

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GARY V. REYNOLDS,  
Plaintiff,

v.

ALLSTATE INS CO., *et al.*,  
Defendants.

No. C 10-4893 SI

**ORDER GRANTING PLAINTIFF’S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

On January 13, 2012, the Court held a hearing on the parties’ cross-motions for summary judgment. For the reasons set forth below, the Court GRANTS plaintiff’s motion and DENIES defendant’s motion.

**BACKGROUND**

Plaintiff Gary Reynolds filed this lawsuit seeking declaratory relief concerning defendant Allstate Insurance Company’s (“Allstate”) obligations under a motorcycle policy Allstate issued to plaintiff. This declaratory action arises from an underlying action entitled *Costanzo v. Reynolds*, Alameda County Superior Court, Case No. VG08407660. In the underlying action, Janice Costanzo seeks in excess of \$2 million<sup>1</sup> in damages for injuries she sustained in a September 4, 2006 motorcycle-vehicle collision. At the time of the accident (and currently), Costanzo was plaintiff Reynolds’ girlfriend, and she was riding as a passenger on a motorcycle operated by Reynolds when they collided with an oncoming automobile. Plaintiff and Costanzo were thrown from the motorcycle and both

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<sup>1</sup> Plaintiff’s motion states that Costanzo seeks in excess of \$2 million in damages in the underlying action, while defendant’s motion states that Costanzo seeks more than \$1 million.

1 suffered significant injuries. Costanzo’s injuries and damages caused by the collision include a broken  
2 left leg with severe infections, which ultimately resulted in the amputation of her leg above the knee.<sup>2</sup>  
3 Costanzo Decl. ¶ 27. The vehicle involved in the accident was uninsured, and both plaintiff and  
4 Costanzo made insured motorist claims under the Allstate policy. Allstate paid the full “per person”  
5 uninsured motorist policy limit of \$100,000 to each of them. Valdez Decl. ¶ 4.

6 In the underlying state court personal injury action, Allstate is representing plaintiff subject to  
7 a reservation of rights to deny coverage to plaintiff as to liability for Costanzo’s damages. In this  
8 lawsuit, plaintiff seeks a declaration that Allstate is obligated to defend and indemnify plaintiff under  
9 the terms of Allstate’s policy against the personal injury damage claims made by Costanzo in the  
10 underlying action.

11  
12 **I. Purchase of the policy**

13 On November 8, 1999, Reynolds purchased from Allstate an insurance policy covering his 1999  
14 Harley-Davidson motorcycle. Reynolds Decl. ¶ 3. Reynolds was the only insured under the policy for  
15 over six years. *Id.* ¶¶ 4, 12. On or about March 4, 2006, Reynolds and Costanzo purchased a 2006  
16 Harley-Davidson motorcycle. Costanzo made the down payment and took out a personal loan for the  
17 balance of the purchase price. Martin Decl. ¶ 3, Ex. B (Reynolds Depo. at 59:9-60:17). Both Costanzo  
18 and Reynolds made payments on the loan. *Id.* at 61:1-8. After plaintiff and Costanzo purchased the  
19 2006 Harley-Davidson, plaintiff contacted Allstate to add the new motorcycle to his existing policy.  
20 Reynolds Decl. ¶¶ 8, 10. Costanzo believed that because she was the holder of the loan, she was  
21 required to be added as an insured under plaintiff’s policy, Costanzo Decl. ¶ 13, and plaintiff instructed  
22 his Allstate agent to add Costanzo as an additional insured. Reynolds Decl. ¶ 11. On March 7 or 8,  
23 2006, Costanzo sent a facsimile to plaintiff’s Allstate agent, directing the agent to add her to Reynold’s  
24 policy. Costanzo’s fax stated,

25 insurance for new Harley – see Farmers, please insure as follows:  
26 Gary V. Reynolds + Janice L Costanzo

27 <sup>2</sup> The Court OVERRULES defendant’s objection on relevance grounds to the evidence  
28 regarding the nature and extent of Costanzo’s injuries.

Unless otherwise noted, the evidence cited in this order is not at issue.

1 2683 Parkside Dr  
2 Fremont, CA 94536  
3 Direct # 925.598.3737

4 Martin Decl. Ex. H.

5 **II. Terms of the policy**

6 The policy's liability insuring clauses provide as follows:

7 **Allstate** will pay those damages an insured person is legally obligated to pay because  
8 of:

- 9 1. **bodily injury**, sustained by any person; and
- 10 2. damage to, or destruction of property.

11 Under these coverages, **your** policy protects an insured person from liability for damage  
12 arising out of the ownership, maintenance or use, loading or unloading of an insured  
13 **auto**. Payments will be made only for damages resulting from covered **bodily injury**  
14 and/or property damage.

15 **We** will defend an insured person sued for damages which are covered by this policy  
16 even if the suit is groundless or false. **We** will choose the counsel. **We** may settle any  
17 claim or suit if **we** believe it is proper. **We** will not defend an insured person sued for  
18 damages which are not covered by this policy.

19 Davis Decl. Ex. A at 4.

20 The policy, as amended in Allstate's California Amendatory Endorsement (AU2250-6), covers  
21 the following as "insured persons[:]"

22 With respect to your insured auto:

- 23 a) **you**;
- 24 b) any **resident**; and
- 25 c) any other person using it with **your** permission.

26 *Id.*, Endorsement at 4.

27 Exclusion 6, as it appears in the endorsement, bars coverage for:

28 **[B]odily injury** to an insured person or **bodily injury** to an insured person whenever the  
ultimate benefits of that indemnification accrue directly or indirectly to an insured  
person. This exclusion applies only to **you** and **resident** relatives.

*Id.*, Endorsement at 5. The policy, as amended by the endorsement, defines "you" and "your" as  
follows:

1 “You” or “Your” – means the policyholder named on the Policy Declarations and:

- 2 a) that policyholder’s **resident** spouse; or  
3 b) a party who has established with that policyholder a registered domestic  
4 partnership under California state law if a **resident** of the same household.

5 *Id.*, Endorsement at 5.

6 The Declarations page of the policy does not list a “policyholder.” Instead, the Declarations  
7 page lists the “NAMED INSURED(S)” as “Gary Reynolds and Janice Costanzo.” *Id.* at 1. The policy  
8 does not contain a definition of “policyholder.”

9  
10 **III. The underlying action**

11 On September 3, 2008, Costanzo filed the underlying action against plaintiff in Alameda County  
12 Superior Court, alleging that plaintiff’s failure to safely operate his motorcycle and avoid the collision  
13 was a substantial contributing factor to the cause of her injuries. By letter dated October 28, 2008,  
14 Costanzo’s attorney informed Allstate of the underlying action. Valdez Decl. Ex. A. In a letter dated  
15 November 21, 2008, Allstate informed plaintiff *inter alia*, that “We have retained the Law Offices of  
16 Michael F. Brown to represent and defend your interests. The cost of defense will be paid by Allstate.”  
17 Valdez Decl. Ex. B. Brown continued to represent plaintiff in the underlying action through 2009,  
18 including through the discovery process, case management conferences, and two trial settings. Reynolds  
19 Decl. ¶ 20.

20 On July 10, 2009, Brown wrote plaintiff a letter informing him,

21 [B]ecause your girlfriend and co-habitant, Ms. Costanzo, is a listed-insured driver under  
22 your Allstate policy, she cannot obtain insurance monies against you for the subject  
23 accident. The only monies she would be able to obtain would be coming directly from  
you, not your insurance carrier.

24 You were going to discuss this with Ms. Costanzo and get back to me. However, to date,  
we have not heard back from you. . . .

25 Valdez Decl. Ex. C. On July 16, 2009, Brown wrote Reynolds another letter stating,

26 To reiterate and to make sure that you are clear about the monies that Ms. Costanzo is  
27 seeking, she seeks your personal money, your assets. As previously stated, she will not  
be able to obtain insurance monies as she was a covered-insured under your policy.

28 *Id.*

1 On January 21, 2010, Costanzo served a California Code of Civil Procedure § 998 Offer to  
2 Compromise in the amount of \$250,000. Martin Decl. ¶ 2, Ex. A. Brown forwarded the offer to  
3 plaintiff on February 6, 2010, and in a separate letter on the same date, wrote,

4 The attorney for Ms. Costanzo has made a policy limit demand and Offer to  
5 Compromise, CCP, Section 998, for \$250,000.00 to settle her case against you. As you  
6 know, and as I have previously expressed to you, I do not believe that there is insurance  
7 money that covers you in this case due to the fact that Ms. Costanzo appears to be  
8 someone who is excluded from suing you because she is a named-insured and/or is a  
9 household member.

10 *Id.*, Ex. B at Reynolds Depo. Ex. M. The offer expired with no response from Allstate.

11 In a letter dated February 26, 2010, Allstate notified plaintiff that Allstate “agrees to pay for your  
12 defense in connection with Ms. Costanzo’s action under your Allstate motorcycle policy, subject to a  
13 reservation of rights.” Reynolds Decl. Ex. F at AS 0001148. The letter stated, *inter alia*, that “Allstate  
14 must reserve its right to deny coverage for [Costanzo’s] suit on the ground the bodily injuries at issue  
15 therein were sustained by a named insured (Ms. Costanzo), and therefore fall within Exclusion 6.” *Id.*  
16 at AS 0001149. The letter also stated, “As you know, Allstate has selected Michael Brown of the Law  
17 Offices of Michael F. Brown to defend you in this case. Although Allstate is reserving the right to  
18 dispute coverage, the coverage issues raised in this letter are separate from any disputed issue in the suit  
19 by Ms. Costanzo, so there is no conflict of interest between you and Mr. Brown that could affect his  
20 representation of you. If you would like to select separate counsel at your own expense to associate with  
21 Mr. Brown in the defense of this action, however, you are welcome to do so.” *Id.* at AS 0001150.<sup>3</sup>

22 Plaintiff filed this declaratory relief action in state court on September 21, 2010, and Allstate  
23 removed the case to this Court. The parties have filed cross-motions for summary judgment. Plaintiff  
24 seeks a declaration that Exclusion 6 does not apply to deny coverage to Costanzo’s injuries. In the  
25 alternative, plaintiff seeks a declaration that Allstate has waived or is estopped from relying on  
26 Exclusion 6 because plaintiff contends that Allstate did not notify him of its intent to reserve rights as  
27 to coverage for Costanzo’s injuries until well after undertaking defense of the underlying action and  
28 until after the expiration of Costanzo’s § 998 offer to settle. Allstate seeks a declaration that Exclusion

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<sup>3</sup> Plaintiff notes that the February 26, 2010 letter contains several factual errors, such as referring to Costanzo as “Ms. Reynolds” and as plaintiff’s “domestic partner,” despite the fact that plaintiff and Costanzo have never been married and have never been registered as domestic partners.

1 6 applies and that Allstate has and had no duty to defend or indemnify plaintiff in the underlying action.

2 Allstate also disputes that it has waived or is estopped from relying on Exclusion 6.

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## DISCUSSION

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### I. The parties' contentions

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Exclusion 6, as it appears in the endorsement, bars coverage for:

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**[B]odily injury** to an insured person or **bodily injury** to an insured person whenever the ultimate benefits of that indemnification accrue directly or indirectly to an insured person. This exclusion applies only to **you** and **resident** relatives.

8

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Davis Decl. Ex. A, Endorsement at 5. The parties agree that Costanzo is “an insured person,” and thus that the first sentence of Exclusion 6 standing alone would bar coverage for her injuries. However, the parties dispute the meaning of the second sentence of the exclusion, and whether the second sentence of the exclusion applies to Costanzo. Specifically, the parties dispute whether Costanzo falls within the definition of “you,” which is defined as “the policyholder named on the Policy Declarations.”

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Plaintiff argues that Costanzo does not fall within the definition of “you” because “you” is defined as “the policyholder named on the Policy Declarations,” and the policyholder is plaintiff.

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situations involving policyholders who are different from insureds, such as a father who owns a policy

1 and who adds his 16 year old son as an insured, or a landlord who requires a tenant (the policyholder)  
2 to carry insurance and add the landlord as an insured.

3 Defendant argues that the second sentence of Exclusion 6 – “This exclusion applies only to **you**  
4 and **resident** relatives” – limits the exclusion’s application to the first two categories of “an insured  
5 person”: “you” and certain “residents.” Defendant argues that by process of elimination, this means that  
6 the exclusion does not apply to the final category of “an insured person,” namely “any other person  
7 using [your insured auto] with your permission.” Defendant argues that the intended function of the  
8 second sentence is to limit the exclusion’s scope to exempt permissive users, not to redefine “insured  
9 person.” Defendant contends that it makes sense to exclude injuries to the named insureds and resident  
10 relatives while covering injuries to unrelated permissive users “to prevent suspect inter-family legal  
11 actions which may not be truly adversary and over which the insurer has little or no control.” *Farmers*  
12 *Inc. Exch. v. Cocking*, 29 Cal. 3d 383, 389 (1981). Relatedly, defendant argues that plaintiff’s  
13 concession that Costanzo is an “insured person” compels the conclusion that she is “you,” because that  
14 is the only type of “insured person” she could be. Defendant argues that there are only three categories  
15 of “insured person”: (a) “you,” (b) “residents,” and (c) permissive users (“any other person using [your  
16 insured auto] with your permission”), and Costanzo was neither a resident nor a permissive user.

17 Defendant contends that a reasonable insured would have no difficulty understanding that “you”  
18 includes Costanzo. Defendant asserts that nothing in the policy states that the term “policyholder”  
19 actually appears in the declarations, and instead the policy merely refers to “you” as the policyholder  
20 “named on the Policy Declarations[.]” Defendant argues that to determine who “you” is, the reader is  
21 directed to look at the names appearing in the Policy Declarations, and that a reasonable insured would  
22 understand that the person “named on the Policy Declaration” is “you.”

## 23 24 **II. Principles of policy interpretation**

25 The interpretation of an insurance policy is a question of law. *Waller v. Truck Ins. Exch., Inc.*,  
26 11 Cal. 4th 1, 18 (1995). “The rules governing policy interpretation require us to look first to the  
27 language of the contract in order to ascertain its plain meaning or the meaning a layperson would  
28 ordinarily attach to it.” *Id.* “While insurance contracts have special features, they are still contracts

1 to which the ordinary rules of contractual interpretation apply.” *Haynes v. Farmers Ins. Exch.*, 32 Cal.  
2 4th 1198, 1204 (2004) (quoting *Palmer v. Truck Ins. Exchange*, 21 Cal. 4th 1109, 1115 (1999)).  
3 Accordingly, insurance policies “must be interpreted to give effect to the mutual intent of the parties at  
4 the time of contracting, and such intent is ascertained, if possible, from the clear and explicit language  
5 of the contract.” *St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.*, 111 Cal. App. 4th 1234, 1243  
6 (2003) (internal citation and quotations omitted). “If contractual language is clear and explicit, it  
7 governs. On the other hand, when policy language is ambiguous, rules applicable to resolving  
8 ambiguity control.” *Id.* (citing *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 1264–1265 (1992)).

9 “An insurance policy provision is ambiguous when it is capable of two or more constructions,  
10 both of which are reasonable.” *Bay Cities Paving & Grading, Inc. v. Lawyers’ Mut. Ins. Co.*, 5 Cal. 4th  
11 854, 867 (1993). “The uncertainty may relate to the extent or existence of coverage; or the peril insured  
12 against; or the amount of liability; or the person or persons protected.” *Jordan v. Allstate Ins. Co.*, 116  
13 Cal. App. 4th 1206, 1214 (2004). “Language in an insurance policy is interpreted as a whole, and in  
14 the circumstances of the case, and cannot be found to be ambiguous in the abstract. The proper question  
15 is whether the [provision or] word is ambiguous in the context of this policy and the circumstances of  
16 this case. The provision will shift between clarity and ambiguity with changes in the event at hand.”  
17 *Bay Cities Paving & Grading*, 5 Cal. 4th at 868 (internal citations and quotations omitted). “Ambiguity  
18 is resolved by interpreting the ambiguous provisions in the sense the [insurer] believed the [insured]  
19 understood them at the time of formation.” *E.M.M.I. Inc. v. Zurich Am. Ins. Co.*, 32 Cal. 4th 465, 470  
20 (2004). “If application of this rule does not eliminate the ambiguity, ambiguous language is construed  
21 against the party who caused the uncertainty to exist.” *Id.* “This rule, as applied to a promise of  
22 coverage in an insurance policy, protects not the subjective beliefs of the insurer but, rather, the  
23 objectively reasonable expectations of the insured.” *Id.* (internal citation and quotations omitted). “Any  
24 ambiguous terms are resolved in the insureds’ favor, consistent with the insureds’ reasonable  
25 expectations.” *Id.* at 471 (internal citation and quotations omitted).

26 Further, “policy exclusions are strictly construed, while exceptions to exclusions are broadly  
27 construed in favor of the insured.” *Id.* (internal citations omitted). “Thus, the burden rests upon the  
28 insurer to phrase exceptions and exclusions in clear and unmistakable language.” *Id.* (internal citation



1 and quotations omitted). “This rule applies with particular force when the coverage portion of the  
2 insurance policy would lead an insured to reasonably expect coverage for the claim purportedly  
3 excluded.” *Id.*

4  
5 **III. The policy is ambiguous**

6 Applying the foregoing principles of policy interpretation, the Court concludes that in viewing  
7 the language of the policy as a whole and under the circumstances of this case, there is an ambiguity  
8 between Exclusion 6’s application to “you,” the policy’s definition of “you” as “the policyholder named  
9 on the Policy Declarations,” and the listing of two “named insureds” on the Declarations page, neither  
10 of whom is identified as the “policyholder.” While the fact that the term “policyholder” is not defined  
11 in the policy does not by itself create an ambiguity, *Foster-Gardner, Inc. v. National Union Fire Ins.*  
12 *Co.*, 18 Cal. 4th 857, 868 (1998), on the facts here there is an ambiguity because the Declarations page  
13 does not identify the “policyholder,” and instead lists two “named insured(s).” As a result, one cannot  
14 determine from the face of this policy the identity of the “policyholder” to whom Exclusion 6 applies.

15 Defendant argues that the policy is not ambiguous because “no reasonable person would have  
16 difficulty figuring out who the ‘policyholder listed on the Policy Declarations’ is.” Reply at 5:6-7.  
17 Defendant asserts that “although the term ‘policyholder’ does not appear on the declarations page, that  
18 term must have some meaning and the only reasonable construction, when interpreting the policy as a  
19 whole and with each provision in context, is that ‘the policyholder named on the Policy Declaration’  
20 refers to the only names that appear on the declarations under the heading “NAMED INSURED(S)[.]”  
21 Cross-Motion at 10:1-5. However, defendant’s argument assumes that “policyholder” and “named  
22 insured(s)” or “insured” have the same meaning and necessarily refer to the same people. They do not.  
23 “Words in an insurance policy, unless given special meanings by the policy itself, must be understood  
24 in their ordinary sense.” *Scott v. Continental Ins. Co.*, 44 Cal. App. 4th 24, 28 (1996). “In seeking to  
25 ascertain the ordinary sense of words, courts in insurance cases regularly turn to general dictionaries.”  
26 *Id.* at 29 (citing cases). Merriam-Webster’s Collegiate Dictionary defines “policyholder” as “the owner  
27 of an insurance policy.” Merriam-Webster’s Collegiate Dictionary 960 (11th ed. 2003). Contrary to  
28 defendant’s assertion, “the policyholder” and the “insured” need not be the same person because people

1 can be insured under a policy without being the owner of that policy.

2 Here, the insurance policy is ambiguous because it is capable of either party’s construction, both  
3 of which are reasonable. Under plaintiff’s construction, Exclusion 6 prevents a negligent policyholder  
4 from recovering for his own injuries because Exclusion 6 is limited to “you,”<sup>4</sup> and “you” in turn in  
5 defined as “the policyholder named on the Policy Declarations.” Although defendant asserts that this  
6 construction is “nonsensical” because, *inter alia*, plaintiff does not “explain why he would ever sue  
7 himself,” Cross-Motion at 13:12, 27-18, the California Supreme Court has held, when interpreting  
8 slightly different language, that such a construction was reasonable. In *State Farm Mutual Automobile*  
9 *Insurance v. Jacober*, 10 Cal. 3d 193 (1973), the court rejected the insurance company’s argument that  
10 “since a person cannot sue himself for injuries he negligently inflicts on himself, the claimants’  
11 proposed interpretation of the exclusion would render the clause nugatory.” *Id.* at 207. In *Jacober*, the  
12 court held that an exclusion of coverage for “bodily injury to the insured” meant that a negligent insured  
13 driver would be unable to recover under the policy for his own injuries, but that co-insured passengers  
14 could recover under the policy based on the liability of the co-insured driver. *Id.* at 207-08. Defendant  
15 contends that *Jacober* does not support plaintiff because in that case, the exclusionary clause barred  
16 coverage for injury to “*the* insured,” whereas here Exclusion 6 bars coverage for bodily injury to “*an*  
17 insured.” Although defendant is correct that the first sentence of Exclusion 6 excludes coverage for  
18 “bodily injury to *an* insured person . . .”, the second sentence limits the exclusion to “you,” which in  
19 turn is defined as “*the* policyholder named on the Policy Declarations . . .” Thus, while *Jacober* is not  
20 squarely on point, *Jacober* is nonetheless instructive in that the court held that the construction advanced  
21 by plaintiff here is reasonable.

22 The Court also finds that the construction proposed by defendant is not unreasonable. Defendant  
23 argues that the second sentence of Exclusion 6 – “This exclusion applies only to **you** and **resident**  
24 relatives” – limits the exclusion’s application to the first two categories of “an insured person”: “you”  
25 and certain “residents,” thus limiting the exclusion’s scope to exempt permissive users. As defendant  
26 notes, insurance policies frequently contain “insured person” exclusions “to prevent suspect inter-family  
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28 <sup>4</sup> Exclusion 6 also applies to “resident relatives,” which is not at issue in this case.

1 legal actions which may not be truly adversary and over which the insurer has little or no control.”  
2 *Cocking*, 29 Cal. 3d at 389.<sup>5</sup>

3  
4 **II. Reasonable expectation of the insured**

5 “If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in  
6 the sense in which the promisor believed, at the time of making it, that the promisee understood it.”  
7 *Bank of the West*, 2 Cal. 4th at 1265 (quoting Cal. Civ. Code § 1636). “This rule, as applied to a  
8 promise of coverage in an insurance policy, protects not the subjective beliefs of the insurer but, rather,  
9 ‘the objectively reasonable expectations of the insured.’” *Bank of the West*, 2 Cal. 4th at 1265 (quoting  
10 *AIU Ins. Co. v. Superior Court*, 51 Cal.3d 807, 822 (1990)). In resolving this question, the Court must  
11 “interpret the language in context, with regard to its intended function in the policy,” as well as  
12 “common sense.” *Id.* at 1265, 1276.

13 The Court may consider extrinsic evidence to resolve this question. *See Cooper Cos. v.*  
14 *Transcontinental Ins. Co.*, 31 Cal. App. 4th 1094, 1107 (1995); Hon. Croskey *et al.*, California Practice  
15 Guide: Insurance Litigation § 4:311 (2010). The Court examines the insured’s objectively reasonable  
16 expectations as of the time the contract was made rather than when the conduct or event giving rise to  
17 the claim occurred. *See Safeco Ins. Co. of America v. Robert S.*, 26 Cal. 4th 758, 766 (2001). In  
18 addition, “evidence of the insurer’s and insured’s ‘course of performance’ – repeated transactions under  
19 the policy – is generally admissible in interpreting policy terms.” Hon. Croskey *et al.*, California  
20 Practice Guide: Insurance Litigation § 4:177.5 (2010). “The conduct of the parties after execution of  
21 the contract and before any controversy has arisen as to its effect affords the most reliable evidence of  
22 the parties’ intentions.” *Employers Reins. Co. v. Sup. Ct.*, 161 Cal. App. 4th 906, 921 (2008).

23 The record shows that plaintiff purchased the policy on his own behalf in 1999, and that at all  
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25 <sup>5</sup> At the hearing, defendant’s counsel asserted that if Exclusion 6 was interpreted to apply to  
26 plaintiff (because plaintiff is “you”), Costanzo’s claim for damages from plaintiff would not be covered  
27 because Exclusion 6 excludes coverage for liability for bodily injury to an insured person. However,  
28 this argument ignores the ambiguity that is created by the second sentence of Exclusion 6. Because  
plaintiff’s construction of Exclusion 6 (as preventing a negligent policyholder from recovering for his  
own injuries because Exclusion 6 is limited to “you,” and “you” in turn is defined as “the policyholder  
named on the Policy Declarations”) is also reasonable, the policy is ambiguous.

1 times during the existence of the policy, plaintiff paid all of the premiums. Reynolds Decl. ¶ 4;  
2 Costanzo Decl. ¶ 7. After plaintiff and Costanzo purchased the 2006 Harley-Davidson, plaintiff  
3 contacted Allstate to add the new motorcycle to his existing policy. Reynolds Decl. ¶¶ 8, 10. Costanzo  
4 believed that because she was the holder of the loan, she was required to be added as an insured under  
5 plaintiff’s policy, Costanzo Decl. ¶ 13, and plaintiff instructed his Allstate agent to add Costanzo as an  
6 additional insured. Reynolds Decl. ¶ 11. On March 7 or 8, 2006, Costanzo sent a facsimile to plaintiff’s  
7 Allstate agent stating “please insure as follows: Gary V. Reynolds + Janice L. Costanzo” and including  
8 Costanzo’s contact information. Costanzo Decl. ¶ 16; Martin Decl. Ex. A, Depo. Ex. H. Costanzo  
9 never filled out, nor was she asked by Allstate to fill out, an insurance application for the motorcycle.  
10 Costanzo Decl. ¶ 18. Plaintiff and Costanzo have never been married or registered domestic partners,  
11 and they were not residing together at the time of the accident. Reynolds Decl. ¶¶ 13-14; Costanzo  
12 Decl. ¶¶ 17, 25. After Costanzo was added to the policy, all premium invoices and accompanying  
13 period amendments to the policy continued to be sent to plaintiff’s home at 1124 Odyssey Court, San  
14 Jose, California 95118. Reynolds Decl. ¶ 15. Costanzo never received a copy of the policy or any  
15 amendments or endorsements at her address, 2683 Parkside Drive, Fremont, California 94536. Costanzo  
16 Decl. ¶ 7. On these facts, an insured reading the policy as a layperson might reasonably conclude that  
17 Exclusion 6 only applied to plaintiff, the policyholder, and would not apply to Costanzo, who was  
18 neither the policyholder nor a resident relative.<sup>6</sup>

19  
20 **III. The exclusion is not plain and clear, and is strictly construed against Allstate**

21 Further, the Court is guided by the principle that exclusions and limitations on coverage are  
22 “strictly construed against the insurer and liberally interpreted in favor of the insured.” *Delgado v.*  
23 *Heritage Life Ins. Co.*, 157 Cal. App. 3d 262, 271 (1984). Similarly, exceptions to exclusions – such  
24 as the exception at issue in Exclusion 6 – are to be construed broadly in favor of the insured. *See Aydin*  
25 *Corp. v. First State Ins. Co.*, 18 Cal. 4th 1183, 1192 (1998). “Conspicuous placement of exclusionary  
26 language is only one of two rigid drafting rules required of insurers to exclude or limit coverage. The

27 \_\_\_\_\_  
28 <sup>6</sup> The parties did not cite any case law interpreting the term “policyholder,” and the Court was  
unable to locate any case involving a similar ambiguity between the terms “policyholder” and “insured.”

1 language itself must be plain and clear. This means more than the traditional requirement that contract  
2 terms be ‘unambiguous.’ Precision is not enough. Understandability is also required.” *Haynes v.*  
3 *Farmers Ins. Co.*, 32 Cal. 4th 1198, 1211 (2004).

4 For the reasons stated *supra*, the limitation on coverage is not plain and clear. Under defendant’s  
5 construction, a layperson is required to deduce by cross-referencing Exclusion 6 and the definition of  
6 “Insured Persons” that Exclusion 6 applies to the first two categories of “Insured Persons”: “you” and  
7 “residents,” and therefore that Exclusion 6 does not apply to the third category of “Insured Persons”:  
8 “any other person using [your insured auto] with your permission” -- in other words, a permissive user.  
9 The Court is doubtful that an average lay reader would understand that he or she needed to compare the  
10 terms of exclusion against the definition of “Insured Person,” which, unlike the other defined terms, is  
11 not bolded in the exclusion. Exclusion 6, as it appears in the endorsement, bars coverage for:

12 **[B]odily injury** to an insured person or **bodily injury** to an insured person whenever the  
13 ultimate benefits of that indemnification accrue directly or indirectly to an insured  
person. This exclusion applies only to **you** and **resident** relatives.

14 Davis Decl. Ex. A, Endorsement at 5. Instead, a reasonable layperson would read Exclusion 6 and likely  
15 turn to the definitions of “you” and “resident,” the two terms bolded in the sentence “This exclusion  
16 applies only to **you** and **resident** relatives.” At the risk of repetition, the endorsement defines “**You**”  
17 as “the policyholder named on the Policy Declarations . . . .” *Id.* at 4. A reasonable lay person reading  
18 Exclusion 6, the definition of “You,” the definition of “Insured Person,” and the Declarations page  
19 would not necessarily understand that Exclusion 6, as Allstate asserts, did not apply to permissive users.

20 *Haynes v. Farmers Insurance Exchange*, which interpreted similar exclusionary language, is  
21 instructive. In *Haynes*, the California Supreme Court interpreted exclusionary language that purported  
22 to reduce coverage for permissive users of an insured vehicle. The policy stated that an “insured  
23 person” includes “Any person using your insured car,” and that for an “insured person, other than you  
24 or a family member,” coverage is provided “up to the limits of the Financial Responsibility Law only.”  
25 *Id.* at 1203. The language was amended by an endorsement to read,

26 We will provide insurance for an Insured person, other than you, a family member or a  
27 listed driver, but only up to the minimum required limits of your state’s Financial  
28 Responsibility Law of \$15,000 per person and \$30,000 per occurrence for bodily injury,  
and \$5,000 for property damage.

1 *Id.* The insurance company argued that an insured could reasonably be expected to understand that a  
2 reduction in coverage to “an Insured person, other than you, a family member or a listed driver” meant  
3 a reduction of coverage for a permissive driver. *Id.* at 1205.

4 The *Haynes* court rejected the insurance company’s contention and held that the permissive user  
5 limitation was not plain or clear:

6 Although the term “permissive user” appears in the title of the endorsement containing  
7 the limitation, the term is nowhere defined, neither in the policy nor the endorsement,  
8 for the average lay reader. While an attorney or an insurance professional likely could  
9 deduce from close examination of the entire document that permissive user refers to “an  
10 insured person, other than you, a family member or a listed driver” (the phrase that  
11 appears in the permissive user limitation itself) and, by cross-referencing to the  
12 definition of insured person in the liability section, that such an “insured person” is “Any  
13 person using your insured car” but not “Any person who uses a vehicle without having  
14 sufficient reason to believe that the use is with the owner’s permission,” the average lay  
15 reader encountering the term in the title of endorsement S9064 would not necessarily  
16 understand its significance.

17 *Id.* at 1211. Here, as in *Haynes*, a reasonable layperson cannot be expected to cross-reference the  
18 definitions of “you” and “insured person,” and deduce that Exclusion 6 did not apply to permissive users,  
19 but that Exclusion 6 did apply to everyone listed as a “Named Insured(s)” on the Declarations page.

20 As the Court concludes that Exclusion 6 does not apply to bar coverage for Costanzo’s injuries,  
21 the Court finds it unnecessary to address plaintiff’s waiver and estoppel theories.

22 **CONCLUSION**

23 For the foregoing reasons, the Court GRANTS plaintiff’s motion for summary judgment and  
24 DENIES defendant’s motion for summary judgment. Docket Nos. 35 & 36.

25 **IT IS SO ORDERED.**

26 Dated: January 19, 2012

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SUSAN ILLSTON  
United States District Judge