

Doctrine of Contra Proferentem Applies Only after Court Considers Extrinsic Evidence Regarding Ambiguous Contract Term

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The United States District Court for the Southern District of New York has held that a court may not construe an ambiguous policy term against an insurer until it has considered all other means of interpretation, including extrinsic evidence. *Gerling Am. Ins. Co. v. Steadfast Ins. Co.*, No. 00-7907 (HB), 2001 U.S. Dist. LEXIS 12154 (S.D. N.Y. Aug. 17, 2001).

This action involved policies issued by three insurers to several health plans. Patients of a doctor, to whom they were referred by the health plans, sued the health plans under theories of tort liability. Two of the insurers defended the health plans and contributed to a settlement of the actions. These insurers requested that the third insurer contribute to the defense and to a settlement. The third insurer denied coverage and filed this action seeking a declaration that it had no coverage obligations in connection with the tort suits. The two insurers countersued for contribution. All parties filed motions for summary judgment.

Under the third insurer's policy, the health plans were not named as insureds on the declarations page, but rather named as "specific insureds" on the policy's location schedule. Accordingly, the third insurer argued that its policy provided "premises-only" liability coverage to the health plans. Because the alleged tortious conduct did not take place on their premises, the third insurer argued that it had no duty to defend or indemnify the health plans. The two other insurers, however, claimed that the health plans were only listed on the location schedule because there was no room for their names on the declarations page.

The district court denied both summary judgment motions, finding that a genuine issue of material fact existed as to whether the third insurer provided general liability or "premises-only" liability to the health plans. In so holding, the district court refused to apply the doctrine of contra proferentem against the third insurer. Applying New York law, the district court held that courts should only resort to that doctrine when they have found a contract term ambiguous and have considered all other methods of interpretation, including extrinsic evidence regarding the meaning of the term.