

Policyholder Playbook Episode 6: Lesson From the 11th Circuit - Your Insurer Cannot Change the Scope of Your Insurance Coverage Through Extrinsic Letters or Guidelines

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The best policyholder advocates do not allow insurers to limit the scope of a policyholder's insurance coverage through letters, guidelines, or other documents executed or sent *after* the relevant insurance policy was purchased. That's because the policy and any documents incorporated into the policy govern the parties' relationship and, generally speaking, nothing else.

The Eleventh Circuit recently emphasized this principle in *Continental Casualty v. Winder Laboratories*, No. 21-11758, 2023 WL 4504183 (July 13, 2023). In *Winder*, two insurers agreed to defend their policyholder against a third-party lawsuit consistent with their duty to defend, but subject to a reservation of rights. *Id.* at *1. The insurers' reservation of rights purported to reserve the right to seek reimbursement of defense costs paid for claims not covered by the policies. *Id.*

After providing a defense for some time, the insurers filed a declaratory judgment action against their policyholder, seeking a ruling that they had no duty to defend and that they could recoup the defense costs they had already paid, consistent with their reservation of rights. *Id.* The policyholder astutely argued that, since "the Policies themselves do not provide for a reimbursement right," the insurers had no right to reimbursement. See Appellees' Principal and Resp. Br. at 12. The Eleventh Circuit agreed, predicting that the "Supreme Court of Georgia would not allow an insurer to recoup its expenses based on a reservation of rights letter without any contractual provision allowing for reimbursement." No. 21-11758, 2023 WL 4504183, at *11.

This same principle often arises in the context of purported "billing guidelines," which liability insurers often seek to impose on policyholders *after* placement of their policies. In *Philadelphia Indemnity v. Chicago Title*, for example, an insurer attempted to limit the amount of defense fees that it was responsible for under a liability policy by imposing upon the policyholder purported "billing guidelines" that included hourly rate caps. No. 09-cv-7063, 2012 WL 2115487, at *5 (N.D. Ill. June 10, 2012). Like the policyholder in *Winder*, the policyholder argued that, since the guidelines were not incorporated into and issued with the policy, they were legally meaningless. *Id.* The court agreed, holding that the guidelines did not govern the parties' relationship since they "were not a part of the original insurance contract." *Id.*

Quick Overview of the Play

Assess whether your insurer's coverage limiting argument is supported by the policy, or something extrinsic to the policy. If the latter, consider pushing back and arguing that materials extrinsic to the policy do not govern the parties' relationship.

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