

NEWS ALERT

APPELLATE PRACTICE



The \$100 Million Question is Answered With Extrinsic Evidence, Not Contra Proferentem

By Elizabeth J. Stewart | April 10, 2017

RULING RECAP: GOLD V. ROWLAND, SC 19585

Last October, we reported on the issues at stake in Gold v. Rowland, the class action that claims that Connecticut state employees were members entitled to shares of stock when their insurer, Anthem, demutualized in 2001. The employees had asked the Supreme Court to reverse the trial court’s ruling that (1) Anthem’s Articles of Incorporation should be considered together with other documents in the Anthem-Blue Cross merger, (2) those documents were ambiguous on the issue of whether the employees were members, and (3) extrinsic evidence showed that the parties intended for only the state, as the policyholder, to be a member. Alternatively, the employees had argued that even if the documents were ambiguous, the trial court should not have considered extrinsic evidence and instead should have directly applied the rule of contra proferentem to interpret the documents against the drafter, Anthem, and in favor of the employees. In a decision with an official release date of April 11, 2017, the Supreme Court rejected the employees’ arguments and affirmed the trial court.

The parties had agreed that Indiana law applied to this contract interpretation question. Therefore, the Supreme Court conducted its analysis under Indiana law.

Before deciding whether there was an ambiguity, the Supreme Court determined which documents made up the contract. The employees argued that only Anthem’s 1997 Articles of Incorporation should be considered. The Supreme Court, however, agreed with Anthem and the trial court, that the merger agreement and the form group guaranty health care insurance policy and certificate of membership (“guaranty policy”) should be considered together with the articles. The Supreme Court held that all of these documents were drafted in conjunction with the Anthem-Blue Cross merger, that they cross referenced each other, that the merger agreement required the amendment of the articles and that the articles did not contain a clause stating that they were the complete expression of the agreement.

The Supreme Court then conducted a legal analysis of whether these three documents were ambiguous as to who was a “member” after the merger. Although the Supreme Court stated that “the relevant language of the 1997 articles generally favors” the employees’ position that they were members, the Supreme Court agreed with Anthem that the articles, the merger agreement and the guaranty policy contained language that could be read both ways. Therefore, the Supreme Court ruled that the language was ambiguous.

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Having determined that the language was ambiguous, the Supreme Court next decided how the trial court should have answered the fact question of whether the employees were intended to be members under these documents. At the trial on this question, the trial court considered extrinsic evidence beyond the three documents mentioned above. Specifically, the trial court relied upon testimony of Anthem and Blue Cross officers and lawyers, public statements these companies had made to Indiana and Connecticut in the regulatory process approving the merger, an actuary report on whether the merger would be fair to Blue Cross members and two notices sent to Blue Cross members before the merger. The Supreme Court held that it was proper for the trial court to consider all of this evidence to interpret the contract documents.

The Supreme Court also specifically rejected the employees' argument that the trial court should have skipped the extrinsic evidence and gone straight to interpreting the contract documents in favor of the employees under the doctrine of *contra proferentem*. That doctrine provides, under both Indiana and Connecticut law, that if there is a contract of adhesion, any ambiguity should be construed against the drafter. The Supreme Court recognized that under Indiana law, the doctrine is a "last resort." There was no need to go to that last resort, the Supreme Court held, because the extrinsic evidence "unequivocally supported" Anthem's interpretation. The Supreme Court also noted that the employees could not use their status as third-party beneficiaries of their group health policy to be "automatically entitled" to have the contract construed in their favor just because they were not involved in drafting it.

Although the Supreme Court applied Indiana law, it probably would have reached the same result under Connecticut law. Unless Connecticut courts are interpreting contracts of adhesion such as insurance policies, they generally review extrinsic evidence to interpret ambiguities in commercial contracts before construing them against the drafters under the *contra proferentem* doctrine. See, e.g., *Cruz v. Visual Perceptions, LLC*, 311 Conn. 93, 107-08 (2014).

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