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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EMCASCO INSURANCE COMPANY, an Iowa corporation; et al., Plaintiff-Appellees, v. JAMES CARTWRIGHT, an individual and, as the appointed guardian ad litem for Matthew Barbee; et al., Defendant-Appellants, and NATIONWIDE INSURANCE COMPANY, an Ohio corporation, Defendant.	No. 21-36021 D.C. No. 3:20-cv-00953-AC MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
John V. Acosta, Magistrate Judge, Presiding

Submitted December 7, 2022**
Seattle, Washington

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: O'SCANNLAIN, McKEOWN, and MILLER, Circuit Judges.

Defendant-Appellants jointly appeal the district court's grant of summary judgment in favor of Plaintiff-Appellee insurers in this coverage dispute. Because the facts are known to the parties, we repeat them only as necessary to explain our decision.

I

The parties agree that under Oregon law the controlling precedent on construing ambiguous insurance policies is *Hoffman Construction Co. of Alaska v. Fred S. James & Co. of Oregon*, 313 Or. 464 (1992). *Hoffman* sets out a multi-step framework for deciphering a disputed insurance provision's meaning.

First, the Oregon courts consider the plain meaning of the provision to determine whether it is susceptible to more than one "plausible" interpretation. *Id.* at 470. If more than one "plausible" interpretation of the provision exists, the court proceeds to the second step. This step instructs the court to examine the disputed provision in both the immediate and broader context of the policy, in order to see if it remains open to more than one "reasonable" interpretation. *Id.* If the policy remains unclear, it is ambiguous. *Id.* at 470–471. Oregon courts will construe such ambiguous policies against the drafter, typically the insurer. *Id.*

II

The district court did not err in finding, based on the broad context of the policy, that "in" does not mean "in connection with," as the Defendant-Appellants claim. The parties agree that *Hoffman* instructs the Court to review the disputed terms in the broad context of the policy. However, the Defendant-Appellants fail to offer any analysis of why their claimed interpretation of the disputed term is "reasonable" when viewed in this broad context of the policy. Furthermore, Defendant-Appellants fail to respond to Plaintiff-Appellees' argument that it is unreasonable to interpret "in" as "in connection with" based on the broad context of the policy. Defendant-Appellants do argue that the Plaintiff-Appellees' interpretation of "in" is unreasonable, but their argument is foreclosed by *Hoffman's* assumption that parties to an insurance contract do not create meaningless provisions. *See Hoffman*, 313 Or. at 472.

In sum, Defendant-Appellants fail to offer any analysis of whether their interpretation is "reasonable" in the broad context of the policy. Instead, Defendant-Appellants' argument focuses on showing that their interpretation is "plausible." This argument does not satisfy *Hoffman's* requirements for establishing that a policy is ambiguous in the sense that justifies construing the policy against the insurer. *See Hoffman*, 313 Or. at 470.

III

The judgment of the district court is AFFIRMED.