbles together two unrelated cases for the proposition that “a party that ‘never paid a penny’s premium’ towards the named insured’s policy” should not receive “a windfall of coverage at the named insured’s expense.” (Citations omitted.) (AAIC Merit Brief, pp. 15-16). Further, AAIC offers a list of irrelevant hypotheticals¹ detailing the alleged potential reach of this case in an attempt to scare the Court into denying coverage. *Id.* at 13. Federal, on the other

¹ For example, AAIC implies that individuals such as a bride and groom would be impacted by ruling in the Appellants’ favor. Personal-automobile-liability policies do not list as covered vehicles “Any ‘Auto’” like the Bluffton policy does or contain broad omnibus clauses like the Commercial Auto Coverage Part, Business Auto Coverage Form at issue in the instant action. It is ridiculous to suggest that a decision in the Appellants’ favor would affect, say, every taxi ride in the state of Ohio.

hand, asserts it is unreasonable to interpret the Hartford Policy in a way which extends liability to an independent contractor. (Federal Merit Brief, p. 23).

The insurers' arguments ignore one basic fact: the Hartford Policy unequivocally envisions coverage for vehicles driven by third parties. The omnibus clause provides coverage to "*anyone else* while using with [Bluffton's] permission a covered 'auto' Bluffton own[s], hire[s], or borrows[s]." (Emphasis added.) Hartford Policy, subsection II.A.1(b).² **Anyone** else, *i.e.*, anyone other than the named insured.

The omnibus clause, by its very nature, is designed to "extend liability coverage to persons, other than the named insured, who had permission of the insured to use the covered vehicle." *Metcalf v. Young*, 6th Dist. No. L-04-1289, 2005-Ohio-2748, ¶25, citing COUCH ON INSURANCE 2d (Rev.Ed.1981) 619, Section 45:293. Indeed, "[t]he purpose of an omnibus clause is not to limit the insurer's liability but, rather, to protect one entrusted with a motor vehicle *and the public in general*." (Emphasis added.) *Id.*, citing *Arkenberg v. Farm Mut. Auto. Ins.* (Mar. 25, 1983), 6th Dist. No. L-82-294, 1983 Ohio App. LEXIS 11560.

Appellants do not ask the Court to "cherry pick" an obscure policy provision and stretch it to extreme lengths. Rather, Appellants ask the Court to apply the plain language of a substantial clause found on page two of the policy, one which "should be liberally applied and construed." *Id.*

Only one conclusion can be drawn from a reasonable reading of the Hartford Policy's omnibus clause: the insurer and the policyholder intended to insure third parties while permissively using vehicles owned, hired, or borrowed by Bluffton. Further, if the parties did not wish the omnibus clause to cover third parties, they had many options at their disposal

² There is no dispute Bluffton and the insurers intended the Executive Coach charter bus the team was riding in at the time of the accident to be a covered auto.

including, *inter alia*: (1) omitting the omnibus clause; (2) adding an additional exception from coverage (the clause already contains five) to exempt third parties; or (3) adding an additional exception from coverage for employees of the person or entity from whom the vehicle was hired.³ But Hartford did not write a policy with these restrictions. Federal and AAIC are bound to the terms of the Hartford Policy, having intended coverage to be extended to third parties like Mr. Niemeyer, regardless of whether these third parties “have [] paid one dime of premium towards Bluffton’s policies.” (AAIC Merit Brief, p. 18).

Further, in addition to the omnibus clause, the Hartford Policy is replete with terms contemplating coverage for third-party vehicles:

- The parties chose to use symbol “1” in the declarations defining “covered ‘auto’” to be any “Auto,” as opposed to limiting this to only autos owned by Bluffton University (T.D.68, Joint Stip., ¶3, Ex. 3);
- On page 8, the Hartford Policy states, “for any covered auto you don’t own, the insurance provided by this coverage form is excess over any other collectible insurance.” This clearly contemplates coverage for autos not owned by Bluffton, even if they are insured by someone else;
- The Hartford Policy contains numerous references to the term “hired” and “hired autos” in addition to the “Who is an Insured” paragraph;
- Although the term “hire” is not defined in the policy, the Commercial Auto Broad Form Endorsement specifically provides that Bluffton employees are permitted to “hire” vehicles on behalf of the University: “Any ‘auto’ hired or rented by your ‘employee’ on your behalf and at your direction will be considered an ‘auto’ you hire”; and
- Numerous endorsements to the Hartford Policy reference hired autos, including “Primary Hired Auto Insurance,” “Schedule of Hired Auto Coverages and Premiums,” and “Changes in Hired Car Physical Damage,” as well as the broad-form endorsement.

³ Indeed, some policies include express language to this effect in their “hired automobile” provisions. See *American Interinsurance Exchange v. Commercial Union Assurance Co.* (C.A.4 1979), 605 F.2d 731, 733.

The myriad of references to the term “hired auto” throughout the policy make it clear the parties contemplated and intended to have broader coverage than simply insuring the vehicles which were owned by Bluffton University. Appellees scoff at the notion that Bluffton could have intended coverage here, and state Bluffton would have no reason to obtain such coverage. But the language of the omnibus clause clearly infers that Bluffton intended to purchase coverage which could protect its employees and students, arguably the university’s most important assets.

Applying the above tenets of Ohio contract law to the case at bar, the Bluffton University policies unequivocally provided coverage for Jerome Niemeyer as an insured. Mr. Niemeyer was using with Bluffton’s permission a covered auto that Bluffton hired for its benefit. The Court does no injustice to the parties’ intent under the policies by finding coverage here. Conversely, for AAIC and Federal to prevail, the Court would have to “re-write” the Hartford Policy to add additional restrictive requirements which do not exist in the policy as written.

The Court should not re-write the Hartford Policy by permitting the insurers to add additional restrictive requirements not present in the policy. Rather, under Ohio law, the Court must constrain itself to the express terms of the Hartford Policy, and rule in favor of coverage.

2. The Court Should Apply the *Westfield* Decision.

Federal and AAIC ask the Court to disregard the case of *Westfield Ins. Co. v. Nationwide Mut. Ins. Co.* (1993), 99 Ohio App.3d 114, and instead apply cases from foreign jurisdictions on the issue of whether Bluffton “hired” the Executive Coach bus. But *Westfield* is relevant and applicable for both its analysis and its result, and should be applied here.

The insurers attempt to distinguish *Westfield* because it did not involve the interpretation of an “omnibus clause.” (AAIC Brief, pp. 18-19; Federal Brief, p. 31). This argument misses

the point completely. The *Westfield* court was faced with an inquiry identical to the one currently before this Court: where the term “hire” is undefined in an automobile-insurance policy, what does that term mean? Thus, *Westfield*’s relevance is two-fold: (1) it provides the appropriate framework the Court should use to determine the meaning of undefined terms in insurance policies; and (2) more importantly, it applied the common meaning of the word “hire” to an analogous factual situation.

Where a term in an insurance policy is undefined, the Ohio rules of policy construction instruct that the term should be given its commonly accepted meaning. *Gomolka v. State Auto. Mut. Ins. Co.* (1982), 70 Ohio St.2d 166, 167-68. In *Westfield*, the term “hire” was not defined in the policy at issue, so the court looked to the word’s “natural and commonly accepted meaning.” *Westfield Ins. Co.*, 99 Ohio App.3d at 119, citing *Gomolka*, 70 Ohio St.2d at 167-68. The Court thus looked to the dictionary definition of the word “hire,” which it found to be “to get the services of a person or the use of a thing in return for payment.” *Id.*, quoting WEBSTER’S WORLD DICTIONARY (1986), p. 665. This Court must use this framework when determining what “hire” means in the Hartford Policy.

In *Westfield*, an educational institution (the West Carrollton School District) engaged a transportation company (the RTA) to transport a student. Under those facts, the court held that the transportation company’s bus was “hired” by the educational institution, based on the commonly accepted definition of the word “hire.” *Id.* at 119. These facts are indisputably analogous to the circumstances currently before this Court.

The fact that *Westfield* did not involve an “omnibus clause” is of no consequence, and the insurers’ attempt to distinguish the case on this basis is unpersuasive. *Westfield*’s importance lies in the court’s determination of the commonly accepted meaning of the word “hire.” In

construing the “omnibus clause” here, the Court must apply the commonly accepted meaning of the word “hire” because it is not defined in the Hartford Policy. *Westfield* provides us with that meaning. *Westfield* further provides us with an application of that meaning to facts extraordinarily similar to those present in the instant action. Accordingly, the Court should apply *Westfield* here and find, based on the definition of “hire” used by Ohio courts, Bluffton hired the Executive Coach bus.

3. The Court Should Apply *Caston* on the Issue of Permission.

Appellants offered *Caston v. Buckeye Union Ins. Co.* (1982), 8 Ohio App.3d 309 on the issue of permission. In its brief, AAIC claims *Caston* is distinguishable because Executive Coach never “entrusted” the bus to Bluffton. But the concept of “entrustment” is not once mentioned in the *Caston* opinion. Rather, *Caston* illustrates that permission can be present where the named insured has the same level of control (or less) over a vehicle than Bluffton had over the Executive Coach bus.

In *Caston*, the Borromeo school and its representative did not own the vehicle. Their authority was limited to the extent authorized by the student’s mother. The *Caston* court had no trouble finding the school had authority to give the student permission to drive the car the school had “borrowed.” The mother and school both gave the student permission to drive the vehicle. Here, the bus would not have been transporting the baseball team unless both Coach Grandey and Executive Coach gave permission. If the Borromeo school had possession and control of the vehicle sufficient to grant permission, it is unquestionable that Bluffton had control of the Executive Coach bus.

In *Caston*, the court held that it was “beyond doubt” that the student was operating the third-party vehicle with the permission of the school. Such is the case here. The Court should apply *Caston* and hold that Mr. Niemeyer was operating the Executive Coach bus with Bluffton’s permission.

4. Bluffton Exercised Substantial Control Over the Bus.

Appellees have challenged Appellants’ characterization of the factual background of this dispute. These “objections” amount to nothing more than an attempt to spin the facts in a manner which downplays the amount of control that Bluffton University, via its employee Coach Grandey, had over the bus.

For example, Appellees contend that Appellants materially misrepresented that Coach Grandey contracted for a specific bus. (AAIC Merit Brief, p. 4; Federal Merit Brief, p. 5). But the face of the contract (in the upper-left corner) could not be clearer -- Grandey contracted for “Coach # 2”:

B.O. Denny Phil 419-502-2830

3/15/07

Jerry

Coach # 2

EXECUTIVE COACH
LUXURY TRAVEL, INC.
10269 SC. RT. 224
P. O. Box 321
Ottawa, OH 45875
(1-419-523-5590)
FAX (1-419-523-5002)

ACCIDENT AT 10:15 AM 3-2-07
Revised from Co. 4533
3/6/07 date change
James 419-303-4777
7695.00
Ch. # 430

Charter Order # 4560

*NON-SMOKING COACH

ERIC - Dean of Students
419-358-3248 MAILED/FAXED 11-16-06

Thank you for choosing us for your transportation provider. Our goal is for you to have a safe and rememberable trip.

Departure Date of Event <u>March 1-10, 2007</u>	Special Fees, Tolls, Parking Fees, Permits	<u>Provided by Customer</u>
Event <u>Bluffton U. Baseball</u>	Driver's Room	<u>Provided by Customer</u>
<u>to Sarasota & Ft. Myers, FL</u>	Quoted Coach Charge	<u>\$7695.00</u>
Contact Person <u>Wm. Grandey</u>	Mileage Charge (\$2.00 per mile to pick-up Point Only)	<u>\$</u>
Phone Number <u>419-358-3222</u>	\$ for Extra Hours After Quoted Hours	<u>04 BC 440554 7695.00</u>
Name & Address <u>Bluffton University</u>	Gratuity (Tip)	<u>Provided by Customer</u>
<u>1 University Drive</u>	Based on <u>57</u> Passenger Coach for <u>11/17/07</u> hours	<u>\$</u>
<u>Bluffton OH 45817-2107</u>	Security Deposit/Received Date	<u>\$ 100.00</u>
	Ohio Sales Tax	<u>\$</u>
	Balance Due	<u>\$ 7695.00</u>

(Emphasis added.) A complete copy of the contract can be found at T.D.66.4, Tobe Depo., Ex. 13. It is silly to suggest that the Appellants misrepresented this fact.⁴

Appellees also object to Appellants' characterization of Bluffton's payment to Executive Coach as a "rental fee" rather than a "fee for transportation services." (AAIC Merit Brief, p. 4). But this characterization is reasonable in light of the fact that Executive Coach refers to its business as "renting coaches." For example, Executive Coach's intake documents are titled "Information for Possible Coach Rentals." (T.D.66.4, Tobe Depo., Ex. 14, pp. 6, 8). Further, in her deposition, Marianne Tobe stated that she used these forms "when someone called *** that was interested in renting a coach." (T.D.66.4, Tobe Depo., p. 32). The contract between Bluffton and Executive Coach does not list a "fee for transportation services," but, as the Court can see above, it includes a "Quoted Coach Charge." *Id.* at Ex. 13. Thus, it is clear the contract was charging for the "coach" itself, not the "transportation service," and it was certainly reasonable to characterize this charge as a "rental fee."⁵

Appellees point out that the trip's itinerary was not provided to Executive Coach until after the contract was executed. (AAIC Merit Brief, p. 6). But the timing is not important: the "Terms and Conditions" of the contract expressly require Bluffton to provide a trip itinerary,

⁴ Appellants have never suggested Coach Grandey chose coach #2, the specific vehicle transporting the baseball team, only that the contract Coach Grandey signed was for a specific vehicle, coach #2. Coach Grandey asked for a bus that met his needs and Executive Coach assigned coach #2 to fill this trip. This is exactly what Hertz or Avis does when a customer asks for a mid-size sedan or a convertible and the rental company assigns a vehicle. The contract a customer signs with Hertz or Avis is for the specific vehicle.

⁵ AAIC goes so far as to call the bus "incidental" to the contract for transportation service. But surely AAIC does not intend to say the bus was a "minor consequence" of the contract, or the bus was included in the contract "merely by chance" or "without intention," as the definition of incidental would imply. *See*, "incidental." MERRIAM-WEBSTER ONLINE DICTIONARY (2010), available at <http://www.merriam-webster.com/dictionary/incidental>. The primary purpose of the contract was to obtain the use of coach #2.

specifically: (a) maps of the pickup site and destination site; (b) a list of all stops; and (c) detailed directions. (T.D.66.4, Tobe Depo., Ex. 13). Further, whether the itinerary was part of the official contract or the negotiation process is not important -- what *is* important is that Bluffton controlled the trip's itinerary. Bluffton, via Coach Grandey, controlled when and where the bus travelled.⁶

Appellees further quibble about whether "the client is in charge" is an official Executive Coach "company policy." (AAIC Merit Brief, p. 5). Regardless of Executive Coach's official policies, the deposition testimony of Executive Coach's Vice President establishes that its clients were, in fact, in charge:

Q. And when you make the statement, "The client is in charge," what did you mean?

A. Well, the client -- you know, I just don't, I don't want my drivers to argue with them because it doesn't look like we are professional. *So I just said the client is always in charge, do what they say beyond means, you know.*

Q. Right.

A. *Because we were in, we were in their hands. Whatever, if they wanted us to stop before -- if this itinerary says we're going to each [sic] lunch at one o'clock but the person in charge wanted to stop at noon, okay, stop at noon, don't argue with them.*

(Emphasis added.) (T.D.66.3, Lammers Depo., pp. 59-60).

The extent of Bluffton's control is further demonstrated by the fact that Coach Grandey could, and did, deviate from the trip's itinerary at his whim, and controlled when and where the

⁶ The fact that Bluffton specifically controlled the trip's route is important because, *inter alia*, it distinguishes the instant action from *Casino Air Charter v. Sierra Pac. Power Co.* (Nev. 1979), 95 Nev. 507, 511 (an aircraft was not "hired" because the named insured "neither designated a particular aircraft nor took any part in the preparation of the flight plan.")

bus travelled. The insurers claim that Bluffton's only actual exercise of control was Grandey's order that the bus return for DVD repairs, and any other right to control Bluffton had was purely hypothetical. This argument is nonsensical: the insurers should not be permitted to deny coverage based on the fact that the bus crashed before Coach Grandey could exercise more of his right to control the bus and driver.

Appellees urge the Court to apply the "control" requirement advocated by foreign decisions and referenced in *Combs v. Black*, 10th Dist. No. 05AP-1177, 2006-Ohio-2439. If the Court decides to abandon *Caston* and impose a "control" requirement, the above-cited facts (along with those cited in Appellants' Joint Merit Brief) clearly demonstrate that Bluffton exercised the requisite amount of control.

5. Appellees Should Not Be Permitted to Impose Additional, Restrictive Requirements to the Hartford Policy.

Throughout their briefs, the insurers ask the Court to impose additional, restrictive requirements to the Hartford Policy which are not present in the policy language. The insurers should not be permitted to enforce requirements not present in the policy, especially in light of the fact that both Federal and AAIC agreed to be bound by the Hartford Policy.

The most notable requirement the insurers seek to add is a "control" requirement. But this is just one of many instances where the insurers attempt to add policy conditions.

Appellees repeatedly state (as did the lower courts) that it was Executive Coach, not Bluffton, which gave permission to Niemeyer. This argument presumes that the Hartford Policy requires the driver operate a vehicle with the sole permission of the named insured, *i.e.*, without any other party's concurrent permission. But sole permission is not mandated by the Hartford Policy -- the driver only needs the permission of the named insured. *See* Hartford Policy, subsection II.A.1(b). This is not an "either/or" exercise; both Bluffton and Executive Coach

gave permission to Mr. Niemeyer to drive. For purposes of this insurance coverage analysis, however, only Bluffton's permission is important. The fact that Executive Coach also gave permission is irrelevant to the insurance policies. Further, in *Caston*, the court held that a driver was using a vehicle with the named insured's permission, despite the fact that the driver undoubtedly had the vehicle owner's (*i.e.*, his mother's) permission.

Bluffton granted Niemeyer permission to use the bus, and the accident occurred while Niemeyer was operating under that permission. *See, e.g., Gulla v. Reynolds* (1949), 151 Ohio St. 147, paragraph 1 of the syllabus (“[S]uch permission relates to the use to which the automobile is being put by such third person at the time of the accident”).⁷ Thus, Niemeyer was a permissive user under subsection II.A.1(b) of the Hartford Policy.

Appellees have asked the Court to pervert the clear, unambiguous language of the Hartford Policy in an attempt to avoid their own coverage obligations. But if the insurers wanted or intended a different result, they could have easily achieved such a result with a few simple modifications of the policy language. For example, the insurers could have used a more restrictive definition of the word “hire,” but they did not. The insurers could have required “sole” or “exclusive” permission in the omnibus clause, but they did not. The insurers could have included express language excluding the employees and/or agents of “the owner or person from whom the [named insured] hired” the vehicle from “hired auto” coverage. *See American Interinsurance Exchange v. Commercial Union Assurance Co.* (C.A.4 1979), 605 F.2d 731, 733 (excluding from coverage “the owner *** of a hired automobile *** or any agent or

⁷ Under the *Gulla* test, Jerome Niemeyer is an insured under the Hartford Policy because his use of the motor coach was within the scope of the permission granted by Bluffton University.

employee of any such owner”). But the insurers chose not to include such language in their contracts. Appellees are bound to the precise language of the Hartford Policy because such language reflects their intent.

6. Appellants’ Arguments Are Not New.

Both Appellees allege Appellants are making a “new argument” by stating Executive Coach granted Bluffton the ability to approve or reject Jerry Niemeyer as a driver. But this argument is not new at all. Appellants have always argued Executive Coach asked Coach Grandey if Jerry Niemeyer was acceptable to use as the driver for the week in Florida. Executive Coach gave Coach Grandey the ability to approve or reject Jerry Niemeyer as the driver. (T.D.66.4, Tobe Depo., p. 60; T.D.66.2, Stechschultz Depo., p. 92). Appellants have always maintained Bluffton’s right to grant permission for Mr. Niemeyer to drive the bus came from Executive Coach because Bluffton was the customer for the spring trip. These points can be found in Appellants’ memorandum supporting summary judgment and opposition memorandum filed with the trial court. (T.D.69 and T.D.72).

The cases cited by Appellees offer them no support. The cases of *State v. Awan* (1986), 22 Ohio St.3d. 120, and *McKinley v. Ohio Bureau of Workers’ Comp.* (2006), 170 Ohio App.3d. 161, deal with the failure to raise a constitutional challenge to a statute in a lower court. In *Awan*, the Court refused to hear a challenge to the constitutionality of the subject statute when that challenge was first raised in the appellate court. This Court stated: “the general rule is that ‘an appellate court will not consider any error which counsel for a party complaining of the trial court’s judgment could have called but did not call to the trial court’s attention at a time when such error could have been avoided or corrected by the trial court.’” (Quotations omitted). *Awan*, 22 Ohio St.3d at 122. Appellants have consistently argued Bluffton gave Mr. Niemeyer

permission to drive the bus when Coach Grandey responded to Mrs. Tobe's inquiry. This is not a new issue or argument.

Further, cases have held that since review of summary judgment decisions is *de novo*, appeal courts may consider all matters raised by the motion for summary judgment, as the trial court should have done. See *Doe v. Dayton City School Dist. Bd. of Edn.* (1999), 137 Ohio App.3d 166. This Court may consider all arguments going to the issues raised by the parties' motions for summary judgment.

7. The Court Should Ignore Federal's "Scott-Pontzer" Scare Tactic Argument.

On pages 25-26 of its brief, Federal makes the proclamation that ruling in favor of coverage here would somehow "embark Ohio on the same sort of misguided path" as was caused by this Court's decision in *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660. This argument insults the Court's intelligence.

The Court is not being asked to define an ambiguous term, apply the maxim of *contra proferentem*, or otherwise construe the Hartford Policy in a manner which belies the parties' intent.⁸ The Court should see this argument for what it is: a desperate, last-ditch attempt to scare the Court into issuing an ill-advised decision which is contrary to the common, ordinary meaning of the terms at issue.

⁸ Appellees repeatedly attack Appellants as strangers to Bluffton's insurance policies, accusing Appellants of urging the policy be construed strictly against the insurers. Appellants are not arguing the policy be construed for or against any party, just that the undefined terms be given the commonly accepted meaning. This Court may properly find coverage for Mr. Niemeyer without construing the policy against Appellees. The fact that the terms "hired" and "permission" are not ambiguous in this policy when given their plain and ordinary meaning, distinguishes this matter from *Scott-Pontzer* and *Galatis* which dealt with the ambiguous term "you" in a corporate UM policy.

CONCLUSION

For the reasons stated above, the Court should reverse the opinion of the court of appeals.

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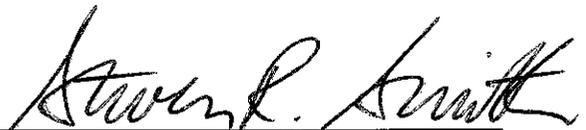
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