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FirstLease. Harco contends that Zurich had the duty to defend Firstlease in the underlying case, and has the duty to indemnify Harco for the cost of settlement paid to Howard Bryant on behalf of Harco's insured, FirstLease, and the cost of the defense provided to FirstLease.

II. Declaratory Judgment - the Zurich Policy

A. Construction of Insurance Contract

The construction of an insurance policy is a question of law for the Court. If the relevant policy language is susceptible of more than one interpretation, one providing coverage and one limiting coverage, the policy is considered ambiguous. See Weldon v. All Am. Life Ins. Co., 605 So.2d 911, 914-915 (Fla. 2d DCA 1992). Ambiguous policy provisions are interpreted liberally in favor of the insured and strictly against the drafter who prepared the policy. State Farm Casualty and Surety Co. v. CTC Dev. Corp., 720 So.2d 1072 (Fla. 1998). The Court should construe the policy as a whole, endeavoring to give every provision its full meaning and operative effect. See Excelsior Ins. Co. v. Pomona Park Bar & Package Store, 360 So.2d 938, 941 (Fla. 1979).

Florida has declined to adopt the doctrine of reasonable expectations in construing policy provisions which are ambiguous. Deni Associates of Florida, Inc. v. State Farm Fire and Cas. Ins. Co., 711 So.2d 1135 (Fla. 1998). Insurance policies are interpreted according to the plain language of the policy, except when a genuine inconsistency, uncertainty or ambiguity in meaning remains after resort to ordinary rules of construction. State Farm Mutual Insurance Co. v. Pridgeon, 498 So.2d 1245, 1248 (Fla. 1996). A provision is not ambiguous because it is complex or requires analysis. Swire Pac. Holdings, Inc. v. Zurich Ins. Co., 845 So.2d 161, 165 (Fla. 2003).

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B. Duty to Defend

An insurer's duty to defend is decided solely by reference to the claimant's complaint if suit has been filed. Higgins v. State Farm Fire and Cas. Co., 894 So.2d 5 (Fla. 2004); Underwriters at Lloyd's London v. STD Enterprises, Inc., 395 F.Supp.2d 1142 (M.D. Fla. 2005).

The Complaint (Dkt. 18-1) alleges that Firstlease owed a duty to Howard Bryant to maintain, inspect and repair the subject moving truck in a reasonably safe manner, and to rent the subject moving truck in a reasonably safe condition. The Complaint further alleges that Firstlease, its agents, servants and/or employees breached its duty of care to Howard Bryant, by negligently or intentionally committing certain acts, which proximately caused Howard Bryant's injuries. The Complaint alleges that Firstlease breached its duty of care on and before May 13, 2006, the date of the accident. Howard Bryant picked the moving truck up on May 2, 2006.

1. Endorsement U-CA-D-428-A. Truckers Coverage Form
CA 00 12 10 01

In the introduction, the Truckers Coverage Form states:

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VI - Definitions.

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As to liability coverage, the Truckers Coverage Form provides:

A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

....

We have the right and duty to defend any "insured" against a suit asking for such damages or a "covered pollution cost or expense." However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends which the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

1. Who is An Insured

The following are "insureds":

a. You for any covered "auto".

....

d. The owner or anyone else from whom you hire or borrow a covered "auto" that is not a "trailer" while the covered "auto":

1. is being used exclusively in your business as a "trucker" and

2. is being used pursuant to operating rights granted to you by a public authority

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e. Anyone liable for the conduct of an “insured” described above but only to the extent of that liability.

However, none of the following is an “insured”:

a. Any “trucker” or his or her agents or “employees”, other than you and your “employees”.

1. If the “trucker” is subject to motor carrier insurance requirements and meets them by a means other than “auto” liability insurance.

2. If the “trucker” is not an insured for hired “autos” under an “auto” liability insurance form that insures on a primary basis the owners of the “autos” and their agents and “employees” while the “autos” are being used exclusively in the “truckers” business and pursuant to operating rights granted to the “trucker” by a public authority.

....

B. Exclusions

This insurance does not apply to any of the following:

1. Expected or Intended Injury

“Bodily injury” or “property damage” expected or intended from the standpoint of the “insured”.

2. Contractual

Liability assumed under any contract or agreement. But this exclusion does not apply to liability for damages:

a. Assumed in a contract or agreement that is an “insured contract” provided the bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement; or

b. That the “insured” would have in the absence of the

contract or agreement.

.....

Section VI - DEFINITIONS

G. "Insured" means any person or organization qualifying as an insured in the **Who is An Insured** provision of the applicable coverage. Except with respect to the Limit of insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.

2. Endorsement CA 20 01 10 01 Lessor-Additional Insured and Loss Payee

Endorsement CA 20 01 10 01, (Dkt. 18-2, pp. 76-77) provides that the Named Insured is "S E Independent Delivery" and Additional Insured (Lessor) is: "Only those where require (sic) by written contract. The designation or description of "Leased Autos" is "Those where required by written contract." The endorsement includes liability, PIP, comprehensive and collision coverage.

The endorsement modifies insurance provided under: Business Auto Coverage Form, Business Auto Physical Damage Coverage Form, Motor Carrier Coverage Form, Truckers Coverage Form.

Endorsement CA 20 01 10 01 further states:

A. Coverage

1. Any "leased auto" designated or described in

the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire or borrow. **Who is an Insured** is changed to include as an "insured" the lessor named in the Schedule.

2. The coverages provided under this endorsement apply to any "leased auto" described in the Schedule until the expiration date shown in the Schedule, or when the lessor or his or her agent takes possession of the "leased auto", whichever occurs first.

B. Loss Payable Clause

1. We will pay, as interest may appear, you and the lessor named in this endorsement for "loss" to a "leased auto"
2. The insurance covers the interest of the lessor unless the "loss" results from fraudulent acts or omissions on your part.
3. If we make any payment to the lessor, we will obtain his or her rights against any other party.

.....

E. Additional Definition

As used in this endorsement:

"Leased auto" means an "auto" leased or rented to you, including any substitute, replacement or extra "auto" needed to meet seasonal or other needs, under a leasing or rental agreement that requires you to provide direct primary insurance for the lessor.

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3. Endorsement CA 20 48 02 99 - **Designated Insured**

This endorsement modifies insurance provided under:

Business Auto Coverage Form
Garage Coverage Form
Motor Carrier Coverage Form
Truckers Coverage Form

This endorsement identifies persons(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

....

SCHEDULE

Name of Persons(s) or Organization(s):

ONLY THOSE PERSONS OR ORGANIZATIONS WHERE REQUIRED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS.

....

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

The terms of an endorsement control over anything to the contrary in any other insuring agreement. Fireman's Fund Ins. Co. v. Levine & Partners, P.A., 848 So.2d 1186, 1187 (Fla. 3d DCA 2006). The Court accords the policy provisions their plain meaning, and gives effect to every provision. When viewed against the backdrop of applicable statutes and regulations, the meaning of the provisions becomes clear. The Court considered that the commercial automobile policy was designed for SEIDS, which is in the business of delivering furniture, which is subject to various federal and state

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motor carrier regulations, and which may use its own employees or independent contractors in the course of its business, and that those employees or independent contractors may own or lease vehicles to carry out delivery services for SEIDS.

In this case, both SEIDS and Firstlease entered into contracts with Howard Bryant which required him to obtain liability insurance which named SEIDS and Firstlease as “additional insured” for liability for bodily injuries resulting from Howard Bryant’s operation of a motor vehicle, in the course of making deliveries as to SEIDS, and during the term of the rented vehicle, as to FirstLease.

Since SEIDS obtained the policy which provided coverage to Howard Bryant, and as such was the “named insured” Howard Bryant became an “additional insured” as contemplated by the ITA.

The Vehicle Rental Agreement required Howard Bryant to obtain liability coverage and property damage coverage for bodily injury or property damage to third parties during the term of the rental, which protected Howard Bryant as operator, and which protected Firstlease, as owner of the rented vehicle operated by Howard Bryant. Firstlease is an “insured” under the Zurich policy as “Anyone liable for the conduct of an “insured” described above but only to the extent of that liability.” In this case, Howard Bryant is not the tortfeasor; only Firstlease is the alleged tortfeasor. The allegations of the Complaint do not involve the vicarious liability of Firstlease, and the statutorily-permitted shift of liability coverage does not come into play.

Policy TRK 2938900-03 includes SEIDS, Howard Bryant and Firstlease within the liability coverage provided to an “insured” as set forth in the section identifying “Who is An Insured” and the endorsements which modify that section. The allegations of Howard Bryant’s Complaint are not within the liability coverage provided to Firstlease

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for the conduct of insured Howard Bryant, which includes only liability to third parties. After consideration, the Court concludes that Zurich had no duty to defend Firstlease in the underlying case.

C. Duty to Indemnify

The duty to indemnify is determined by analyzing the actual facts of the underlying case. State Farm Fire and Cas. Co. v. CTC Dev. Corp., 720 So.2d 1072, 1077 n.3 (Fla. 1998). The Court may consider extrinsic evidence in determining the duty to indemnify. The undisputed evidence, including the terms of the Vehicle Rental Agreement, establishes that Howard Bryant was required to obtain liability insurance coverage and property damage coverage which was primary only as to bodily injury or property damage to third parties. Howard Bryant is a party to the Vehicle Rental Agreement, not a third party.

Under the terms of the Harco policy, once Harco paid the settlement to Howard Bryant, any rights Firstlease had to recover damages from another party were transferred to Harco. The Hillsborough County Circuit Court determined that the indemnification provision of the Rental Agreement was not enforceable. Howard Bryant had no duty to indemnify FirstLease under the Vehicle Rental Agreement.

After consideration, the Court concludes that, since Firstlease was only an insured as to liability coverage for bodily injury to third parties resulting from the negligence of its "Renter," Howard Bryant, Zurich has no duty to indemnify Harco for Firstlease's primary negligence to Howard Bryant under the terms of Policy No. TRK 2938900-03.

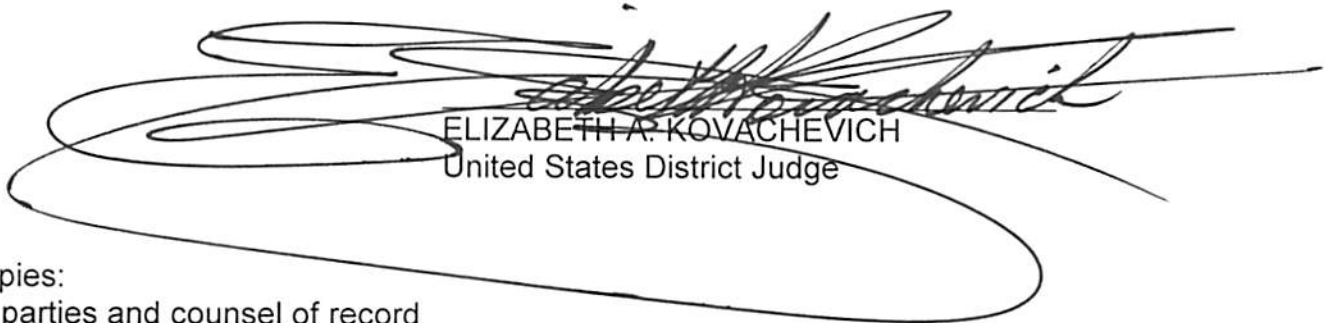
The Court has determined that Zurich had no duty to defend and no duty to

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indemnify under its policy. Harco therefore is precluded from recovering the settlement amount, its legal fees and defense costs from Zurich. Accordingly, it is

ORDERED that the Motion for Summary Judgment (Dkt. 18) is **denied** and the Cross-Motion for Summary Judgment (Dkt. 23) is **granted**. The Clerk of Court shall enter a final judgment in favor of Zurich American Insurance Company and close this case.

26th **DONE and ORDERED** in Chambers, in Tampa, Florida on this day of September, 2011.



ELIZABETH A. KOVACHEVICH
United States District Judge

Copies:
All parties and counsel of record