

>> Please rise.

The Florida Supreme Court is now in session.

Please be seated.

We now take up the third case on our docket, State Farm Mutual Automobile Insurance Company versus Menendez.

>> Good morning, may it please the court.

>> I believe I've reserved five minutes for rebuttal.

This case involves the application of the household exclusion of State Farm automobile by family members of a permissive driver insured as defined in the policy.

That facts can be briefly stated.

The named insured under the policy is Gilda Menendez, the grandmother.

She let her granddaughter Fabiola to drive the vehicle.

Fabiola was driving it and the occupants are the parents as well as her grandmother.

Fabiola and her parents reside at an address separate from the grandmother but they do reside daughter with parents.

The accident happened and the coverage that emerges is whether the grandmother's policy covers the parents of the permissive driver.

>> First was there an issue -- was there something where the granddaughter was trying to get coverage of some sort?

>> Initially there may have been a claim along those lines.

Assuming they ever were trying to make that claim by the time you got to the third DCA they

were not claiming coverage for the daughters injuries or the grandmother's injuries.

>> There is no question that the granddaughter was an insured under the policy as a permissive user?

>> Correct.

>> And of course, if they all lived in the same household as the grandmother we would have really no issue.

>> Right.

Yes and an exclusion says in relevant part that there is no coverage for any bodily injury for any family residing in the insured's household.

>> If it just -- if had it just said in an insured's household rather than the, that would have been even the Third District would have said that is unambiguous?

>> A think they would have to keep in mind that is a broader exclusion.

If it said any insured household or an insured household that is more than what this exclusion is.

That would be a broader exclusion because that would allow you to say family members of one insured who resided any other insured are excluded.

The way we read this is the insured household refers unambiguously back to the same insured referenced earlier so here because we are talking about a permissive driver, it is about the insured household that matter so we could have said any insured or an insured household but that would have been a

greater exclusion and certainly we don't have to make the exclusion broader than is intended.

And that is exactly what the third DCA held.

Even both the bold and italicized word insured is defined to include not just the name or permissive drivers, they said it is reasonable construe the phrase to be only the named insured and as a result what happens is family members of a permissive driver who reside with her have coverage because they have to live with the named insured and we think that is an unreasonable and illogical reading of the policy which conflicts with at least three cases.

This court granted a review based on State Farm versus read and Linehan versus Alkhabbaz both of which applies to the same household exclusion to claims brought by permissive drivers by family members of the permissive driver.

On further research I think there is conflict clearly with another decision in court.

This court's decision in Webb versus American fire and casualty included the policy exclusionist said there's there is no coverage or injury to an employee of the insured in this court said that exclusion extended not just to employees of the named insured but employees of the permissive driver insured because we have to apply the policy definition. That is exactly contrary to what

the third DCA did so based on conflict with any of those cases.

>> Reid is a State Farm case and is at this policy language identical to the policy language in Reid?

>> Reid gives is not a quotation of the policy language but sets forth the -- and certainly a substantive part it is functionally the same.

What it says is, it says -- I can read it to you, Your Honor. It says the way they described it as they said this insurance is not apply to bodily injury to any insured or any member of the family of an insured residing in the same household as the insured so we have the same and insured the insured construct link.

In relevant part of the substantive leave the same exclusion.

>> In Reid it was clearly said that this would -- this kind of situation would not be covered?

>> The analysis in Reid was the daughter has a claim, I'm sorry. The sister is driving her sister and they reside in the same household.

This court was clear that the sister driving the car was a permissive driver.

It was her father's car.

She was an insured.

The sister lived with her and therefore the exclusion of plight.

>> Two separate questions.

One is what is the best out-of-state case against you on this same language if there is

one?

Is there one?

>> I don't know if there is one. My research turned up in the Missouri Supreme Court case which is strictly on point. I notice not binding but it sets forth a highly persuasive analysis here at this exact policy line so I don't think we can cited to any other state cases and frankly I don't know of any dealing with this exact language.

>> I would assume -- is this a standard exclusionary clause? I know we have had other case where some insurance says it is different or better they should have said more are less.

Do we have that here?

>> I don't know if other insurance companies use the same exclusion and as far as whether State Farm uses it throughout the country I don't know that either.

I know they at least must use it in Missouri.

>> The other question I have is, State Farm is clearly saying we intended this exclusion, this household exclusion to mean exactly what we are saying. It is a logical reading.

Just explain from the insurance underwriting policy point of view why the same policy reason that is why you would exclude coverage for anybody residing in the named insured house applies to permissive users and their household members?

>> I addressed this in my reply brief and they are even greater in this context.

The idea is resident family members are likely to collude with one another.

I would think resident family members in a borrowed car where the policy was issued would have even greater reason to get the coverage under the named insured under someone else's policy.

The same policy considerations are here but without the downside of an increased premium that would come along with it so certainly the policy considerations apply if not more so in this context.

As far as to deal dead on with ambiguity issue there is no ambiguity here.

When we use the sentence structure where there is no coverage for bodily injury to family members of an insured residing in the insured household it is clear I think that the insured means the one referenced earlier and I think I may be able make it clear with a common example.

If I was to say if you see a friend, tell the friend hello.

Who should you say hello to?

It is clear the one referenced earlier in the sentence is that when you saw so there's no genuine ambiguity.

>> Your Argument which is actually, maybe equally strong or stronger is that if they use -- what is that?

>> Preposition.

>> Whatever it is, and the second time it might mean that excludes even if they weren't living in the named insured household and they were trying

to sue the named insured.

>> So long as you have a situation where a family member was related to an insured.

I think State Farm has tailored this exclusion to make the purpose which is what I said keep resident family members from colluding in lawsuits.

>> Then is the case that they can sue the grandmother is vicariously liable.

Can they sue the grandmother?

>> They can certainly see the grandmother.

They wouldn't be covered for that in that it's an issue the Florida Justice Association stumbled onto in their amicus brief.

The coverage here is an dependent on who can be liable or who can be sued.

The policy doesn't cover claims by resident family members of an insured.

Doesn't matter who might be liable.

So long as the injury is to a resident family member of the insured.

The policy doesn't provide coverage for it regardless.

And I think that is clear.

The parties in this case haven't taken a contrary position to that and the other thing that is important to point out is if exclusion were meant to apply only to the household of the named insured would have said you are household.

You is defined in the policy to mean named insured.

Insured used here is it old italicize defined word.

It is entirely wrong to strip it away from its defined meaning.

And really those are all the points I want to make.

I could address some of their arguments and I think I probably have the time to do that.

Cochran is a Fourth District case that they relied upon heavily for the Proposition that the insured means the named insured.

Cochran is not controlling here. For a number of reasons.

I think it was incorrectly decided from the outset because it is inconsistent with this courts Webb decision I described earlier.

Webb is contrary to what Cochran did.

The other important point is even if Cochran was corrected is not on point here.

Cochran dealt with the first part of the exclusion we are talking about here.

At the time Cochran said there is no coverage for bodily injury to the insured.

Here we are dealing with the second part of the household exclusion that says there is no coverage for bodily injury to a family member of an insured residing in the insureds household.

The insured is used in a context that clearly relates back to an insured so even if Cochran were correct it is distinguishable and doesn't govern here.

In fact the Cochran court went on to decide the Linehan case which applies the way it should be.

It doesn't consider Cochran to govern this very scenario and as far as the Linehan case goes that is not complicated because all the court did was address the validity of exclusion and I think it does more than that. Cochran came just a few years after Reid so the validity of the exclusion was established. Cochran -- Linehan gives the substance of exclusion which is the same as ours.

They give us all the facts.

>> Cochran was started before Reid?

>> I thought Cochran was decided before Reid so my question was did Reid in any way overrule that?

>> You are right.

Cochran was three or four years before Reid.

At the very least it is not controlling on the question here.

Keep in mind also Cochran was an opinion by one judge and another concurred.

I think if there are no other questions I am inclined to reserve the rest of my time for rebuttal if I can do that.

Thank you.

>> May it please the court.

Lauri Waldman Ross for the named insured Menendez.

Let me address two things right off the bat.

The issue of jurisdiction, the only thing that Reid decided was house old exclusions were valid. It did not address in the issue was not race to the ambiguity of that particular exclusion.

We have never contested that A,

household exclusions are valid in Florida or B, that state farms exclusion is not valid in particular.

The only thing that was at issue in this case was the ambiguity of this particular provision is applied to the facts of this case.

>> So do you disagree that Reid actually says that the permissive users -- the people who live in the household with the permissive user are also excluded?

>> I disagree with his assertion that was the holding of this case.

And in fact, this court has always said, and said in the DuBose case, that a case does not stand for a Proposition that was never raised before it and cannot be controlling authority on it.

The fact in this case was ambiguity was not raised.

The issue before the case was whether or not, and this is how the insured wrote.

The issue before they court was whether or not the passage of the Florida reparations automobile act, the passage of that act invalidated household exclusions.

And what this court held was, no it didn't.

There were a series of other cases as this court went back and forth over whether or not interest docile immunity should be abolished or not.

There was the Florida Farm Bureau case in which somebody raised the issue of whether or

not passage of the contribution among joint tort users act abolished household exclusions. This court held that did not. Every time a new act was passed, the issue came up whether or not those acts abolished household exclusions.

This court says, no they didn't but whether or not household exclusions are valid is a different question from whether the specific exclusion is ambiguous.

And that is the issue before this court.

In Linehan, the court raised the issue of validity of the household exclusion.

You don't know what the arguments were with regard to ambiguity, where there was racism issue, because it is not addressed.

The only thing that the Fourth District says in Linehan is that we have considered the arguments raised as to whether or not Reid controls are not and we find them not to have merit.

But they have no discussion about ambiguity.

So let's go back to the facts in Reid.

In the facts of Reid, assuming we get past that issue and the reason I say we get past this jurisdictional issue is because jurisdiction is a threshold issue.

We came here onto alleged conflict cases.

Reid and Linehan, neither of which address the issue of ambiguity.

And Kyle versus Kyle out of this

court are controlling jurisdictional case, this court said, and the issue was a prior issue had been raised with regard to validity of a will. And this court says on appeal, another issue got raised as a conflict contesting ambiguity of the will.

This court held the issues were completely different, afforded no basis for car -- for complex jurisdiction and it went on to say because an argument was made because the actual language in the will was in conflict in this court says the conflict between the District Court of Appeal decision and decision of another state Supreme Court is not a basis for conflict.

So when you look at what Reid actually held which was validity, what Linehan actually held, which is validity and then you look at what they have contested in this case, which is alleged ambiguity, there is no express direct conflict.

>> What did you say about Webb? I realize that came up when you have not had a chance to respond to your brief so I give you an opportunity now to respond to a.

>> Webb has to do with an exclusion dealing with a different exclusion to begin with.

It deals with the business employee of riding in the car.

>> But on this interpretive question --

>> It really doesn't square-on address the interpretive question but I looked at it after-the-fact because let me

also segue into the change in the issues that have been raised on appeal.

We start out with an additional brief, which says this complex with the law of Florida.

The court misapplied Reid and misapplied Linehan.

Those are the issues.

We briefed Florida law as it applies to a jurisdiction and ambiguity.

A new lawyer representing State Farm files and apply brief which is nothing to do with the issues raised on appeal, goes and raises foreign jurisdictional law which we have not been able to respond to so when he tells you there are no other cases, if you look at the Cochran court and I want to go back to Cochran because Cochran is an ambiguity case.

If you look the majority and compared with the dissent, the dissent and this is what I found the most interesting about this case.

The dissent says, and this is judge Owens dissent, he says there is merit to the argument that there is a distinction between the insured in these insurance policies.

And in fact, there is authority standing for that Proposition and he cites in Patton versus Patton which is a Pennsylvania Supreme Court case interpreting what?

A State Farm policy, a State Farm exclusion.

And there is a lengthy discussion and patent versus patent as to why the analysis

that State Farm engaged in was wrong because the omnibus insured provision, actually the definition of insured was intended to add coverage to the policy and Patton versus Patton is a case in which there were two injured parties, one of whom was married to the named insured who could not recover and the other at home was married to the omnibus insured who could recover.

And the reason why is the court looked at the difference in the terms and said if the insurance company was improperly relying on the definition section which adds coverage to additional people as contemplated by the named insured with the named insured paid for, but when you are looking at the exclusion, you had to interpret that exclusion in terms of the exact language that was interpreted.

So if we are talking about the reasonableness of our interpretation we in this it -- we have the Missouri Supreme Court going their way but the only issue that was before the Third District Court of Appeals was the reasonableness of our interpretation and if two interpretations were equally reasonable which they were under the facts of this case, then the court determined that it was ambiguous.

>> What about his argument the distinction between the use of the insured insureds as opposed to the term you.

>> That is a distinction again

that State Farm has come up with that simply isn't borne out by the policy.

While they define you as named insured, there are plenty of other provisions of this policy in which they use the terms the insured where it means the named insured.

There is a mediation provision. There is a cooperation tradition.

There is a Membership provision all of which refer to the insured rather than an insured and it makes perfect sense.

They don't use the term you.

They use the term the insured.

It makes perfect sense because the policy specifically says that the definition of insured means person or persons defined as insured in the specific coverage.

So this particular policy has different definitions.

The end term insureds throughout uses different terms and insured versus the insured referring to different things and going to the grammatical issue, the term an insured is an indefinite Article that means any insured.

>> In looking at the specific language because whatever Pennsylvania says, Missouri says, the Third District says we are looking at this de novo.

It is not whether your interpretation is reasonable. The issue is that objectively and equally reasonable interpretation.

>> I agree.

>> So I thought if they had used an in the second instead of the,

his argument is that would have unintentionally added to the wrath of the exclusionary cause. What do you say to that and if you are saying how would they write this so it would be unambiguous what would you say?
>> Number one, it doesn't add to the exclusion by using the term and we were comparing and analyzing different factual scenarios.

My co-counsel.

>> You had a great deal of fun with this.

>> We have compared lots of -- he will go along with me as long as I don't ensure too far but let's assume that Menendez --
[LAUGHTER]

>> A rueful expression on that.
[LAUGHTER]

>> Let's assume the grandmother was driving her own car. It doesn't fall within the language of the exclusion. Why?

And they are arguing the household exclusion. Collusion, fraud between family members.

Why not?

Look at the language of this particular exclusion. The exclusion says there is no coverage for any bodily injury to any insured.

That is a named insured. Any member of an insureds family residing in the insureds household.

No question that the granddaughter and her parents do not reside in the grandmothers household so if Menendez was driving her own car, this goes

to the reasonableness of our position.

This household exclusion wouldn't apply at all.

>> That is not the question.

Of course it would not, you are right but by changing the facts and saying -- that won't apply here doesn't make it apply here. The thing that troubles me here is to be ambiguous just because you have to do construction does not render it ambiguous because I have never seen an insured contract that you didn't have to do some kind of construction.

>> And I agree with you.

But ours is objectively reasonable because it comports with other provisions with the policy.

>> But if you look at that immediate context is that most reasonable that any insured and light of -- or the insured in light of the earlier reference in that same sentence to any insured?

That seems to me to be a very powerful contextual indicator right there as is to let that subsequent reference to insured means.

>> And that is a reasonable interpretation.

>> But it says that is the question we have to decide. That seems to me to be such a powerful indicator of what that word means in that context that these other things about stuff that is done elsewhere in the policy, it seems to me to be very insubstantial compared to that powerful indicator right there in the immediate context.

>> But Cochran uses that as well.

>> Very nice but Cochran might very well be wrong.

>> But let's assume -- how you would I have written this?

>> I'm sorry.

How I would have written is or how it could've been written.

Number one we had two alternatives that it could be written.

Number one, I'm sorry.

I'm looking for the exact language.

There's no coverage for any insured or any member of an insurance family residing in an insureds house.

Or residing in such insureds household.

Because the such would refer back but the term the does not and the is a specific person.

>> You are now down to --

>> Thank you very much and thank you for the extra time.

I respectfully asked the court to discharge jurisdiction because there really isn't any.

Thank you.

>> I will give you a couple of extra minutes as we help cocounsel here.

>> On behalf of the named insured, Joseph Menendez.

Let me start off with I think the rule that you have to look at the entire thing.

>> How was the named insured impacted by this decision?

>> The named insured is impacted by this decision because one of the passengers was in the hospital and claimed over \$275,000 of medical bills and

consequently filed his claim to get it covered.

The policy had a limit of \$50,000.

They said no go ahead and sue us and they subsequently filed an action on this.

I think the issue in this case is important.

Here's the issue in this case I believe.

First of all we start with a situation that we are interpreting and exclusionary rule.

Hence, we have to go ahead and restrictively analyze it.

Thus it is to equally plausible interpretations in this matter.

I submit to you all that since we are talking about exclusionary rules you should go ahead and take a plausible possible one that is more restrictive because we are talking about and exclusionary rule not a granting of coverage. Number two, I understand Cochran could have been wrongly decided and interest and that maybe Missouri could have been rightly decided and I understand the dissenting Cochran which says our analysis is equally plausible and reasonable could not carry that much weight but I suggest to you all that if you have judges, dissents on certain positions and the misery courted you have the Cochran court that should tell you that my interpretation is just as reasonable as their interpretation.

>> The Cochran court was back in the 75 time period?

At the time insurance companies were not using "you" and "your" for insureds.

>> I believe Your Honor is correct.

>> I think that added to some of the issue so I'm not sure that Cochran is really on point here when you have got the new English that insurance companies have gone to.

>> I respectfully disagree and this is the reason why.

Please note that both Reid and Linehan talk about the validity of these household exclusions. They had it public policy analysis.

We are not a public policy analysis and that is why my co-counsel is right.

This is an interpretive debate whether or not his interpretation is the only interpretation that an objective person looking at this would reach and I submit to you that it is not in here's the reason why.

Justice Periente brought up the issue of how would you write it to make a clear because their obligation is to make it clear. They are the drafters.

>> That is not the case.

They do not evaluate any closet in an insurance contract on the basis of how could you write it better?

>> It is a not the test.

Here's why I submitted it as a test.

If you have reasonable interpretation of this language despite definition ambiguous. Which means they have to carry

the burden as they do -- our interpretation is illogical and absurd because if we have to plausible once and it means ambiguous.

>> I'm still concerned that we may not have jurisdiction. I can see that argument starting to blossom a little but this policy describes the named insured, does it not? In terms of you and your. Is that under the definition section?

>> Yes it is and let me address that.

They have five categories of insureds.

Five categories of insureds. It is a granting of coverage. They use that terminology to give an expansive interpretation of an exclusionary policy. In any event if you look at that you have five categories of people and then you put the -- let me give you an example.

>> This is missing the point about the named insured and that is talking about the named insured.

That is what I'm talking about and does this policy not use you and your to identify what it means a named insured under coverage A liability coverage?

>> Yes but it also uses the word the insured to me the name insured by talks about duty to cooperate.

Whoever the insured is will have to cooperate.

Keep going.

That is not limited to named insured.

Anyone who seeks coverage under

that policy will have to cooperate to receive coverage.

>> The named insureds.

>> The named insured?

>> That is what I'm saying and I'm not getting across the point.

>> You are.

Keep going.

>> They use the named insured. You can't sever it and you have to read it as a whole. In these other sections in the policy age 21, 22.

>> Does it say the named insured or the insured?

>> The insured which only refers to the named insured because of the duty to cooperate.

>> It is all insureds. The insured and all insureds. You are not selling me on this point.

>> The legal fees and costs of reimbursement.

>> That is the same thing. That would be any insured that may have coverage under the policy.

>> They have the issue of a financial responsibility to talk about the insured. Can only be the named insured and what I'm saying is.

>> I can agree with you there.

>> You do not necessarily in this policy conclude that the insured is not always the named insured.

>> That is true but and again I sort of am wondering about this competition myself. Justice Canady, given that -- before we look at the whole policy by reading just this provision, we can understand who

is excluded.

You would agree with that.

So if we look at it and say there is only one logical reading, that ends the story. We don't go look at everything else.

>> I agree but if you look at the policy if they are severable.

I understand your argument. You have to look at the policy and the section of the policy that uses the insured.

There is a problem here and the other thing that is important, and then I will stop, is on page 21, they use the word such insured.

>> What coverage is that under? That is not coverage A.

What are the definitions for section A, coverage A liability coverage here?

>> They have the five categories.

>> You mean the named insured.

>> Or your -- isn't it?

And what else?

Yes are right.

Don't use up all your time.

>> Two seconds.

The cases they use is not what they are arguing now.

This court most respectfully should not get involved in interpretive analysis of a policy.

This court has jurisdiction of conflict.

Obviously other courts and other jurors have found our interpretation to be as reasonable as their interpretation when you are looking at and in the --

Thank you for your time.

>> Thank you.

>> I have a question.

In arguing to the State District, did State Farm argue that Reid and Linehan had different results?

>> Yes.

>> It is not mentioned in the Third District.

>> Reid is mentioned in the Third District and Reid did not address the direct application of the facts.

Linehan was argued in the Third District brief and wasn't cited in the court opinion.

If I could address a couple of things.

>> Can you address the conflict issue?

The fact is this issue, when we are deciding that household exclusions are valid, that is not discussing whether a particular provision is ambiguous or not.

>> No but I think both Reid and Lineham did more than address the abstract validity.

The fact that neither one said it is an unambiguous exclusion I don't think matters if what it means is the court was applying it as it was written in both courts involved in application.

>> Usually when we are finding conflict, since the complex jurisdiction is narrow, the misapplication may be in the court case, it wasn't the issue before the court.

It seems that, and I haven't looked at the brief in those cases to see if ambiguity was briefed but it did was send the

issue before the court or unnecessarily decided predicate, don't understand how there can be conflict.

>> It is true that neither decision says it is ambiguous or not ambiguous but I think Reid did say it applies.

Implicit and that is the notion that given the facts it applies which is exactly what the third DCA point is.

And a trial court in this state couldn't --

the decision here -- it would have to choose.

The fact of that the court didn't specifically say unambiguous but went on to say it applies I think is sufficient and again though.

>> You are saying the argument in the Third District, there is nothing to discuss.

It can't be any ambiguity because you are bound to apply Reid and Lineham and the court said we read those decisions and we don't see the conflict.

And that is not determinative of course but it concerns me and you agree that Webb was not added to your reply brief.

>> Webb was not added into my reply brief.

I cited a case in support of the argument but certainly I have not gone afield.

It was appropriately cited in my reply brief.

The court should consider it because we now do have conflict with the Webb decision is not Reid and Lineham.

As far as the notion that Reid, Reid can explicitly address --

explicitly say the policy applied which is what the third DCA wouldn't do here.

I do have to address the notion that there may be out of state cases that apply to this.

I don't know.

>> Can I ask -- in fairness -- You didn't raise the out-of-state cases until your reply brief and they are representing that in the Missouri case and Pennsylvania Supreme Court ruled differently. If you are going to give us out-of-state cases to pick and choose, it seems to me that you ought to know that if it is a Missouri case at the Pennsylvania Supreme Court ruled differently and bring that to our attention.

Don't you think that is what a lawyer should be doing, arguing in front of this court?

>> If Your Honor thinks I should have cited --

>> I'm asking you.

Is it in that Cochran decision or not?

>> I don't recall them involving the exact policy language.

If they did it is possible they did for going out now and I apologize if I should have cited a contrary out-of-state decision.

I have only cited the one Missouri case because it applied to the analysis.

I can't promise the court there is a recent cases apply to this exact policy language.

>> That is not controlled by law.

My recollection is correct your

ethical obligation is to inform us of controlling the law.

And there's no suggestion that any of these out-of-state cases were controlled with law.

>> I think it sets forth a good analysis and certainly if I had cases in Florida would have sided them to the court and I'm not whining in a.

>> I'm not suggesting it breach of any ethics but out-of-state cases are going to come in and they are not controlling.

There is no opportunity she has too applied within your initial brief.

If you are now going to add something on -- I don't want to use up your time.

I'm not suggesting you were unethical.

>> I appreciate that as far as counsel's opportunity to respond.

Ms. Ross isn't shy in terms of applying supplemental authority.

If it should've been cited in the initial brief then I apologize for that.

>> May I ask you this question? In the Linehan case, is it sufficiently similar so that we have conflict because there it recites the facts and it gives a paraphrase description of exclusion, but it does not discuss ambiguities or anything else like that.

Is that sufficiently similar to give us jurisdiction?

>> I think so and for the same reasons I think Reid gives you jurisdiction.

>> I think Reid is a different category.

Linehan does have very similar facts.

>> It didn't explicitly say it is ambiguous or unambiguous.

A paraphrase and exclusion and we have to trust the paraphrase represents a correct substantive description of the policy language and again it is analogous in terms are referring to a family member of any with insured residing in the household of the insured.

My notes say --

>> And the insured or any member of the family of any insured. Right.

>> I think in relevant part it is substantively the same as ours.

And yes it is true Linehan -- given Reid addressed the validity there is an implicit application going on when the court gives us the facts and gives us the exclusion and affirms the summary judgment based on the exclusion.

>> You are saying these two cases cannot stand edit these to come before a court it is one or the other.

>> I think that is true and again, although yes it is true I only cited read in the reply brief.

Again I think it is a case that can be considered by the court for jurisdiction.

As far as --

I don't think it is a reasonable interpretation of any document to strip it of its definition and even though the definition of insured includes permissive insurgent named insured is

reasonable to say it is only going to play to named insured.

>> There has to be one section and --

>> When we refer to your car, insured means one, you so that would be the named insured and your spouse, the relatives of the first person named in the declaration or any person while using such car if its use is within the scope and consent of you or your spouse.

>> That makes the driver here insured.

Anything else?

>> Any other person or organization liable for the use of such car by one of the above. That is the five.

>> Those are the ones, okay.

>> Can see clearly we have one and two in category four is a permissive driver and again I would think it is not a reasonable interpretation to say even though insured means these five people we are only going to say it includes category 1.

I think the court has the basis for jurisdiction and we asked that the court, there were no other questions is approved in the third DCA and remand for injury judgment.

>> We thank both sides for your arguments.