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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

RYAN MCFARLAND and KATHRYN MCFARLAND, Plaintiffs - Appellants, vs. LIBERTY INSURANCE CORPORATION, Defendant-Respondent.	)	Supreme Court No. 45781

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Fourth Judicial District
of the State of Idaho in and for the County of Ada

The Honorable Lynn Norton, District Judge, Presiding

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Plaintiffs-Appellants Ryan McFarland and Kathryn McFarland ("Mr. and Mrs. McFarland" or "the McFarlands"), by and through their attorneys of record, McFarland Ritter PLLC, respectfully file this Reply Brief in support of their appeal of the District Court's February 8, 2018 Final Judgment in favor of Defendant-Respondent Liberty Insurance Corporation ("Liberty").

I. INTRODUCTION

Liberty has failed to provide this Court any reason to find that the word "Dwelling" – perhaps the most important word in the entire Policy at issue – should be read to exclude coverage of the McFarlands' Claim. Liberty had the obligation of limiting the word to a single structure by so defining it in the Policy; Liberty failed to meet that obligation, and so did not have the luxury of limiting it after a Claim was made. Instead, Liberty is stuck with the ordinary meaning: "Dwelling" coverage should be applied to the Garage and Bonus Room because the McFarlands *dwell* there, as the McFarlands advised Liberty before the Policy was issued, and as the settled legal definition of "Dwelling" requires. In the alternative, if "Dwelling" has no accepted, ordinary meaning, then the policy is ambiguous and, by law, the Policy should be construed in favor of coverage of the McFarlands' Claim. Under either scenario, the District Court erred in granting summary judgment in favor of Liberty denying the McFarlands "Dwelling" coverage.

II. ARGUMENT

A. The McFarlands Showed that the District Court Erred in Granting Summary Judgment in Favor of Liberty.

The McFarlands established the District Court's error by setting forth the following facts (in summary), none of which Liberty has ever disputed:

1. The dwelling on the Cabin property consists of a main house with a kitchen, bathroom, and bedroom, and, just steps away, a detached Garage with the Bonus Room above it. R., pp. 125-26.

2. In or about September 2010, Mrs. McFarland contacted Liberty via telephone to inquire about purchasing a homeowner's insurance policy for the Property. R., p. 122. Mrs. McFarland described the Cabin property to the Liberty's representative, and explained that the dwelling includes a kitchen, bath and a bedroom, as well as the detached Garage and Bonus Room. R., p. 122-23.

3. Until the water event giving rise to the Claim, both the Garage and Bonus Room were heated and had lighting for continuous, protracted use as part of the dwelling; the Bonus Room was furnished with a bed and couch, and the Garage was furnished with other accoutrements of daily living. R., pp. 123, 126.

4. The version of the Policy in effect at the time of the Claim insured the "Dwelling" up to a limit of $221,600.00 ("Coverage A"), and "Other Structures" up to $22,160.00 ("Coverage B"). R., pp. 126, 177.

5. The Policy does not define "Dwelling"; instead, the Policy merely refers to the word in the negative, by distinguishing it from "Other Structures," which are *non-dwelling* structures on the property: "We cover other structures on the 'residence premises' ***set apart from the dwelling*** by clear space." R., p. 139.

6. In February 15, 2017, the radiant heater in the Bonus Room failed, resulting in hot water pouring, unabated for days, onto the floor and walls of the Bonus Room, streaming onto the ceiling of the Garage below, and destroying the insulation, drywall, doors, overhead Garage doors, and plumbing and electrical components of the Garage and Bonus Room. R., pp. 126-127.

7. Liberty immediately admitted that the Claim was covered under the Policy. R., p. 127.

8. Mr. McFarland and the water remediation company consulted with, and obtained the approval of, Liberty, before commencing remediation work. *Id.*

9. Liberty issued partial payment to and on behalf of the McFarlands, but the amount was insufficient to pay for all of the remediation and repair. R., pp. 127, 129.

10. Liberty took the position that the applicable coverage limit for the structural damage under the Claim was the lower Coverage B limit. R., p. 128.

Based on these facts, the McFarlands showed in their opening Brief on appeal that the District Court erred in determining that the Coverage B limits applied to the Claim:

- The "burden is on the insurer to use clear and precise language if it wishes to restrict the scope of its coverage." *Moss v. Mic-America Fire & Marine Ins. Co.*, 103 Idaho 298, 300, 647 P.2d 754, 756 (1982).

- In determining the meaning of a contract, a court cannot "rewrite [the] contract[]" (*Losee v. Idaho Co.,* 148 Idaho 219, 223, 220 P.3d 575, 579 (2009)), "revise the contract" (*Elliott v. Darwin Neibaur Farms*, 138 Idaho 774, 779, 69 P.3d 1035, 1040 (2003)), "modify the express terms" (*Lupis v. Peoples Mortg. Co.*, 107 Idaho 489, 492, 690 P.2d 944, 947 (Ct. App. 1984)), or "make for the parties better agreements than they themselves have been satisfied to make, and by a process of interpretation relieve one of the parties from the terms which he voluntarily consented to nor can courts interpret an agreement to mean something the contract does not itself contain" (*J.R. Simplot Co. v. Chambers*, 82 Idaho 104, 110, 350 P.2d 211, 214 (1960)).

- Because "Dwelling" is not defined in the Policy, the Court must look to the plain, ordinary meaning of the term. *See Kinsey*, 234 P.3d 739, 743 (2010). The District Court cited Merriam-Webster and Google, which define "dwelling" as "'shelter (such as a house) in which people live'; 'a house, apartment, or other place of residence'; and 'a place where people live.' Thus, the term dwelling is synonymous with house." R., p. 271. The District Court concluded from that definition that the Garage and Bonus Room could not be part of the dwelling because the term "Dwelling" must refer to "a singular structure . . . a singular dwelling." R., p. 271. The error in this reasoning is that the word "singular" simply does not appear anywhere in the Policy, or in the dictionary definition; neither do the terms "singular structure" or "singular dwelling." By inserting those words, the District Court impermissibly "modif[ied] the express terms" of the Policy (*Lupis*, 690 P.2d at 947), and interpreted the Policy "to mean something the contract does not itself contain." (*J.R. Simplot Co.*, 350 P.2d at 214).

- Nothing in Liberty's Policy prohibits the Dwelling from including more than one structure; if Liberty wanted to exclude the Garage and Bonus Room from the "Dwelling," it was incumbent upon Liberty to do so in clear language in the Policy. *Moss*, 647 P.2d 754, 756 (1982).

- The McFarlands expressly purchased, and Liberty expressly sold, insurance to cover the Garage and Bonus Room as part of the "Dwelling." R., p. 122-23.

- Alternatively, the term "Dwelling" may be ambiguous, which the Court should find if the Policy "is reasonably subject to conflicting interpretations." *Farm Bureau Mut. Ins. Co. of Idaho v. Schrock*, 150 Idaho 817, 821, 252 P.3d 98, 102 (2011). As this Court has noted,

> [b]ecause insurance policies are contracts of adhesion that are not usually subject to negotiation between the parties, **any ambiguity in a policy is construed strongly against the insurer**. To this end, where language may be given two meanings, one of which permits recovery while the other does not, **the policy should be given the construction most favorable to the insured**.

Id. (emphasis added) (internal citations and quotations marks omitted).

- *Arreguin v. Farmers Ins. Co. of Idaho*, 145 Idaho 459, 180 P.3d 498 (2008), which the District Court did not address, is an almost perfect analog to this instant case, and this Court's conclusion there is directly applicable here:

> We are compelled to strictly construe the exclusionary provision in favor of the insured and the insurance company bears the burden to use clear and precise language when restricting the scope of coverage. It is unclear whether "outbuildings" covers the buildings defined in separate structures or the attached structures defined under dwelling. Unlike the other clear and detailed exclusionary provisions, the "Outbuildings" provision fails to reference any other part of the contract. Therefore, because Farmers has not met

> its burden to use clear and precise language in this particular exclusionary provision, we hold the "Outbuildings" exclusionary provision is ambiguous and reverse the district court's grant of summary judgment to Farmers.

Id., 180 P.3d at 502.

B. Liberty's Arguments Do Not Support Affirming the District Court's Decision.

Liberty has not provided this Court any basis for sustaining the District Court's decision. The McFarlands respond to Liberty's Respondent's Brief arguments as follows:

i. Because Liberty Failed to Define "Dwelling" in the Policy, The Court Should Apply the Ordinary Meaning of the Term.

First, Liberty argues that *allowing "Dwelling" to be dependent upon an insured's use or subjective belief nullifies the purpose of Coverage B, and requires circular reasoning.* Respondent's Brief, at 6. This argument illustrates why Liberty, the insurer, has the burden of using "clear and precise language if it wishes to restrict the scope of its coverage." *Moss*, 647 P.2d at 756. Without such clear and precise language, the District Court found that the term "Dwelling" means "'a place where people live.'" R., p. 271. This definition does in fact leave the meaning of "Dwelling" to how the insured uses the property. Here, the McFarlands used the Garage and Bonus Room as part of the dwelling, and, what is more, they told Liberty before buying insurance of that use. If that makes the meaning of the Policy dependent on the McFarlands' subject belief – or, more properly, the McFarlands' use – that is because Liberty failed to use clear and precise language to restrict the scope of its coverage.

Because Liberty failed to use clear and precise language to exclude the Garage and Bonus Room from "Dwelling" coverage, this Court should give effect to the plain meaning of the words of the Policy (*see Cascade Auto Glass, Inc. v. Idaho Farm Bureau Ins. Co.*, 141 Idaho 660, 662–63, 115 P.3d 751, 753–54 (2005); *Clark v. Prudential Prop. & Cas. Ins. Co.*, 138 Idaho 538, 541, 66 P.3d 242, 245 (2003); and *Mut. of Enumclaw Ins. Co. v. Roberts*, 128 Idaho 232, 235, 912 P.2d 119, 122 (1996)), looking at the Policy as a whole (*Selkirk Seed Co. v. State Ins. Fund*, 135 Idaho 434, 437, 18 P.3d 956, 959 (2000)). Liberty agrees with the law, but urges the Court to find that "Dwelling" applies to only a single structure, and is not dependent on the McFarlands' use of the property. The problem with Liberty's position is that the "single-structure" limitation is not found *anywhere* in the language of the Policy, and by asking the Court to impose that limitation Liberty is violating the case law it purportedly relies on: Liberty wants the Court to give effect to Liberty's "subjective, undisclosed interpretation of a word or phrase." *Swanson v. Beco Const. Co*., 145 Idaho 59, 63, 175 P.3d 748, 752 (2007). The Court should apply the plain meaning of "Dwelling" and find that all portions of the Cabin property where the McFarlands "dwell" are subject to the "Dwelling" coverage limits of the Policy. On the McFarlands' property, that includes the main house, as well as the Garage and Bonus Room, as the McFarlands specifically advised Liberty prior to when the Policy was issued.

ii. The McFarlands Negotiated "Dwelling" Coverage for the Garage and Bonus Room.

Next, Liberty argues *the argument that the McFarlands specifically advised Liberty, prior to buying insurance, that the Garage and Bonus Room were part of the dwelling, is not*

supported by record. Respondent's Brief at 8. That argument is wrong on its face: Plaintiff Kathryn McFarland testified that she advised Liberty, at the time she applied for insurance, that the Cabin "includes a kitchen, bath, and a bedroom, and that a bonus room is located above a detached garage. I explained to [Liberty] that the bonus room and garage are regularly and continuously used by my family." R. at 122-23. At no point has Liberty challenged the truth of that statement; conversely, Liberty expressly conceded it in Liberty's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment when Liberty stated, "The material facts in this matter are basically undisputed." R., 245.

Liberty concludes that the McFarlands were simply underinsured on the Garage and Bonus Room, and should have purchased additional coverage. See Respondent's Brief, at 9. That argument is circular: it works only if this Court first accepts Liberty's position that the dwelling *does not* include the Garage and Bonus Room. The McFarlands never knew or could have known that they were potentially "underinsured" until the loss, the resulting Claim, and Liberty's subsequent denial of "Dwelling" coverage on the Garage and Bonus Room.

iii. Ambiguous Language Must be Construed in Favor of Coverage.

Next, Liberty argues that *a policy provision is construed strictly in favor of the insured only where an exclusion is concerned.* Respondent's Brief, at 10. This argument is contrary to law, as articulated by this Court:

> This Court exercises free review over questions of law, including whether an insurance policy is ambiguous. If the language of an insurance policy is clear, then the language will be given its plain and ordinary meaning. To determine whether a policy is ambiguous, the Court must ask whether the policy is reasonably

> subject to conflicting interpretations. If confronted with ambiguous language, the reviewing court must determine what a reasonable person would understand the language to mean. Furthermore, because insurance policies are contracts of adhesion that are not usually subject to negotiation between the parties, any ambiguity in a policy is construed strongly against the insurer. To this end, where language may be given two meanings, one of which permits recovery while the other does not, the policy should be given the construction most favorable to the insured.

Schrock, 252 P.3d at 102 (emphasis added) (internal citations and quotations marks omitted). Other cases, including one cited by Liberty, support the principle that ambiguity *anywhere* in the Policy, are to be interpreted in favor of coverage. In *City of Boise v. Planet Ins. Co*., 126 Idaho 51, 57, 878 P.2d 750, 756 (1994), the Court found an ambiguity in the definitions sections, not in an exclusion, and held: "Because of the ambiguity in the meaning of **occurrence,** we construe the definition most strongly against the company." *Id.* at 878 P.2d 750 (emphasis in original). The Court thus construes *any* ambiguity in a Policy in favor of coverage, not just ambiguity in exclusions.

Liberty's argument is not only wrong legally, but amounts to sophistry. The reason this lawsuit exists is because Liberty has *excluded coverage* of a portion of the McFarlands' Claim using the Policy's "Dwelling" and "Other Structures" language. Liberty does not exclude coverage *entirely* – it paid the limits applicable to "Other Structures" – but it excluded coverage for the amount in excess of the "Other Structures" limit that *would be* (and, to the McFarlands' point, *should be*) covered by the "Dwelling" Policy limits. Thus, even if the Court were willing to entertain Liberty's argument, it still fails because at bottom the Court is being asked to determine the degree, or amount, of exclusion.

iv. Liberty has not Distinguished *Arreguin*.

Liberty next attempts, unsuccessfully, to distinguish *Arreguin*. First, Liberty argues that *Arreguin* is inapplicable because the ambiguous term there was "outbuildings," not "dwelling" or "separate structures." Respondent's Brief, at 9. That argument is unavailing because everything said about the undefined word "outbuildings" in *Arreguin* could be said about the undefined word "Dwelling" here, with the same legal outcome:

> [T]he insurance company bears the burden to use clear and precise language when restricting the scope of coverage. It is unclear whether "outbuildings" covers the buildings defined in separate structures or the attached structures defined under dwelling. Unlike the other clear and detailed exclusionary provisions, the "Outbuildings" provision fails to reference any other part of the contract. Therefore, because Farmers has not met its burden to use clear and precise language in this particular exclusionary provision, we hold the "Outbuildings" exclusionary provision is ambiguous and reverse the district court's grant of summary judgment to Farmers.

Arreguin, 180 P.3d at 502. Similarly here: it is unclear from the Policy whether "Dwelling" is limited to one structure, or also includes the Garage and Bonus Room, where the McFarlands expressly advised Liberty that dwelling activity occurs.

Second, Liberty argues that *Arreguin* is inapplicable because it dealt with an exclusion. As set forth above, the "exclusion" argument is a distinction without a difference: to the extent Liberty wishes to deny coverage for the amounts above the "Other Structures" limit, that denial constitutes an exclusion of coverage, and therefore the rules for interpreting exclusions apply in this case.

v. "Dwelling" is Ambiguous Because it Has No Settled Legal Meaning.

Liberty cites to *Melichar v. State Farm Fire & Cas. Co.*, 143 Idaho 716, 152 P.3d 587 (2007) for the proposition that *an undefined word does not make an insurance policy ambiguous* (see Reply Brief at 10); however, Liberty has failed to give the Court the full quote, which is: "the mere fact that a term is undefined in a policy does not make that term ambiguous ***if it has a settled legal meaning***. *Id.*, at 152 P.3d 592 (emphasis added). That qualifier, "if it has a settled legal meaning" – which Liberty conveniently omits – was the point in *Melichar* and is the point here. In *Melichar*, this Court found no ambiguity because the meaning of the word "occurrence" (the word at issue there) "is well settled in Idaho" (*Id.*); the same cannot be said for the word "Dwelling," here. Liberty has not provided a "settled legal meaning" of "Dwelling," and the District Court did not cite to one either. Thus, "Dwelling" is ambiguous and should be interpreted in favor of coverage.

In a related attack, Liberty attempts to fault the McFarlands for *citing to no authority that Dwelling should be interpreted to include multiple structures.* Reply Brief, at 7. This argument is a head-fake: Liberty bears the burden of using clear and precise language to limit coverage (*Moss*, 647 P.2d at 756); it is not the McFarlands' burden to prove the negative, *i.e.*, that "Dwelling" has no settled legal meaning. In response to a charge that it has failed to meet its burden, Liberty should have shown a settled legal meaning. Liberty has utterly failed to provide the Court any citation to a case in which the meaning of "Dwelling" was settled, or limited to a single structure. The fact that Liberty cannot show a settled legal meaning suggests that none exists, and therefore, that the Policy is ambiguous.

The foregoing notwithstanding, there is at least one century-old case, and one nearly two-centuries-old case, that did wrestle with this issue. Those ancient cases, despite the passage of time, are directly applicable here in two respects: (i) they acknowledge that the term "dwelling house" or "house" could include a "cluster of buildings," and (ii) both cases turn on whether the insured used clear and precise language in the policy to delineate what was covered (and not covered) – what Liberty should have done, but failed to do, here. A Georgia Court found as follows in 1907:

> And Mr. Bishop defines a "dwelling house" as "a permanent building or cluster of buildings in which a man with his family resides. He need not so construct his habitation that all the shelter he requires will be under one roof. Therefore the words 'dwelling house' embrace in law the entire congregation of building, main and auxiliary, used for abode." And upon the same line the words "dwelling house" will be found to be defined by numerous other law–writers. . . . But we think the decision of this case does not depend upon the definition of the word "dwelling house," because the building insured is not only said to be a "dwelling," but it is further described and identified by the words "her two–story frame, shingle–roof building and additions thereto," in one policy, and "the two–story shingle–roof frame building and its additions adjoining and communicating," in the other policy. So that the real question is, not whether a cluster of disconnected houses may or may not in some instances constitute a "dwelling house" (to which proposition we fully agree), but whether it can be fairly understood as a part of the contract of insurance that "a two–story frame building and its additions," used as a dwelling house, shall also include a servant's house feet away, so as to render the insurer liable for damage by fire to the servant's house, though there was no fire or damage to the two–story frame building.

N. British & Mercantile Ins. Co. v. Tye, 1 Ga. App. 380, 58 S.E. 110, 111–12 (1907). This 111-year-old case gives Liberty a perfect template for crafting its policies to unambiguously limit "Dwelling" coverage to a single structure. Liberty's failure to do that should lead this Court to, as did the Georgia Court "fully agree" that a "dwelling house" can include "a cluster of disconnected houses." *Id.*

In a 19th Century Louisiana case, a court also found that a "house" includes disconnected smaller houses, kitchens, and privies. The problem for the insurer there is the problem for Liberty here: the insurer failed to clearly define the property insured.

> The only difficulty which occurs in the decision of this case, arises out of the description of the property insured, being too general and indefinite to give that clearness and certainty, which it is desirable should prevail in all contracts. The property on which the insurance was effected is described to be "two houses. . . ."
>
> The evidence of the case shews that the main houses, or building insured, are situated in the place designated in the description as contained in the body of the policy; that they are used as counting and store-houses; that the whole lot on which they are placed, is enclosed by the outer walls of these houses and a continuation of said walls to the extreme rear of the lot, where two other smaller houses are built, for the purpose of storing merchandise, leaving a small yard between the front and rear buildings, on the ends of which are kitchens and privies, for the use of the occupants of the counting-houses. On the 31st of March, 1830, the two houses in the rear were entirely destroyed by fire, as well as the kitchens and privies, and a slight injury done to the main buildings. . . .
>
> In the construction of every instrument, the ordinary and legal meaning of words must be taken into consideration. In the present case we must inquire what the parties to the contract meant by the word house. In the common and ordinary acceptation, every thing appurtenant and accessary to a main building would be embraced by this word . . .

> We have no doubt of the intention of the insured, in the present instance, to secure an indemnity by the contract of insurance, on all and every part of his buildings on the lot in the street where they are described as situated; this evidently appears from the payment (annually) of a premium commensurate with the entire value of the whole:

Workman v. Ins. Co., 2 La. 507, 508–10 (1831). 187 years ago, the Louisiana court dealt with the same problem presented in this instant case, and looking at both the insufficient description in the policy and the intent of the insured, found that the series of disconnected buildings – all of which collectively constituted a dwelling – were covered as the insured "house." This Court should decide this case the same way.

There is wide recognition in most, if not all, states of the Country, that in non-insurance contexts "dwelling" includes adjacent structures connected by common use; in fact, this interpretation of "dwelling" is so common and well settled that it is hard to find a recent decision on it. What follows is a small sample of the voluminous case law on this question:

- In *Bare v. Com*., 122 Va. 783, 94 S.E. 168 (1917), the Virginia Supreme Court of Appeals reviewed the ample record already in existence:

> As construed by the courts from the earliest to the latest times, the words "dwelling" or "dwelling house" have been construed to include not only the main house, but all of the cluster of buildings convenient for the occupants of the premises, generally described as "within the curtilage."
>
> Sir Mathew Hale says:
>
> > "'Domus mansionalis' doth not only include the dwelling house but also the outhouses that are parcel thereof * * * if they are parcel of the messuage, though they are not under the same roof, or joining contiguous to it." Hale's Pleas of the Crown, 558.

Blackstone (4 Bl. m. p. 225) announces the same doctrine, saying that if the houses are within the common fence, though not under the same roof or contiguous, a burglary may be committed therein, "for the capital house protects and privileges all its branches and appurtenances, if within the curtilage or homestall."

In 3 Greenleaf (2d Ed.) § 80, we find this succinct and comprehensive statement:

"The term 'mansion,' or 'dwelling house,' comprehends all the outbuildings which are parcel thereof, though they be not contiguous to it. All buildings within the same curtilage or common fence, and used by the same family, are considered by the law as parcel of the mansion. If they are separated from the dwelling house, and are not within the same common fence, though occupied by the same owner, the question whether they are parcel of the mansion or not is a question for the jury upon the evidence."

Mr. Bishop says:

"A dwelling house need not be under one roof. It may be a cluster of separate buildings and it includes the outhouses and buildings in the cluster appurtenant and auxiliary being parcel of the messuage and within the curtilage and which are subservient to the main dwelling for the purpose of habitation." 2 Bish. Cr. Law (7th Ed.) § 104. State v. Wilson, 2 N. C. 242; Pitcher v. People, 16 Mich. 147.

Pendleton, P., in Commonwealth v. Posey, 4 Call (8 Va.) 122, 2 Am. Dec. 560, says:

"'Dwelling house' is a complex term, and scarcely more certain than house; for it is not confined to any particular room in the building, nor even to the same room, but it extends to all the houses belonging to the curtilage."

In Page v. Commonwealth, 26 Grat. (67 Va.) 947, Moncure, P., says:

"An outhouse, adjoining a dwelling house, or under the same roof, or within the curtilage thereof and occupied therewith, was considered, at common law, as part and parcel of the dwelling

> house, within the meaning of the law concerning arson and burglary."
>
> In England the curtilage seems to have included only the buildings within the inner fence or yard, because there, in early times, for defense, the custom was to inclose such place with a substantial wall. In this country, however, such walls or fences, in many cases, do not exist, so that with us the curtilage includes the cluster of buildings constituting the habitation or dwelling place, whether inclosed with an inner fence or not. In Pond v. People, 8 Mich. 150, it was held, in a case in which the prisoner was charged with murder, that a building 36 feet distant from the prisoner's house, used for preserving the nets employed in the owner's ordinary occupation as a fisherman, and also as a dormitory for his servants, is in law a part of his dwelling, though not included with the house by a fence, and that a fence is not necessary to include buildings within the curtilage if within a space no larger than that usually occupied for the purposes of the dwelling and customary outbuildings

Id. 94 S.E. 168, 171–72.

- Cases in subsequent decades are in accord. "It is traditional to the common law that a 'dwelling' or 'dwelling house' includes the cluster of buildings in which a man with his family resides and extends to such outbuildings as are within the curtilage." *United Carbon Co. v. Conn*, 351 S.W.2d 189, 190 (Ky. 1961).

- The Mississippi Supreme Court, citing American Jurisprudence, found that "A dwelling house has been variously defined as the apartment, room in a hotel, building or cluster of buildings in which *a man with his family resides,* or any permanent building in which a man may dwell and lie. *Course v. State*, 469 So. 2d 80, 81 (Miss. 1985) (emphasis in original).

- Most recently, the Superior Court of Connecticut observed:

> The words dwelling or dwelling house have been construed to include, not only the main house, but all of the cluster of buildings

> convenient for the occupants of the premises, generally described as within the curtilage. Depending upon where the garage is situated, it may be deemed as located within the cluster of buildings considered within the curtilage.

State v. Kelly, 2000 WL 1340285, at *3 (Conn. Super. Ct. Aug. 25, 2000).[1]

What these cases show is that "dwelling" does in fact have a settled legal meaning: "A dwelling house [is] defined as the . . . cluster of buildings in which a man with his family resides." *Course v. State*, 469 So. 2d at 81. Liberty's failure to define the word in the Policy differently means that "Dwelling" should include the Garage and Bonus Room, as supported by law and by the use the McFarlands advised Liberty of long ago.

vi. The Word "One" in "One Family Dwelling" Modifies the Word "Family," not "Dwelling."

Finally, Liberty attempts to persuade the Court that *the "one family dwelling" language of the Policy requires a finding that "Dwelling" covers only one structure* (see Respondent's Brief, at 10). That argument is spurious: the word "one" modifies the word "family," not "dwelling" – that is, "one" indicates the number of families, not the number of structures or dwellings, as is clear from the definition of "Residence premises" in the Policy: a "one family dwelling . . . or . . . "'Residence Premises' also means a two family dwelling." R., p. 138.

[1] The Connecticut Court found that the garage was not part of the dwelling in that case because "no evidence has been presented to prove that the garage is associated with the privacies of life." *Id.* That is, there was no evidence that people "dwelt" there. That is contrary to the undisputed facts in this case, which include (i) the McFarlands informed Liberty prior to purchasing the Policy that the Garage and Bonus Room were part of the dwelling, and (ii) the McFarlands did in fact "dwell" in the Garage and Bonus Room – that is, the Garage and Bonus Room were part of the dwelling.

C. Liberty Is Not Entitled to Attorneys' Fees or Costs.

Liberty argues that they should be awarded attorneys' fees on this appeal. The McFarlands object on the following grounds:

- For the reasons set forth herein, Liberty should not prevail in this case, and therefore they will have no claim to attorneys' fees.
- The McFarlands have not brought this appeal frivolously. This case has a firm basis in established case law, particularly *Arreguin*, which the District Court did not address, let alone distinguish.

III.
CONCLUSION

Based on the foregoing, and for the reasons set forth in the Appellants' Brief, Mr. and Mrs. McFarland respectfully request that this Court reverse the District Court's decision granting summary judgment in favor of Liberty and find that the Policy limits applicable to the "Dwelling" apply to the Claim.

RESPECTFULLY SUBMITTED THIS 26th day of July 2018.

By _____
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July 2018, I caused to be served a true copy of the foregoing APPELLANT'S REPLY BRIEF by the method indicated below, and addressed to each of the following:

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