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THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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INTERNATIONAL MARINE UNDERWRITERS, a division of One  
Beacon America Insurance Company, a Massachusetts insurance  
company,  
Respondents,

V.

ABCD Marine, LLC, a Washington LLC; ABCD Marine, a  
Washington partnership, and Albert Boogaard, an individual domiciled  
in Washington,  
Appellants.

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RESPONDENTS ANSWER TO APPELLANTS  
PETITION FOR REVIEW

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Dennis Moran, WSBA# 19999  
William Keller, WSBA# 29361  
MORAN & KELLER, PLLC  
5608 17<sup>TH</sup> AVE NORTHWEST  
SEATTLE, WA 98107  
Tel: 206-877-4410  
Fax: 206-877-4439  
[dmoran@morankellerlaw.com](mailto:dmoran@morankellerlaw.com)  
[bill@morankellerlaw.com](mailto:bill@morankellerlaw.com)

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## I. INTRODUCTION

Mr. Boogaard was a contract welder on the Northland Services (NSI) dock on the Duwamish. One day Northland told him that he and all the contractors on the worksite had to sign "Access Agreements" which required them to actually go to their insurance brokers and ask their insurance brokers to add Northland as an additional insured on their insurance policies. Mr. Boogaard dillyed and dallied around for two months without taking the time to go to send it to his own insurance agent who would have purchased him the additional coverage. Then he got injured at the site. It was only because Mr. Boogaard never added Northland as an additional insured, as he was required to do under the Access Agreement he signed, that he suffered an uncovered loss. Had Mr. Boogaard simply honored his contract with Northland there would have been coverage. Had Mr. Boogaard purchased Workers Compensation Coverage for himself from the State of Washington, there would have been coverage.

Division 1 found that no coverage for Mr. Boogaard exists under the IMU policy Mr. Boogaard purchased, in its well-reasoned opinion filed at 165 Wn.App 223 (2011). There exists no reason for further review of this very clear case, which relates to Mr. Boogaard's failure to comply with an Access Agreement he signed and entered into with a company

called Northland Services Inc. Instead of meeting his contractual obligations, Mr. Boogaard now seeks to turn his third party liability policy into a first party medical claim contract. ABCD and Mr. Boogaard's claims for coverage for personal injuries under the IMU policy failed for the following reasons: (1) Mr. Boogaard is a first party to the insurance policy with IMU which is a third party liability policy; (2) the policy when read in its entirety proves that no coverage should exist under the circumstances of this case, it ensures ABCD/Mr. Boogaard for liability for damages they cause to others; (3) Mr. Boogaard is a first party to the insured contract with Northland and was treated that way by Northland – Northland counter-claimed against Mr. Boogaard individually, as opposed to bringing a third-party claim against ABCD Marine; Boogaard signed the access agreement promising to obtain additional insured status and Workmen's Compensation Coverage; and (4) Mr. Boogaard and ABCD's expert opinion and policy arguments cannot substitute for the plan language of the policy and do not rise to the requisite level for review by this Court.

There are no overarching policy arguments for review in this case. This case does not leave thousands of injured workers at risk through no fault of their own. This is a case where a person that entered into a contract to indemnify another party and agreed to purchase Workmen's

Compensation Insurance, and then he failed to buy the insurance. While suffering a personal injury is tragic, the damages to the plaintiff were caused by his own actions and omissions, not by IMU. There is no coverage for Mr. Boogaard's personal injuries under the policy as the trial court and court of appeals correctly found.

## **II. STATEMENT OF CASE**

Since 2000, Mr. Boogaard provided welding services to Northland (NSI) and Naknek Barge Lines at a marine terminal located on the Duwamish River. Mr. Boogaard was a senior partner in the partnership ABCD Marine. ABCD Marine had contracted with IMU for a "Comprehensive Marine Liability and Ship Repairers Legal Liability Policy in April, 2000. In August, 2001, Naknek sent ABCD a letter indicating that all contractors must provide commercial general liability coverage of \$1 million and that the certificate of insurance "must name and waive Naknek Barge Lines LLC and Northland Holdings Incorporated." Naknek Barge Lines LLC is a Delaware limited liability company (CP 729 & 732), and it is owned by Northland Holdings Incorporated, which is a holding company without any employees or operations. Northland Holdings also owns NSI, is a Washington Corporation. (CP 2 & 34, 732, 943). IMU was never provided a copy of the letter, and never received a request by ABCD to add any additional

insureds to the policy. The policy was renewed for the next several years without any additional insureds being added to the policy. ABCD opted not to obtain Workmen's Compensation insurance for its two partners. (CP 680-681).

On September 29, 2004, Mr. Boogaard entered into a written "Access Agreement" with NSI, wherein Mr. Boogaard and ABCD agreed to defend and indemnify NSI for injuries to all persons arising out of ABCD's operations and/or use of NSI's property and to obtain liability insurance that included an additional insured endorsement naming NSI as an additional insured under the policy. (CP 708-709). The Agreement also required ABCD to carry Workmen's Compensation insurance for its employees. (CP 709). The Access Agreement stated in pertinent part as follows:

8. Personal Injuries: User [Boogaard] shall be responsible for all bodily and personal injuries to all persons arising out of or resulting from its operations and/or use of the Property, including bodily and personal injuries to its own employees, except if caused by the sole intentional negligence of NSI. User shall indemnify and hold harmless (including costs and legal fees) NSI of and from all losses, damages, claims and suits for bodily and personal injury, whether direct or indirect, arising out of or relating to its operations or use of the Property, except such bodily and personal injuries caused directly from the sole intentional negligence of NSI. This indemnification agreement includes all claims and suites against NSI by any employee (present or former) of User and User expressly waives all immunity and/or limitation of liability under any worker's compensation, disability benefits or other employee or employment-related act of jurisdiction...

10. Insurance. User shall obtain and maintain, at its own expense, public liability insurance for personal injuries and property damage covering User's operations under this agreement including a contractual liability endorsement which specifically insures User's liabilities pursuant hereto. Such insurance must have minimum limits per occurrences of \$1,000,000 and shall be evidenced by an Insurance certificate specifically naming NSI as additional insured and must waive subrogation against NSI (and its officers, directors, employees, agents, and subsidiary or affiliated companies), with the waiver to include any claim relative to policy deductible, and must be primary to any other insurance which may be maintained by NSI. Further, the insurance shall be endorsed such that it may not be canceled or changed materially except on thirty (30) days notice to NSI. User shall also procure and maintain, at its own expense, state and federal, as applicable, standard worker's compensation liability insurance covering all its employees, subcontractors and agents, but neither User nor its workers' compensation insurer shall have any right of action against NSI for subrogation or reimbursement of any payments made pursuant to that policy (including payments within any policy deductible.)

CP 203-204 (Exhibit A to Boogaard dep. Attached to Moran Decl. 247-279)) & CP 274-275 (Exhibit D to Moran Dec.)

Mr. Boogaard never provided his own insurance agent or IMU with a copy of the Agreement nor was IMU informed of its existence except later through litigation. *He never requested that NSI be named as an additional insured under the policy and therefore they were never made an insured under the policy. ABCD had also not purchased Workers' Compensation coverage having exercised the option to exempt himself, and Wes Dahl, the general partners from such coverage.* (CP 680-681). (Emphasis added).

On October 19, 2004, Mr. Boogaard was seriously injured by a forklift driven by an NSI employee. When the accident occurred, NSI was not an additional insured and ABCD Marine was not carrying Workers' Compensation insurance, (CP 704), contrary to the Access Agreement's requirements. Mr. Boogaard's insurance agent Alliance advised IMU of the accident, but both Mr. Boogaard's agent and IMU agreed at that time that the IMU policy provided no coverage for Mr. Boogaard's injuries.

Mr. Boogaard sued NSI and Northland Holdings for personal injuries. They in turn filed a counter-claim against Mr. Boogaard for breach of the Access Agreement. No third-party claim was ever brought against ABCD Marine in a separate capacity. NSI and Northland Holdings moved for Summary Judgment which the trial court granted finding that Mr. Boogaard breached the Agreement and was required to indemnify NSI. IMU agreed to continue to pay for Mr. Boogaard's defense on appeal, but denied any coverage for his injuries or for the judgment entered against him. Mr. Boogaard decided not to appeal, but instead entered into a settlement with NSI stipulating that Mr. Boogaard receive a \$600,000 judgment against NSI, which he would not seek to collect from them, and that NSI receive a judgment in the amount of \$712,022.21 against Mr. Boogaard. Mr. Boogaard thereafter demanded

that IMU pay him the amount of the \$712,022.21 Judgment entered against him. The agreed judgments are expressly subject to the terms and conditions of the settlement agreement. (CP 746). Mr. Boogaard has not had to pay anything to NSI on its judgment, nor has NSI sought to enforce its judgment. (CP 695). Per the terms of the agreement NSI did pay \$50,000 in cash to Mr. Bogaard and his attorneys at the time of settlement. CP 694, 749.

IMU brought a declaratory action against ABCD and Mr. Boogaard to determine coverage. ABCD and Mr. Boogaard filed an Amended Answer and asserted counter-claims against IMU for breach of insurance contract and for first-party bad faith. IMU moved for Summary Judgment, which the trial court ordered, finding that no coverage existed for Mr. Boogaard's injuries under the policy. Mr. Boogaard and ABCD appealed. The parties briefed the issues and the appellate court requested that the parties be prepared to discuss the case *Cowan Systems Inc. v. Harleysville Mutual Insurance Co.*, 457 F.3d 368 (4<sup>th</sup> Cir. 2006) wherein the Court considered the term "third person" in an insured contract clause similar to the policy clause in this case. After oral argument, the appellate court affirmed the decision of the trial court by written opinion at 165 Wn.App. 223 (2011). Appellants moved for reconsideration claiming that the Court failed to account for distinctions between ABCD Marine and its

general partners, and whether the policy holder's status as a general partner excludes coverage for an injured worker if he is a general partner. After briefing on the issue, a majority of the Court of Appeals denied reconsideration, and the Petition for Review followed.

### III. LEGAL ANALYSIS

This is a very simple insurance coverage case, where there is no language in the policy that would provide coverage for the claims alleged. In absence of policy language, Mr. Boogaard is now searching for policy considerations to take the place of contractual language. This tactic should continue to fail. There is no coverage, and there is no systemic policy problem caused by the previous decisions in this case. There will not be a rash of injured workers without insurance coverage, unless persons such as Mr. Boogaard fail to abide by their contracts.

#### A. **The Appeals Court Correctly Interpreted The Insurance Contract**

A party claiming benefits under an insurance policy has the burden to bring itself within the terms of the policy before it can establish the insurer's liability thereon. *See Isaacson Iron Works v. Ocean Accident & Guarantee Corp.*, 191 Wn. 221, 224, 70 P.2d 1025 (1937), *cited in Waite v. Aetna Cas. & Sur. Co.*, 77 Wn.2d 850, 853, 467 P.2d 847 (1970). Where, as here, the policy language is clear and unambiguous, courts must enforce it as written and may not modify it or create ambiguity where

none exists. *McDonald v. State Farm Fire and Cas. Co.*, 119 Wn.2d 724, 733, 837 P.2d 1000 (1992). An interpretation of an insurance contract must be reasonable and take into account the purpose of the insurance at issue. *Lynott v. Nat'l Union Fire Ins. Co.*, 123 Wn.2d 678, 689-90, 871 P.2d 146 (1994). Courts must "decline to impose on an insurer coverage of a liability not set forth in the policy." *E-Z Loader*, 106 Wn.2d 901, 910 (1986). "Interpretation of insurance policies is a question of law, in which the policy is construed as a whole and each clause is given force and effect." *Overton v. Consolidated Ins. Co.*, 145 Wn.2d 417, 424, 38 P.3d 322 (2002) (citing *Pub. Util. Dist. No. 1 v. Int'l Ins. Co.*, 124 Wn.2d 789, 881 P.2d 1020 (1994)). A court is not at liberty to revise a contract under the theory of construing it. *Evans v. Metropolitan Life Ins. Co.*, 26 Wn. (2d) 594, 174 P. (2d) 961. *Jeffries v. General Casualty Co.*, 46 Wn.2d 543, 546 (Wash. 1955). The policy at issue in this case is a comprehensive marine liability policy designed to insure ABCD Marine and its partners against property damage and bodily injury claims *they cause* to third parties. It specifically excludes coverage for injuries of ABCD employees. Mr. Boogaard is seeking to avoid these clear policy exclusions.

**B. The Purpose Of The Policy Was To Protect ABCD And Mr. Boogaard From Liability To Third Parties That They Caused, Not To Injuries Which They Suffered**

This is the last ditch attempt to turn a third party liability contract into a first party injury policy. Mr. Boogaard is a first party to the insurance contract with IMU. The IMU policy is a third party liability policy. It provides coverage to the insured for *liability*, and extends that liability coverage to liability acquired by an “insured contract.” (CP 136). However, an “insured contract” only extends coverage by contract where the bodily injury is suffered by a “third person or organization” and Mr. Boogaard does not qualify as a third person or organization under the clear language of the policy. (CP 136). He is a first party insured and a first party to the Access Agreement as demonstrated by the policy itself.

**SECTION I- COVERAGES**

**COVERAGE A. BODILY INJURY AND  
POROPERTY DAMAGE LIABILITY.**

Insuring Agreement.

1. We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of “bodily injury” or “property damage” to which this insurance applies....

...

**SECTION II- EXCLUSIONS**

- A. EXCLUSONS APPLICABLE TO SECTION 1, COVERAGES A AND B ONLY:

Notwithstanding anything to the contrary contained in this policy, it is hereby understood and agreed that this policy is subject to the following exclusions and that this policy shall not apply to:

- .....
2. "Bodily injury" or property damages" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages:

- a. Assumed in a contact or agreement that is an "insured contract," provided that the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement;.....

.....

9. "Insured contract" means:

.....

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) **under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third person or organization.**

(CP 112, 114 &136). Here, Mr. Boogaard is not a "third person."

He is a first party to both the Access Agreement and the IMU insurance policy by virtue of his representation in the Access Agreement and the definitions as set forth under the policy:

USER  
Albert Boogaard/Wes Dahl  
By: Albert Boogaard  
Its: Senior Partner  
umed:  Yes  No

(CP 203-204; see also 273-275, Exhibit D to Moran Declaration.)

As a partner in the ABCD general partnership, Mr. Boogaard is a first party beneficiary to the IMU policy as an “Insured.”

<i>Named Insured</i>	ABCD Marine	<i>Producer</i>	Alliances Insurance, Inc.		
<i>Street</i>	346 NW 89 <sup>th</sup> Street	<i>Street</i>	P.O. Box 77086		
<i>City</i>	Seattle	<i>City</i>	Seattle		
<i>State</i>	WA	<i>State</i>	WA		
<i>Zip</i>	98117	<i>Zip</i>	98177		
<i>Policy Period:</i>	From: April 3, 2004	<i>To:</i>	April 3, 2005		
	At 12:01 A.M. Standard Time at your Mailing Address shown above.				
<i>Named Insured Is A:</i>	<input type="checkbox"/> Corporation	<input checked="" type="checkbox"/> Partnership	<input type="checkbox"/> Individual	<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Organization (Other than Corp, Partnership or Joint Venture)
<i>Business Description:</i>	Welding and deck repair on barges and fishing vessels.				

(See CP 110, Dec Page to IMU policy, (Exhibit F to Cox declaration CP 88-146.))

#### SECTION IV- WHO IS AN INSURED.

1. If you are designated in the Declarations as:

...

- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insured's, but only with respect to the conduct of your business.

Moreover, it's fundamental that if he were a “third person” then he couldn't have a first party insurance claim or a bad faith claim, as those are exclusive to “first parties.” See *Tank v. State Farm*, 105 Wn.2d 381, 393 715 P.2d 1133 (1986). Since Mr. Boogaard is not a “third person” the Exclusion A(2) applies.

The policy is clear that it intends to be a liability policy. Examination of the four corners lead to the inescapable conclusion that it

objectively intends to cover liabilities of its insured's but not first party injury claims by ABCD or its owners, employees, directors, etc. In Section II A 4 (a-e). These are:

**Notwithstanding anything to the contrary contained in this policy, it is hereby understood and agreed that this policy is subject to the following exclusions and that this policy shall not apply to:**

4. a. Any liability of whatsoever nature of the insured, whether you may be liable as an employer or in any other capacity whatsoever, to any of your "employees", including but not limited to any liability under any Workers' Compensation Law, Unemployment Compensation Law, Disability

**MARINE UNDERWRITERS/CONFACON INSURANCE**

**But not Law, United States Longshoremen's & Harbor Workers' Compensation Act, Jones Act, Death on the High Seas Act, General Maritime Law, Federal Employers' Liability Act, or any similar laws or liabilities, and/or whether by reason of the relationship of master and servant or employer and employee or not.**

- b. Any liability of whatsoever nature of the insured to the spouse, child, parent, brother, sister, relative, dependent or estate of any of your "employees" arising out of the "bodily injury" and/or "personal injury" to said "employees", whether you may be liable as an employer or in any other capacity whatsoever.
- c. Any liability of whatsoever nature of the insured to any other party arising out of "bodily injury" and/or "personal injury" to any of your "employees", including but not limited to any such liability for (i) indemnity or contribution whether in tort, contract or otherwise and (ii) any liability of such other parties assumed under contract or agreement.
- d. Any liability of any of your "employees" with respect to "bodily injury" and/or "personal injury" to another of your "employees" sustained in the course of such employment.
- e. Any liability of whatsoever nature which any of your directors, officers, partners, principals, "employees" or stockholders may have to any of your "employees".

(CP 114-115).

These exclusions help manifest the clear intent of the policy to be a third party liability policy as opposed to a first party policy covering employee injury claims. The policy clauses above set forth the clear intention that the policy would not cover injuries to the insured or their employees whether in tort or through indemnity. Therefore, when it comes to interpreting the definition of "third party" in the insured contract clause, the interpretation needs to be consistent with the intent of the insurance contract itself.

**C. Northland Treated Mr. Boogaard As A First Party To The Access Agreement**

Mr. Boogaard is a first party insured under the IMU policy. He is a named insured. The definition of insured covers all partners. This is true of nearly all liability policies for partnerships. *Simmons v. Insurance Company of North America*, 17 P.3d 56 (Alaska 2001) citing *Williams v. Mammoth of Alaska Inc.*, 890 P.2d 581, 584 (Alaska 1995). See also *Hartford Accident Indem. Co. v. Huddleston*, 514 S.W.2d 676 (Ky. 1974) (contract for partnership liability insurance contemplates partnership as aggregate of persons rather than as legal entity).

Mr Boogaard was also a first party to the Access Agreement and NSI treated him as such in the pleadings and Mr. Boogaard responded as a first party in the pleadings. This is an important distinction between Mr.

Boogaard's circumstance and *Cowan Systems Inc. v. Harleysville Mutual Insurance Co.*, 457 F.3d 368 (4<sup>th</sup> Cir. 2006),<sup>1</sup> where the injured worker (Shaeffer) in *Cowan Systems* brought a first party tort claim against the a tortfeasor (Linens N Things) who then brought the insured, Cowen Systems, in as a third party liable under CR 14 on the contract.

Mr. Boogaard, as an individual, originally sued Northland directly for personal injuries. Northland in turn filed a CR 13(a) counterclaim against Mr. Boogaard for breach of the Access Agreement. Unlike the defendant in *Cowan Systems*, Northland did not file a CR 14 third party claim against ABCD, the partnership, as a separate entity because Mr. Boogaard was the first party to the Access Agreement. Neither did Mr. Boogaard bring ABCD in as a separate entity under CR 14(b) or as a CR 13(h) "additional party." Thus Mr. Boogaard was the only person on his side of the "v" in the Northland case. ABCD was never made a party to the case with Northland.

A counterclaim is defined as "any claim which at the time of the serving of the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and *does not require for its adjudication the presence of third parties[.]*" (CR 13(a)). *In re Marriage of Parker*, 78 Wn.

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<sup>1</sup> The case the Court of Appeals, Division 1, wanted to discuss.

App. 405, 409 (Wash. Ct. App. 1995). So when Mr. Boogaard sued Northland, they counterclaimed directly against him for the judgment, not against ABCD. In a third party claim under CR 14(a) a defendant may bring in a third party "At any time after commencement of the action a defending party, as a third party plaintiff, may cause a Summons and Complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him." Northland never made a claim against ABCD, they made a counterclaim against Mr. Boogaard because he was a first party to the Agreement, as noted by his signature above.

Had Northland claimed against ABCD for the breach they could not have had any set off against Mr. Boogaard's individual claim nor would they have filed a counterclaim, they would have needed to bring a third party claim against ABCD if they believed the partnership and not Mr. Boogaard was liable for the breach.

The primary case cited by ABCD/Mr Boogaard, *Truck Insurance v. BRE*, 119 Wn. App. 582 (2003), also fails address this issue of whether Mr. Boogaard is a "third party" or "first party." That case deals with where the insured had added another entity to the policy as an additional insured, which Mr. Boogaard *didn't do*. For example, *Truck Insurance v. BRE*, 119 Wn. App 582, discusses the applicability of an insured contract

where the contractor, WestStar, actually went out and got the insurance policy naming BRE as an additional insured under the WestStar policy. In that instance, BRE was a first party beneficiary to the Truck Insurance liability policy, so Truck had an obligation to treat BRE as a first party insured. *Truck*, 119 Wn. App. at 589. Here there has been an affirmative finding that no attempts were made to make Northland an additional insured under the policy. Consequently, the relevance of the Truck Insurance case to this one is dubious.

The citation to *McDowell v. Austin*, 105 Wn.2d 48 (1985) also has no bearing on this case. In that case, the Court upheld a contract requiring indemnity so long as it did not violate RCW 4.24.115. That case would have had more relation to Mr. Boogaards claim against NSI which he chose not to appeal.

**D. A Partnership Cannot Be Separated From Its Partners**

Appellant cannot distance himself from the entity he created. A partnership is a different entity than a corporation or a limited liability company, and they are treated differently under the law. While a partnership is an entity distinct from its partners, it cannot be separated from it. Partnerships generally differ from insurance policies that name a corporation as the insured. Unlike partnerships “courts generally consider corporations to be separate legal entities apart from their owners.” See

*Widiss, Unisured and Underinsured Motorist Insurance* § 4.4 (B) at 67-68.

As set forth above, the IMU policy excluded coverage for first party injuries, including coverage for injuries to employees as well. The clear and unambiguous contract language states that the policy is to cover liabilities of its insured's but not first party injury claims by ABCD or its owners, employees, directors, etc. in Section II A 4 (a-e). CP 114-115. Mr. Boogaard's argument doesn't make much logical sense because it seems to require Mr. Boogaard to be wearing two hats, one hat as a first party signatory to the Access Agreement but a third party hat as an ABCD employee. But if that's the case, then the Exclusions at 4(a), (c) and (d) above would apply anyway. (CP 114-115).

**E. There Are No Public Policy Considerations At Stake Here That Justify Review**

The Court of Appeals decision will not leave countless workers without coverage for personal injuries. Instead, the decision demonstrates that there are consequences when a person fails to live up to their agreements. Mr. Boogaard never added NSI as an additional insured under his policy as he agreed he would. Mr. Boogaard did not obtain Worker's Compensation coverage as he agreed he would. Had he done either of those he would have had coverage. The IMU policy was never

meant to provide coverage for any injuries to Mr. Boogaard or any employees he might hire. The policy language is clear on that point. If he wanted coverage for that type of casualty he should have purchased it, or obtained it. Instead, he is trying to turn a third party liability policy into a first party injury contract. There is no basis under the law for that to happen.

The Court need not consider Appellant's arguments about expert testimony regarding policy language interpretation or emotional policy arguments about uninsured injured workers. They have no application here. Mr. Sedillo's testimony regarding the distinction between a named insured and an automatic insured cannot substitute for the policy language. Expert testimony cannot be used to provide legal meaning or interpret the insurance policies as written. *See Crow Tribe of Indians v. Racicot*, 87 F.3d 1039, 1045 (9th Cir. 1996) (stating that expert testimony is not proper for issues of law because the role of experts is to interpret and analyze factual evidence and not to testify about the law); *Maffei v. Northern Ins. Co. of New York*, 12 F.3d 892, 898-99 (9th Cir. 1993) (holding that an insurance expert's declaration that a sulphur dioxide cloud constituted a "hostile fire" as described in insured's policies was improper expert testimony); *Aguilar v. Int'l Longshoremen's Union Local No. 10*, 966 F.2d 443, 447 (9th Cir. 1992) (stating that matters of law are

"inappropriate subjects for expert testimony"). Therefore, the Court should view the experts' testimony in this case as only relevant for the facts that they observed and not for their legal conclusions as to what conditions were covered or excluded under the terms of the policy. *McHugh v. United Serv. Auto. Ass'n*, 164 F.3d 451, 454 (9th Cir. Wash. 1999); 4 JOSEPH M. MCLAUGHLIN, JACK B. WEINSTEIN & MARGARET A. BERGER, Weinstein's Federal Evidence sec. 702.03. (2007) (stating that "matters of contract interpretation are generally for the finder of fact to decide, and are not an appropriate subject for expert testimony"). Here, Sedillo's testimony cannot change the clear policy language as it relates to the definition of "insured contracts." Furthermore, his opinion testimony cannot change the facts or rewrite the policy. Consequently, the policy language should require this Court to affirm its previous decision and the trial court in dismissing Mr. Boogaard's claims.

Signed this 4<sup>th</sup> day of May, 2012.

/s/ Dennis Moran

Dennis Moran, WSBA# 19999  
William Keller, WSBA# 29361  
MORAN & KELLER, PLLC  
5608 17<sup>th</sup> Avenue NW  
Seattle, WA 98107  
Tel: 206-877-4410  
Fax: 206-877-4439  
[dmoran@morankellerlaw.com](mailto:dmoran@morankellerlaw.com)  
[bill@morankellerlaw.com](mailto:bill@morankellerlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on May 4<sup>th</sup>, 2012, I sent to the Supreme Court of the State of Washington, through email, and to parties listed below, through legal messenger, a copy of the document to which this certificate is included:

David J. Balint, PLLC  
Attorney for Appellants  
2033 Sixth Avenue, Suite 800  
Seattle, WA 98121  
Tel: 206-728-7799  
Email:

Martin D. Fox  
Attorney for Appellants  
2033 Sixth Avenue, Suite 800  
Seattle, WA 98121  
**Tel: 206-728-0588**  
**Email:**

*/s/Marisa Testa*

Marisa Testa, Legal Assistant  
MORAN & KELLER, PLLC  
5608 17<sup>th</sup> Avenue Northwest  
Seattle, Washington 98107  
Telephone: 206.877.4410  
Facsimile: 206.877.4439  
E-Mail: [marisatesta@morankellerlaw.com](mailto:marisatesta@morankellerlaw.com)

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Please file the attached Reply to Petition for Review. Thank you.

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IMU v. ABCD

Dennis M. Moran, WSBA # 19999  
William A. Keller, WSBA # 29361  
MORAN & KELLER, PLLC  
5608 17<sup>th</sup> Avenue Northwest  
Seattle, Washington 98107  
Telephone: 206.877.4410  
E-Mail: [bill@morankellerlaw.com](mailto:bill@morankellerlaw.com)  
E-Mail: [dmoran@morankellerlaw.com](mailto:dmoran@morankellerlaw.com)

Marisa Testa  
Legal Assistant  
Moran & Keller PLLC  
5608 17th Ave NW  
Seattle, WA 98107  
P – 206 877-4413  
F – 206 877-4439  
[MarisaTesta@morankellerlaw.com](mailto:MarisaTesta@morankellerlaw.com)