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IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Docket No. 25-ICA-216

ZURICH AMERICAN INSURANCE COMPANY,

Petitioner,

v.

HOMESITE INSURANCE COMPANY OF FLORIDA
and J.F. ALLEN COMPANY, INC.,

Respondents.

(On Appeal from the Circuit Court of Upshur County,
West Virginia, Civil Action No. CC-49-2024-C-16)

# CONSOLIDATED REPLY BRIEF ON BEHALF OF PETITIONER, ZURICH AMERICAN INSURANCE COMPANY TO RESPONDENTS, HOMESITE INSURANCE COMPANY OF FLORIDA AND J.F. ALLEN COMPANY, INC.'S RESPONSE BRIEFS

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### A. Zurich's interpretation of the Auto Exclusion gives effect to all portions of the Exclusion while Homesite/J.F. Allen's interpretation fails to give effect to the "legally must pay as damages" language.

As set forth in Zurich's Brief, the insuring agreement at issue within the Zurich Auto Policy states as follows:

> 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 [any auto].

*AR0862.*[1] The insuring agreement is clear and unambiguous in that it requires that the sums an insured is required to pay as damages must result from the use of an auto for coverage. Therefore, the Court must apply, and not interpret, the plain and ordinary meaning of the insuring agreement. Syl., *Keffer v. Prudential Ins. Co.*, 153 W.Va. 813, 172 S.E.2d 714 (1970) ("Where the provisions of an insurance policy contract are clear and unambiguous they are not subject to judicial construction or interpretation, but full effect will be given to the plain meaning intended.").

Homesite and J.F. Allen argue that Zurich's interpretation of the insuring clause ignores the "[b]ecause of 'bodily injury' or 'property damage' to which this insurance applies, caused by an 'accident'" portion of the insuring agreement. Zurich's interpretation does not ignore the requirement that the damages at issue meet the definition of "bodily injury" or "property damage"; however, the same is irrelevant to the dispute at hand since it is undisputed that the death of Decedent in the Underlying Action qualifies as "bodily injury" caused by an "accident" as defined within the Zurich Policy.

[1]The phrase "covered 'auto'" within the insuring agreement is defined as "any auto" by operation of Section I and Item Two of the Declarations. *AR0861, AR0845.*

The insuring agreement can be broken down to its subcomponents as follows. Zurich agrees to pay all sums an insured "legally must pay as damages" (1) because of "bodily injury" or "property damage" (2) caused by an "accident" and (3) resulting from the ownership, maintenance or use of any auto. By its plain language, in order for the insuring agreement to be triggered, all three (3) subcomponents must be met. In other words, for the Zurich Auto Policy to afford coverage, the sums an insured "legally must pay as damages" must meet the definition of "bodily injury" or "property damage," be caused by an "accident," and result from the use of any auto.

J.F. Allen and Homesite both argue that the insuring agreement is triggered so long as the "bodily injury" or "accident" arises from the use of any auto. However, this is clearly not the case based on a plain reading of the insuring agreement set forth above. If that were the case, the insuring agreement would read as follows:

> 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" [that] result[s] from the ownership, maintenance or use of [any auto].

However, the insuring agreement does not condition coverage on whether the "bodily injury" or "accident" results from the use of any auto but rather is contingent upon whether the insured's legal obligation to pay damages results from the use of any auto:

> 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 [any auto].

*AR0862*. "The use of the word 'and' in a list indicates the conjunctive, meaning that all listed conditions must be satisfied." *State v. McDonald*, 250 W. Va. 532, 538–39, 906 S.E.2d 185, 191–92 (2023). The phrase "resulting from the ownership, maintenance or use of [any auto]" modifies the phrase "**legally must pay as damages**", as do the phrases "because of 'bodily injury' or

'property damage'" and "caused by an accident." In order for **damages** to be captured by this insuring agreement and covered, those **damages** must (1) be because of "bodily injury" or "property damage", (2) caused by an "accident", **and** (3) result from the ownership, maintenance or use of any auto. It is undisputed in this case that the damages at issue were because of "bodily injury" and caused by an "accident." However, the theory of liability pled against J.F. Allen – negligent hiring/retention of an independent contractor – plainly does not result from the ownership, maintenance or use of an auto, or have any requirement of involvement of an auto whatsoever. It is Nu Creek/Marple – the owners/operators of the auto in question – against which theories of liability were pled pertaining to negligent use/operation of an auto, and it is Nu Creek/Marple's auto liability insurer that properly responded to this loss.

Homesite offers a long, tortured explanation of why it claims that the phrase "resulting from the […] use of [any auto]" modifies the words "bodily injury" which can be summarized by the following quote within Homesite's Response:

> The "narrowing" language in the insuring agreement does not modify the word "sums." Rather, the phrase "because of 'bodily injury' or 'property damage' to which this insurance applies" modifies the word "damages." In turn, the phrase "caused by an 'accident resulting from the ownership, maintenance or use of a covered 'auto'" modifies the words "bodily injury" and "property damage."

*Homesite's Response Brief at 11.* However, Homesite's proffered interpretation is simply not borne out by the language of the insuring agreement or elementary grammar, as explained above. Homesite has cited no legal authority or even general rules of grammar in support of its argument and relies only on its own self-serving, conclusory assertions. Notably, Homesite's interpretation does not address the "legally obligated to pay as damages" qualification whatsoever.

Homesite and J.F. Allen both argue that Zurich's insuring agreement is triggered if the bodily injury results from the use of an auto. However, this interpretation would render the

"legally obligated to pay as damages" proviso unnecessary and meaningless and effectively rewrite the insuring agreement as follows:

> 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 [any auto].

*AR0862*. Thus, Homesite and J.F. Allen's interpretation runs afoul of the well-settled principle that a contract should not be interpreted in a manner which renders a portion redundant. *See* Syl. Pt. 3, *Carnegie Nat. Gas Co. v. S. Penn Oil Co.*, 56 W. Va. 402, 49 S.E. 548 (1904) ("No word or clause in a contract is to be treated as a redundancy, if any meaning reasonable and consistent with other parts can be given to it."); Syl., *Henderson Dev. Co. v. United Fuel*, 121 W.Va. 284, 3 S.E.2d 217 (1939) (contracts "should be so construed, if possible, as to give meaning to every word, phrase and clause and also render all its provisions consistent and harmonious"); Syl., *Clayton v. Nicely*, 116 W. Va. 460, 182 S.E. 569 (1935). ("A contract must be considered as a whole, effect being given, if possible, to all parts of the instrument.").

Therefore, the Court should reject Homesite and J.F. Allen's proposed, contorted interpretation of the Zurich Auto Policy's insuring agreement as it is not supported by its plain language.

**B. Contrary to Homesite's argument, Zurich does not assert, and has not asserted, that the insuring agreement is only triggered by the insured's use of an auto.**

Homesite devotes several pages of its Response Brief, arguing against an assertion which Zurich never made. Homesite claims that "[r]educed to its essence, Zurich's primary argument is that the insuring agreement should only be triggered if the insured's liability results from the insured's ownership, maintenance or use of an auto." *Homesite's Response Brief at 12.* Homesite couches its argument with the "reduced to its essence" qualifier because Zurich has not made such an argument. Rather, it is Zurich's position that the plain language of the insuring

agreement is only triggered if the insured's legal obligation to pay damages results from the use of an auto. Stated simply, the theory of liability pled against Zurich's insured must be seeking to hold the insured liable in connection with the ownership, maintenance or use of an auto. Here, if the theory of liability pled against J.F. Allen was one of vicarious liability for Nu Creek/Marple's use of its own auto (a theory which was not pled), such a theory of liability does not require the insured's own ownership, maintenance or use of an auto, and is plainly distinguishable from a negligent/hiring retention of an independent contractor theory of liability – which has nothing to do with the ownership, maintenance or use of an auto.

Homesite cites Allan D. Windt's *Insurance Claims and Disputes: Representation of Insurance Companies & Insureds* (6th Ed. 2023) as follows:

> Sometimes the policy provides that the insured is entitled to coverage for injury "resulting from the use of a covered auto." In that event, it is irrelevant whether the insured was driving the covered auto. It is enough that the insured is being sued because of an injury that resulted from someone's use of a covered auto.

*Id.* at § 11:36, note 1. However, Zurich's insuring agreement simply does not provide that the insured is entitled to coverage for injury "resulting from the use of a covered auto" as contemplated by this passage. Rather, it is the damages that must result from the use of an auto. Thus, Windt is discussing policy language which is not contained in the Zurich Auto Policy. The insuring agreement in the Zurich Auto Policy provides that the insured is entitled to coverage if its legal obligation to pay damages results from the ownership, maintenance or use of any auto. A theory premised upon negligent hiring/retention of an independent contractor does not result from the ownership, maintenance or use of any auto.

In further support of its argument, Homesite cites *Brown v. Champeau,* 537 So. 2d 1120 (Fla. Dist. Ct. App. 1989), *Pac. Emps. Ins. Co. v. Domino's Pizza, Inc.*, 144 F.3d 1270 (9th Cir. 1998), *Allstate Ins. Co. v. Andrews Florist on 4th St., Inc.*, No. 8:08-CV-2253-T-EAJ, 2011

WL 672349 (M.D. Fla. Feb. 17, 2011), and *Navigators Specialty Ins. Co. v. Nationwide Mut. Ins. Co.*, 50 F. Supp. 3d 1186 (D. Ariz. 2014), *aff'd,* 670 F. App'x 957 (9th Cir. 2016). However, each of these cases addressed insurers' arguments that the policies at issue limited coverage to the insured's ownership, maintenance, or use of an auto, an argument which Zurich has not advanced herein. Accordingly, Homesite's reliance on these inapposite cases is clearly misplaced.

**C. Contrary to Homesite's argument, a claim for negligent hiring/retention is an independent claim for negligence, and such theory of liability does not result from the use of a vehicle.**

Homesite does not appear to dispute that a cause of action for negligent hiring/retention is an independent claim for negligence which does not result from the insured's use of an automobile. *Homesite's Response Brief at 17.* However, Homesite's argument that the theory of liability asserted against the insured is irrelevant is flawed for all the reasons set forth above.

Homesite again repeats its arguments, which torture and distort the plain language of the insuring agreement, stating:

> The insuring agreement obligates Zurich to pay all sums an "insured" legally must pay as damages. But this does not apply to all types of damages. Zurich is only obligated to pay those sums if the "insured" is legally obligated to pay such damages because of "bodily injury" or "property damage". Moreover, Zurich is only obligated to pay those sums if the insurance applies to such "bodily injury" or "property damage"; if the "bodily injury" or "property damage" was caused by an "accident"; and if the "bodily injury" or "property damage" resulted from the ownership, maintenance or use of any auto.

*Homesite's Response Brief at 18.* This is not supported by the plain language or sentence structure of the insuring agreement, which states:

> We will pay all sums an "insured" legally must pay as damages [1] because of "bodily injury" or "property damage" to which this insurance applies, [2] caused by an "accident" and [3] resulting from the ownership, maintenance or use of [any auto].

*AR0862.*

Homesite's interpretation, without textual or legal support, combines subparts (1) and (3), while leapfrogging subpart (2). Homesite's interpretation also ignores that the sums the insured "legally must pay as damages" must meet all three (3) subparts and fails to give effect to the conjunctive "and". The plain language of the insuring agreement clearly shows that the sums the insured must legally pay as damages must meet all three (3) discrete subparts which follow. As set forth in more detail below, the sums J.F. Allen was legally obligated to pay as damages did not result from the use of an auto since a claim for negligent hiring/retention is an independent claim for negligence which neither requires nor results from the use of any auto.

Therefore, the Court should reject Homesite's interpretation of the insuring agreement, which is not supported by the plain language of the insuring agreement.

## D. *Huggins* supports Zurich's position, Homesite and J.F. Allen's arguments notwithstanding.

### 1. The Court in *Huggins* found that a claim for negligent entrustment does not involve the use of an auto, as is the case for the negligent hiring/retention claim in the Underlying Action.

Both Homesite and J.F. Allen attempt to distinguish *Huggins*, but their arguments fall flat. Homesite and J.F. Allen both argue that the Court should pay no mind to *Huggins* because it addressed a policy exclusion which was found to be ambiguous as opposed to an insuring agreement. While true, *Huggins* addressed an issue directly analogous to the case at hand. The exclusion at issue in *Huggins* provided that the policy did not provide coverage for "the ownership, maintenance, operation or use … of land motor vehicles." *Huggins v. Tri-Cnty. Bonding Co.*, 175 W. Va. 643, 647, 337 S.E.2d 12, 15 (1985). The parties disputed whether the claim for negligent entrustment asserted against the insured was barred by the exclusion for "use" of motor vehicles.

In finding that it did not, the Court recognized as follows with respect to a negligent entrustment:

> Furthermore, the critical element of a negligent entrustment cause of action is the initial improper loaning of the vehicle—improper in the sense that it is given to a person who is known to be likely to cause an unreasonable risk of harm to others.
>
> Thus, the driver's negligent operation is not the critical factor in a negligent entrustment action, although it is necessary to complete the causal connection between the original negligent act (the entrustment) and the ultimate injury.

*Id.* at 649,17 (citations omitted). This principle is directly applicable to the Zurich Policy's insuring agreement language and the claim for negligent hiring/retention herein. Moreover, the fact that the language at issue in *Huggins* was contained in an exclusion does not alter the Court's recognition of the independent nature of a claim for negligent entrustment. Applying the principle annunciated in *Huggins* to this case, the insuring agreement is not triggered because a claim for negligent hiring/retention is an independent claim for negligence which does not result from the use of an auto.

The negligence claim asserted against J.F. Allen in the Underlying Action was a separate cause of action that arose independent from the use or operation of an auto – meaning, the same claim could have been asserted against J.F. Allen even if the ultimate injury did not involve an auto accident.[2] Just as the critical element of a negligent entrustment cause of action is the initial improper loaning of the vehicle; the critical element of the negligent hiring/retention claim is the initial improper hiring/retaining of the contractor. The thrust of the claim is J.F. Allen's alleged negligent hiring/screening practices in retaining an independent contractor, and the driver's negligent operation of a vehicle is <u>not</u> the critical factor in the claim. In this specific case,

[2]If the independent contractor/driver assaulted someone, the same theories of liability could be pled against J.F. Allen regarding negligent hiring/retention. The claims asserted against J.F. Allen simply do not hinge upon the use or operation of an auto.

however, it happened to be what completed the causal connection between the original negligent act (the hiring/retention) and the ultimate injury.

Additionally, a claim for negligent hiring/retention does not require the use of a motor vehicle as an element of proof. *Kizer v. Harper*, 211 W. Va. 47, n. 10, 561 S.E.2d 368 (2001) (citing *Thomson v. McGinnis*, 195 W.Va. 465, 465 S.E.2d 922 (1995)) ("[O]ne who undertakes to hire an independent contractor who is not careful or competent can be held liable for resulting damages caused by the independent contractor if the hiring entity is negligent in the selection and retention of the independent contractor."); *McCormick v. W. Virginia Dep't of Pub. Safety*, 202 W. Va. 189, 193, 503 S.E.2d 502, 506 (1998) ("[I]t appears that a primary question in determining whether an employer may be held liable, based on a theory of negligent hiring or retention, is the nature of the employee's job assignment, duties and responsibilities—with the employer's duty with respect to hiring or retaining an employee increasing, as the risks to third persons associated with a particular job increase.").

The independent nature of a claim for negligent hiring/retention is further demonstrated by the fact that J.F. Allen's alleged negligence would have occurred at an entirely different time than the operator of the auto's negligence. J.F. Allen's alleged negligence would have occurred when it hired/contracted with Nu Creek/Marple, prior to the auto accident ever occurring; whereas, Marple's purported negligence (and Nu Creek's imputed negligence through respondeat superior) occurred at the time of the auto accident. *See McCormick v. W. Va. Dep't of Public Safety*, 202 W.Va. 189, 503 S.E.2d 502, 506–07 (1998) (per curiam) ("When the employee was hired or retained, did the employer conduct a reasonable investigation into the employee's background vis a vis the job for which the employee was hired and the possible risk of harm or

injury to co-workers or third parties that could result from the conduct of an unfit employee?") (emphasis added).

Thus, despite Homesite and J.F. Allen's attempt to distinguish the same, *Huggins* and the additional legal authority set forth above, demonstrate that a claim for negligent hiring/retention is an independent claim for negligence, separate from the negligence of Marple/Nu Creek, and which does not require the use of an auto as a necessary element.

**2. *Huggins* adopted a "theory of liability" approach.**

Homesite and J.F. Allen attempt to avoid the clear application of *Huggins* to the case at hand by arguing that *Huggins* actually did not adopt a "theory of liability" approach. Homesite argues that *Huggins* only rejected the "cause of damages" approach due to the policy using the term "negligent personal acts" as opposed to "occurrences." While true that this was one consideration in *Huggins*, the Court also rejected the insurer's argument against the "theory of liability" approach because the policy does make distinctions according to theories of liability. The insurer argued, as do Homesite and J.F. Allen herein, that "its policy protects against occurrences that cause a liability, and not against theories of liability" and that if a loss was caused by an occurrence involving a motor vehicle, "there is no coverage regardless of the theory upon which the liability is grounded." *Huggins*, 175 W. Va. at 649-650, 18.

*Huggins* rejected this argument, reasoning:

> Nationwide's policy does make distinctions according to theories of liability. For instance, the policy expressly excludes coverage if the liability is based on intentional acts or if the liability is premised on professional negligence. Thus, the argument that the policy only covers occurrences and not theories of liability is without merit.

*Id*. at 650, 18. Like the policy at issue in *Huggins*, the Zurich Auto Policy makes distinctions according to theories of liability. For example, the Zurich Auto Policy excludes coverage based

on intentional conduct or pollution, regardless of the specific occurrence that caused the injury. *AR0863, AR0865.*

Accordingly, the *Huggins* court applied the "theory of liability" approach, which is also required based on the plain language of the insuring agreement as set forth above, and is what this Court should apply here.

**3. Contrary to Homesite's argument, *American National* did not adopt a "cause of damages" approach.**

Homesite's assertion that *Am. Nat'l Prop. & Cas. Co. v. Clendenen*, 238 W. Va. 249, 254, 793 S.E.2d 899, 904 (2016) overruled *Huggins* and adopted a "cause of damage" approach is plainly erroneous. In *American National*, two (2) teenagers murdered a former friend. The parents of the deceased brought suit against the teenagers' parents to recover damages in connection with their daughter's death. *Id.* at 252, 902. The plaintiffs' theories of liability alleged against the parents were that the parents were negligent in their supervision of the teenagers and negligently entrusted the vehicle used to drive the victim on the night of the murder. *Id.* at 253-254, 902-903. However, the "cause" of the decedent's "bodily injury" was an intentional murder.

At issue, were two (2) insurance policies, which contained exclusions for intentional acts and violations of the law. The first policy stated, in pertinent part:

> **SECTION II EXCLUSIONS**
>
> 1. **Coverage E—Personal Liability and Coverage F—Medical Payments to Others** do not apply **to bodily injury** or **property damage**:
>
> a. Which is expected or intended by **any insured** even if the actual injury or damage is different than expected or intended;
>
> […]
>
> p. Arising out of any criminal act committed by or at the direction of **any insured**;

The second policy stated:

> **We** do not cover under *Bodily Injury Liability Coverage, Property Damage Liability Coverage, Personal Injury Liability Coverage, and Medical Payments To Others Coverage*:
> 1. **Bodily injury**, **property damage** or **personal injury** expected or intended by **anyone we protect** even if:
>
> a. the degree, kind or quality of the injury or damage is different than what was expected or intended; or
> b. a different person, entity, real or personal property sustained the injury or damage than was expected or intended.
>
> **We** do not cover under *Bodily Injury Liability Coverage, Property Damage Liability Coverage, or Personal Injury Liability Coverage*:
> ....
> 9. **Personal injury** arising out of willful violation of a law or ordinance by **anyone we protect**.

*Id.* at 254, 904.

Thus, distilled to their essence, the relevant language of the exclusions in *American National* was as follows:

> [This insurance] does not apply to bodily injury or property damage […] [w]hich is expected or intended by any insured[.]
>
> [This insurance] does not apply to bodily injury or property damage […] [a]rising out of any criminal act committed by or at the direction of any insured[.]
>
> We do not cover […] [b]odily injury, property damage or personal injury expected or intended by anyone we protect[.]
>
> We do not cover […] [p]ersonal injury arising out of a willful violation of law or ordinance by anyone we protect.

*Id.* By their plain language, the exclusions in *American National* were triggered by the cause of the "bodily injury", "property damage" or "personal injury" - which was expected or intended by any insured or which arose out of a violation of law.

It was in this context that the *American National* decision stated:

> Here, the Neeses seek the same wrongful death damages against both Sheila and Rachel and their mothers. The focus of the intentional/criminal acts exclusions is on the cause of the damages, not the negligent supervision and negligent entrustment causes of actions alleged against Tara Clendenen and Patricia Shoaf. Perkins, 867 So.2d at 139. As all such bodily injury claims arise from the intentional and criminal conduct of Sheila Eddy and Rachel Shoaf, insureds under the policy, the exclusions preclude coverage for all of the claims.

*Id.* at 261, 911 (emphasis added).

Unlike the exclusions in *American National*, the focus of the Zurich insuring agreement at issue is not on the "cause of damages." Instead, the insuring agreement is conditioned on whether the insured's legal obligation to pay damages, *i.e.*, the theory of liability asserted against the insured, results from the use of an auto. Here, the claim asserted against J.F. Allen is a garden variety negligence claim regarding its hiring/screening practices for independent contractors and the allegations made against J.F. Allen simply do not involve the use of an auto despite Homesite's and J.F. Allen's pained attempts to make it so.

Homesite also argues that *American National* shows that the Supreme Court "has now clearly adopted a 'cause of damages' approach of interpreting such insurance policy exclusions" and no longer follows the "theory of liability" approach utilized in *Huggins*. *Homesite's Response Brief at 23.* However, *American National* did not discuss *Huggins* or even cite to *Huggins* a single time. It was not necessary for *American National* to discuss *Huggins* because *Huggins* addressed a different type of exclusion containing different triggering language. Therefore, *American National* did not overrule *Huggins* as Homesite improperly suggests, and the court's reasoning in *American National* is simply not applicable here.

**4. Regardless of Homesite's attempts to distinguish *Pablo* and *Marquis* and its assertion that they represent the minority view, the plain language of the Zurich insuring agreement requires the application of the "theory of liability" approach.**

Homesite argues that *Pablo* addressed a policy exclusion as opposed to an insuring agreement and that *Marquis* recognized that its approach represents the minority view. Regardless of whether it is properly characterized as the "minority" position, the "theory of liability" approach was adopted by *Huggins* and is mandated by the plain language of the Zurich insuring agreement for all the reasons set forth hereinabove.

**E. The Circuit Court erred in finding the Zurich Auto Policy to be ambiguous based solely on the parties' disagreement as to its proper application.**

J.F. Allen[3] argues that "[t]he ambiguity [of the Zurich Auto Policy] in this case is highlighted by the competing arguments by both insurance companies." *J.F. Allen's Brief at 10.* However, it is axiomatic that "[t]he mere fact that parties do not agree to the construction of a contract does not render it ambiguous. The question as to whether a contract is ambiguous is a question of law to be determined by the court." *Blake v. State Farm Mut. Auto. Ins. Co.*, 224 W. Va. 317, 323, 685 S.E.2d 895, 901 (2009)(citing Syl. Pt. 1, *Berkeley County Pub. Serv. Dist. v. Vitro Corp. of America*, 152 W.Va. 252, 162 S.E.2d 189 (1968)). Aside from arguing that Homesite has offered an interpretation of the Zurich Auto Policy which differs from Zurich's interpretation, J.F. Allen offers no substantive explanation as to how the Policy and its standard insuring agreement language is ambiguous. J.F. Allen has cited no legal authority which has found the language of the insuring agreement at issue, which is standard Insurance Services Office language, to be ambiguous. Therefore, the Circuit Court clearly erred in finding that the insuring

[3]Homesite admits that the Circuit Court erred in finding the Zurich Auto Policy to be ambiguous based solely on the disagreement among the parties as to its proper application. *Homesite's Response Brief at 29-31.*

agreement of the Zurich Auto Policy was ambiguous solely because of the "competing interpretations asserted by the parties."

## III. CONCLUSION

For all the reasons set forth herein and otherwise apparent to the Court in the record, Zurich respectfully requests that the Court reverse the April 25, 2025 *Order*, as the Zurich Auto Policy clearly does not apply to J.F. Allen's alleged independent act of negligently hiring/retaining an independent contractor because such a claim plainly does not result from the ownership, maintenance, or use of an auto.

Dated this 5th day of September, 2025.

**ZURICH AMERICAN INSURANCE COMPANY, RESPONDENT/PETITIONER BY COUNSEL:**

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# CERTIFICATE OF SERVICE

The undersigned, counsel of record for Respondent/Petitioner, Zurich American Insurance Company, does hereby certify on this 5th day of September, 2025, that a true copy of the foregoing "***CONSOLIDATED REPLY BRIEF ON BEHALF OF PETITIONER, ZURICH AMERICAN INSURANCE COMPANY TO RESPONDENTS, HOMESITE INSURANCE COMPANY OF FLORIDA AND J.F. ALLEN COMPANY, INC.'S RESPONSE BRIEFS***" was filed with the Clerk of Court using File & ServeXpress system, which will send notification of such filing to the following:

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