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In the Supreme Court
of the State of California

CENTURY NATIONAL INSURANCE COMPANY,

Plaintiff and Respondent,

v.

JESUS GARCIA SR., THEODORA GARCIA and
JESUS GARCIA, JR.,

Defendants-Appellants.

**CENTURY-NATIONAL INSURANCE COMPANY'S
SUPPLEMENTAL ANSWER BRIEF**

**To the Honorable Ronald M. George, Chief Justice, and to the
Honorable Justices of the Supreme Court of the State of California.**

INTRODUCTION

Pursuant to California Rules of Court Rule 8.520(d), plaintiff and respondent Century-National Insurance Company hereby submits the following supplemental answer brief on the merits.

STATEMENT OF FACTS

Century-National Insurance Company filed its answer brief on the merits on June 8, 2010. On June 17, 2010, this Court filed its decision in the case *Minkler v. Safeco Insurance Co.* (2010) 49 Cal.4th 315. On July

28, 2010, defendant and appellant Jesus Garcia, Sr. filed his reply brief on the merits relying upon, *inter alia*, the *Minkler* decision.

LEGAL ARGUMENT

I.

***MINKLER* IS DISTINGUISHABLE FROM THE INSTANT MATTER**

In filing a reply brief, appellants cite *Minkler v. Safeco Insurance Co.* (2010) 49 Cal.4th 315, and argue that the decision states a general rule of “reasonable expectations”:

“What are the reasonable expectations of the average insured? This Court answered that question in *Minkler, supra*, and ruled that the severability clause created ambiguity when viewed against the exclusionary clause in the policy. . . . Based on this Court's discussion in *Minkler, supra*, there can be no doubt about the legal meanings of the words ‘the’, ‘an’ or ‘any’ insured and the benefit or detriment to an innocent coinsured depending on which word is used in the policy.” (Appellants’ Reply Brief, pp. 3-4.)

Thus, appellants see *Minkler* as stating a general rule that any exclusion for injuries or damage from the intentional or criminal acts of “an insured” is ambiguous and unenforceable *per se*. In other words, appellants assert that, as regards an insurance policy containing a severability clause, any and all exclusions for intentional or criminal acts of an insured are necessarily ambiguous, and must therefore be construed in favor of the insureds, by applying the exclusions severally to each insured.

In fact, it was expressly stated in *Minkler* that ambiguity is not a foregone conclusion. Rather, “each exclusion applicable to ‘an’ or ‘any’ insured must be examined individually, and *in context*, to determine the effect a severability clause like the one at issue here might have on its operation.” (*Minkler v. Safeco Ins. Co. of America, supra*, 49 Cal.4th at 329, n.5 [emphasis added].) In this case, the context is different and appellants are ignoring the well-tested rules of contract interpretation underpinning *Minkler*.

In *Minkler*, this Court held that:

“Applying California principles of insurance policy interpretation we now conclude that an exclusion of coverage for the intentional acts of ‘an insured,’ read in conjunction with a severability or ‘separate insurance’ clause like the one at issue here, creates an ambiguity which must be construed in favor of coverage. . . .” (*Minkler v. Safeco Ins. Co. of America, supra*, 49 Cal.4th at 319.)

The key words which distinguish the instant case are “read in conjunction with. . . .” The policy at issue in *Minkler* contained a severability condition that affected application of the intentional act exclusion for liability coverage of injuries or damage caused by the intentional act of an insured, invoking application of the interpretational rule that “[a]n ambiguity in a policy results when ‘there is contradictory or necessarily inconsistent language in different portions of the instrument.’” (*Delgado v. Heritage Life Ins. Co.* (1984) 157 Cal.App.3d 262, 271.) Because the severability clause in the *Minkler* policy was deemed

inconsistent with the exclusion barring liability coverage for intentional acts of an insured, the exclusion was held to be ambiguous.

There is no such ambiguity in the policy at bench. Respondent's policy does, in fact, contain a severability condition, but it applies only to the liability section of the policy and does not apply at all to the first party property part of the policy. The policy states:

"2. Severability of Insurance. This insurance applies separately to each insured. This condition shall not increase our limit of liability for any one occurrence." (Clerk's Transcript "CT", p. 24.)

However, this provision of the policy is not intended to be "read in conjunction with" the first party coverage and exclusions applicable in the matter at bench. Thus, while respondent's homeowners policy does contain a policy condition entitled "Severability of Insurance," that provision is found in the conditions section of the policy applicable only to the liability coverage, and not the first party coverage at issue in this lawsuit.

Respondent's policy is a package policy – an insurance policy that combines coverage from two or more types or lines of insurance into one policy. The policy is divided into "Section I—Property" (CT, pp. 13-21) and "Section II—Liability" (CT, pp. 21-25) coverages, each having its own separate conditions section. (CT, pp. 18-21 and CT, pp. 24-25.) Then, the back of the policy contains a "General Conditions Applying to the Entire Policy" section, with conditions applicable to all coverages. (CT, pp. 25-26.) Because of that structure, the "Severability of Insurance" condition applies only to the Section II—Liability coverage.

This is further demonstrated by the index found at the front of the policy, which graphically depicts the policy in outline form. (CT, p. 10.) The index diagrammatically lays out the various sections of the policy, and shows their interrelationships. As the diagram makes clear, respondent's policy has three different conditions sections, one applicable to Section I—Property coverage, another applicable to Section II—Liability coverage, and a third, "General Conditions Applying to the Entire Policy."

The interpretation of given words in an insurance policy depends on their use in the instrument and the subject matter to which they refer. (*Am. Star Ins. Co. v. Ins. Co. of the West* (1991) 232 Cal.App.3d 1320, 1327.) "Within outlines, subtopics are divisions of the topic above them." (*Id.*) The outline format of the policy and the typographical placement of the different conditions sections compel the conclusion the Severability of Insurance condition in the Section II—Liability coverage part of the policy has no application to the coverage grant or exclusions contained in Section I—Property.

This was a first party property loss case and the exclusions at issue in the instant case are contained in the Section I—Property part of the policy. The only policy conditions applicable would be those found in the Section I conditions part and/or those found in the General Conditions part. Since the Severability of Insurance condition is found only in the Section II—Liability part of the policy, it has no applicability to this case. In other words, the intentional and criminal act exclusions that respondent relies on should not be "read in conjunction with" the Severability of Insurance condition of the policy. As a result, they are unambiguous.

II. CONCLUSION

Appellants' claim was for a first party property loss under the Section I—Property coverage of the policy at bench. Appellants' reply brief in this matter relies substantially on this Court's recent holding in *Minkler v. Safeco Insurance Co.* (2010) 49 Cal.4th 315; however, *Minkler* did not involve, and in fact said nothing about, first party property coverage. Although the *Minkler* decision involved a severability of insurance provision which is substantially similar to that in the policy at issue here, the provision in this matter expressly applies only to the liability coverage of the policy. Thus, contrary to appellants' contention, the *Minkler* case is not controlling precedent for this matter.

Respectfully submitted,

HAIGHT BROWN & BONESTEEL LLP,
Valerie A. Moore, and
Christopher Kendrick

*Attorneys for Plaintiff and Respondent
Century-National Insurance Company*

**CERTIFICATE OF COMPLIANCE
WITH RULE 8.204(c)(1)**

I, the undersigned, Christopher Kendrick, declare that:

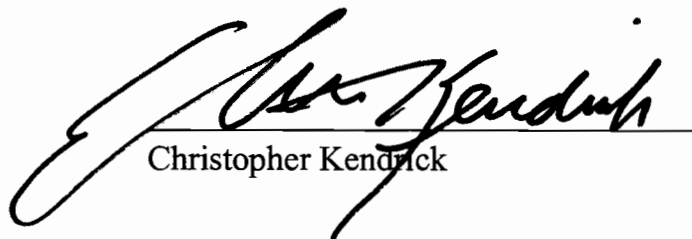
I am an associate in the law firm of Haight Brown & Bonesteel, LLP, which represents plaintiff and respondent, Century-National Insurance Company, in this case.

This certificate of Compliance is submitted in accordance with Rule 8.204(c)(1) of the California *Rules of Court*.

This supplemental answer brief on the merits was produced with a computer. It is proportionately spaced in 13 point Times Roman typeface. The brief contains 1,221 words, including footnotes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 30, 2010, at Los Angeles, California.


Christopher Kendrick

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.:

Case Name: CENTURY NATIONAL INSURANCE COMPANY v. JESUS GARCIA, SR., THEODORA GARCIA and JESUS GARCIA, JR.
Case No.: Supreme Court case number: S179252

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, California, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 6080 Center Drive, Suite 800, Los Angeles, CA 90045-1574; that on September 30, 2010, I served the within CENTURY-NATIONAL INSURANCE COMPANY'S SUPPLEMENTAL ANSWER BRIEF ON THE MERITS in said action or proceeding by depositing a true copy thereof, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 30, 2010, at Los Angeles, California.

Julie Dekhtyar



(Original Signed)

