# Policyholder Playbook Episode 45: The Insurer's Policy Interpretation Must Make Sense Grammatically

October 14, 2025 Greg Van Houten

PRACTICES Insurance Recovery, Litigation

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Show notes:

We are back. After summer break and a week-long arbitration in September, we return with Episode 45 of the Policyholder Playbook. This episode is all about the word "the," and asking, does the insurer's interpretation of the policy make sense grammatically? If it does not, then the interpretation can and probably should be attacked.

This all comes from the Fifth Circuit's July 2025 decision in *Paloma Resources v. Axis Insurance Company*, where the court considered whether an intellectual property exclusion barred coverage for a claim alleging the misappropriation of trade secrets and confidential information. The policyholder argued the exclusion did not apply because there were only *allegations* of misappropriation and no proof that it actually occurred. The insurer argued allegations were enough.

As always, we start with the plain language.

The exclusion provided the insurer shall not be liable for a claim—and here I am quoting—"based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged involving any actual or alleged any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress, or service mark or the misappropriation of ideas or trade secrets, or the unauthorized disclosure of or access to confidential information."

That's a lot—but did you notice the break in the clause before "misappropriation of ideas or trade secrets"? The policyholder did. The policyholder argued that, "as the exclusion is written, the placement of the word 'the' immediately preceding the 'misappropriation of ideas or trade secrets' clause in the exclusion suggests no carryover modification by the phrase 'actual or alleged' . . . the result being actual, as opposed to alleged, misappropriation of trade secrets are required to trigger . . . the exclusion."

To emphasize this, the policyholder noted "it makes no sense grammatically to read the exclusion as applying to 'any actual or alleged . . . the misappropriation of trade secrets.'"

The court found that argument, and the policyholder's construction, was reasonable. The court agreed that "it makes no sense grammatically, in everyday English or otherwise, to read the exclusion as applying to 'any actual or alleged . . . the misappropriation of trade secrets.'" And that "This suggests the inclusion of the determiner 'the' before 'misappropriation' represents a purposeful break in the series," such that the mere allegations of misappropriation were not enough—the insurer needed to show that actual misappropriation occurred to trigger the exclusion.

After making that finding—and this goes back to other episodes—the court held that because the policyholder proffered a reasonable interpretation of the exclusion, that interpretation necessarily prevailed because "when language in an insurance policy 'is susceptible to more than one construction,'" it generally is "construed strictly against the insurer and in favor of the insured."

So, two lessons here. First, ask whether the insurer's interpretation of the policy makes sense grammatically because, if it does not, it can be attacked. And second, remember, often the policyholder needs to proffer only a reasonable interpretation—not the best interpretation—to prevail. Thanks so much, and welcome back to the Playbook.