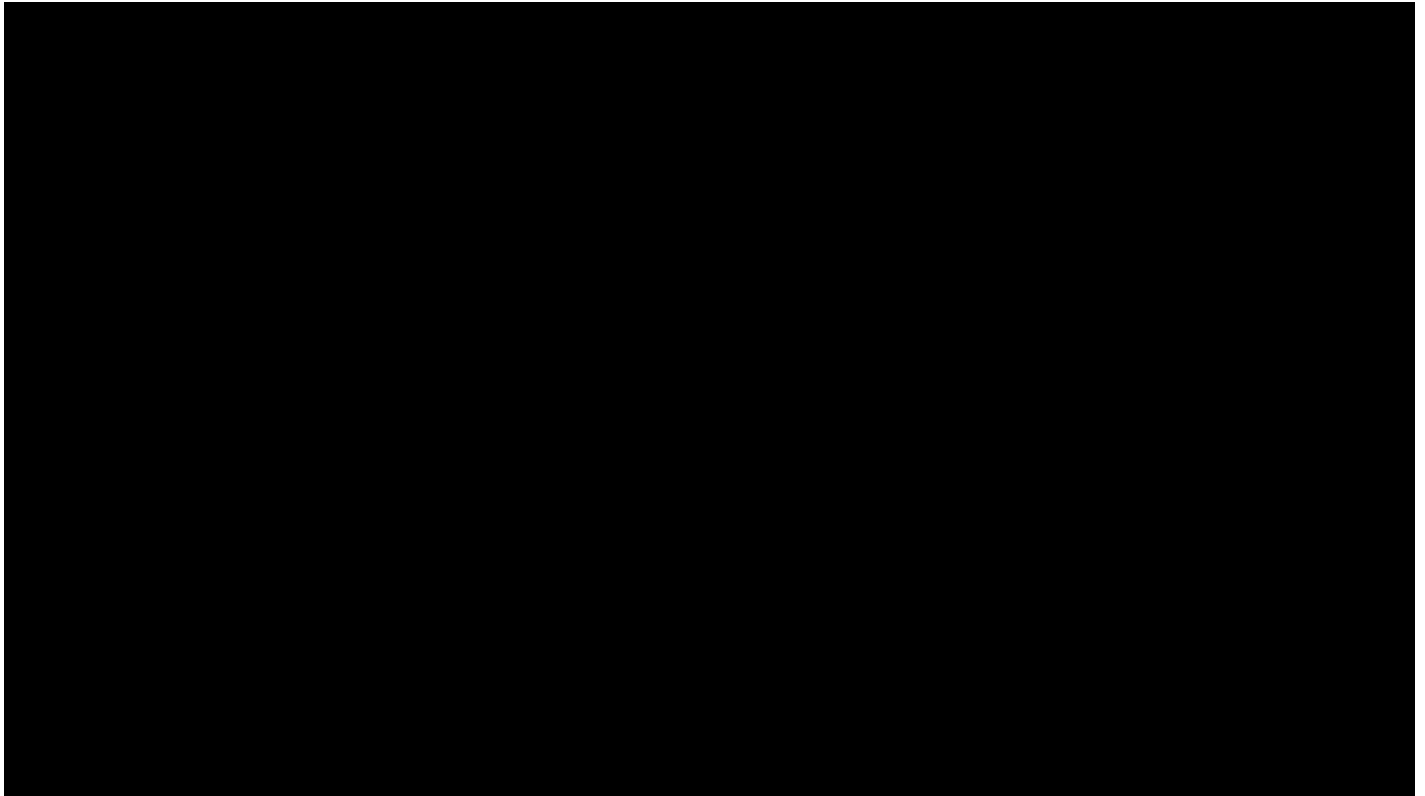


Policyholder Playbook Episode 17: Use Rules of Insurance Policy Interpretation to Your Advantage

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In some jurisdictions, Texas, for example, a policyholder can prevail in a dispute over the meaning of insurance policy language in one of two ways. First, and most obviously, by proving that its interpretation is the only reasonable interpretation of the policy language. Second, by proving that, even if the insurer's interpretation of the language is reasonable, so is the insured's, and that, when policy language is susceptible of two reasonable interpretations, the insured wins.

This rule comes from the doctrine of contra preferentem, which is latin for "against the offeror." In a nutshell it means that contractual ambiguity is construed against the offeror, or the drafter, which with insurance policies, is almost always the insurer.

And what is contractual ambiguity? Quoting from a New York appellate court, "The test for ambiguity is whether the language of the insurance contract is susceptible of two reasonable interpretations."

Knowing that's the test, the next task is to figure out whether your jurisdiction resolves ambiguity automatically, against the drafter-insurer and in favor of the insured, or whether the jurisdiction instead requires discovery on what the ambiguous terms mean. Texas falls into the former camp, for example, and New York the latter.

With the former camp, the bar is a little lower for insureds—to win short of discovery, they don't need to prove their interpretation is the only reasonable interpretation, but just a reasonable interpretation. That's a much easier bar to clear, and a useful way of framing an policy language argument – it doesn't need to be the best interpretation, or the only interpretation, but a reasonable interpretation. The best policyholder advocates are pros at coming up with “reasonable interpretations.” Good luck.

Case No. 1 – *Lend Lease (U.S.) Const. LMB Inc. v. Zurich Am. Ins. Co.*, 136 A.D.3d 52, 56 (1st Dept. 2015)

Case No. 2 – *RSUI Indem. Co. v. The Lynd Co.*, 466 S.W.3d 113, 119 (Tex. 2015)

Case No. 3 – *State v. Home Indem. Co.*, 66 N.Y.2d 669, 671 (N.Y. 1985)