Superior Court of California
County of San Bernardino
1455 Civic Drive
Victorville, CA 92392

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
COPY
NOV 19 2010
BY ____
LUCY A. SCHNEIDER, DEPUTY

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO
14455 CIVIC DRIVE, VICTORVILLE, CALIFORNIA 92392
VICTORVILLE DISTRICT

AMERICAN STATES INSURANCE COMPANY, an Indiana Corporation Plaintiff, vs. H.L.C.D., INC., a California Corporation doing business as HECTOR LABASTIDA CONSTRUCTION AND DEVELOPMENT; HECTOR LABASTIDA, an individual;CHRISTINA RAMIREZ, an individual, ALIZAH RAMIREZ, a minor, by and through her Guardian Ad Litem, CHRISTINA RAMIREZ; MARTIN ORTIZ, SR., an individual; PATRICIA CORDES, an individual, WAWANESA MUTUAL INSURANCE COMPANY, a California Corporation, LINCOLN GENERAL INSURANCE COMPANY, a Pennsylvania Corporation, and DOES 1-10, Defendants.	Case No. CIVVS703193 SUPPLEMENTAL STATEMENT OF DECISION FOLLOWING COURT TRIAL

A bench trial was held before the Court on July 6, and July 7, 2010 to determine insurance coverage. American States Insurance Company (American States) filed a Complaint for declaratory relief seeking a judicial determination that no duty to defend or duty to indemnify exists arising from a business auto policy issued to Hector LaBastida (LaBastida) and H.L.C.D, Inc. (HLCD). Defendants and Cross-complainants Patricia Cortes, Christina Ramirez and Alizah

Ramirez (Defendants) are victims of an automobile accident involving LaBastida. Defendants obtained an assignment of rights from LaBastida and HLCD and filed a Cross-Complaint alleging causes of action for Breach of the Duty of Good Faith and Fair Dealing, Breach of Contract. Defendants also seek declaratory relief and a judicial determination that American States has duty to defend and indemnify LaBastida and HLCD.

The parties stipulated that there were two issues before the Court to be resolved:

1. Did American States have a duty to defend HLCD and Hector LaBastida (LaBastida) in the underlying actions against them as a result of the automobile accident at issue in this matter?

2. If Issue No. 1 is answered in the affirmative, are Defendants/Cross-Complainants entitled to recover the full value of the underlying arbitration award from American States based on their cause of action for Breach of Contract, or is American States' liability capped at the limits of its policy, plus interest?

In addition to the two stipulated issues to be decided by the Court, American States and Defendants entered stipulations regarding facts and issues to be decided by the Trial Court in a filed document titled "Amended Stipulations of Law and Fact Pertaining to Court Trial on Issues of Insurance Coverage." Additional evidence submitted at trial included the testimony of two witnesses. Mr. Lawrence Signaigo testified as the designated the person most knowledgeable regarding underwriting by American States. Michael Carroll testified as the representative of American States who was responsible for evaluating coverage.

The Underlying Action

According to the stipulated facts, in the early morning of May 27, 2004, LaBastida, the principal owner of HLCD Inc. was driving his 2003 Hummer H2 on US Highway 395 while intoxicated. LaBastida negligently crossed over into oncoming traffic and struck a car driven by

Martin Ortiz, Jr., his girlfriend Christina Ramirez, and her daughter Alizah Ramirez. Ortiz Jr. was killed in the accident. Both Christina and Alizah Ramirez suffered serious injuries. LaBastida pled guilty to criminal charges and was sentenced to state prison. Two subsequent lawsuits were filed against HLCD and LaBastida. Christina Ramirez and her daughter Alizah Ramirez filed a lawsuit against HLCD and LaBastida seeking to recover damages for personal injures sustained in the accident. Patricia Cordes, the mother of decedent Martin Ortiz, Jr., filed a lawsuit for wrongful death.

The underlying actions were submitted to arbitration by stipulation before the Hon. John K Trotter, Ret. On July 8, 2008, an award was issued. (Trial Exhibit 13). LaBastida was found to be acting within the course and scope of his employment with HLCD at the time of the accident. LaBastida and HLCD were further held to be 100% liable for the harm suffered by the plaintiffs in the underlying actions. LaBastida and HLCD were joint and severally liable.

The arbitrator awarded Christina Ramirez $1,689,557.65. Her daughter, Alizah, received an award $1,503,436.13. Patricia Cordes, mother of decedent Ortiz, was awarded $3,003,681.33 in her wrongful death action. The total judgment against HLCD and LaBastida was $6,196,675.11

Wawanesa Insurance Company defended HLCD and LaBastida against the underlying actions. Wawanesa issued a personal automobile policy to LaBastida covering his H2 Hummer. That policy included a $300,000 policy limit. As discussed further below, American States was requested to join in the defense but refused to do so. American States issued a business automobile insurance policy to HLCD which is the subject of this lawsuit. A copy of the policy is Trial Exhibit 1 and consists of 52 pages. In connection with the policy, American States sent LaBastida another 21 pages containing several documents which are identified in the record as Trial Exhibit 2. The policy and the additional documents were mailed together unattached and in loose form in an envelope. (Trial Transcript Page 88, Line 6 through Page 90, Line 3). Among the

additional documents within the envelope that were mailed to LaBastida was American States Form 6-3124A. Form 6-3124A, is found in the trial record at Trial Exhibit 2, Page 15 along with the other documents mailed in the envelope along with the policy. Form 6-3124A is also separately marked as Trial Exhibit 3. That form contains the following language:

IMPORTANT – PLEASE REVIEW 6-3124A

Named Insured: H.L.C.D

Policy No. 01-CG-253160-20

Agent: RAINTREE INSURANCE AGENCY INC

RAINTREE INSURANCE AGENCY INC

Address: PO BOX 2488

PO Box 2488

Phone: (909) 81-2654

Dear Valued Policyholder,

We appreciate the opportunity to write you commercial auto coverage. Please take a minute to review your policy.

Your policy has been issued based on the drivers listing below. In order to insure that your policy is issued with the most current information, please review this list and update as necessary. Include employees who drive their own vehicles on company business or anyone who will drive an insured vehicle. Contact your independent agent to advise of any changes.

Also, remember to report all newly hired employees to your agent during the year.

NAME OF DRIVER	DATE OF BIRTH	DRIVERS LICENSE NUMBER	STATE	DATE OF HIRE
LABASTIDA HECTOR	04-23-68	C5192148	04	

On October 14, 2004, LaBastida retained attorney Ryan Saba, who in turn contacted Mr. Carroll of American States[1] by letter regarding potential civil liability. Trial Exhibit 4. Christina Ramirez and her daughter retained attorney Michael Brewer, who contacted American States on October 15, 2004 regarding their recently filed claim and asserted that "Mr. Labastida's vehicle is a 'covered auto' under the provisions of the (policy)." Trial Exhibit 5. On November 15, 2004, Mr. Carroll of American States wrote his first of several letters denying coverage for HLCD's and Labastida's claim in the underlying actions. Mr. Carroll stated that he was denying coverage on the ground that the American States policy did not provide coverage for the accident since it was not listed in the policy as a covered auto. Trial Exhibit 6.

Wawanesa retained attorney James Catlow to provide a defense to Labastida in the underlying action. On February 9, 2005, attorney Catlow wrote a letter to Mr. Carroll stating that based on the allegations in the complaint in the underlying action and his review of the American States policy, "there may in fact be coverage." Trial Exhibit 7. Attorney Catlow pointed out that LaBastida was returning from a meeting conducted solely for the purpose business of HLCD. He also discussed Form 6-3124A as follows:

> "I have included a copy of (Form 6-3124A). This page indicates that a specifically-listed and covered driver is Mr. Hector LaBastida. This endorsement suggests that the policy was issued based on the driver listing below. This endorsement requests that the insured 'include employees who drive their own vehicles on company business or anyone who will drive an insured vehicle.' It is my impression that this endorsement provides that the auto portion of this policy coverage applies to any of the employees of the insured who are driving their own vehicles on company business."

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[1] Correspondence and documents included in the exhibits refer to Safeco Insurance. American States Insurance Company is alleged to be subsidiary corporation of Safeco Insurance Company of America. See First Amended Cross-Complaint at paragraph 4 and 5.

On April 13, 2007, Mr. Carroll wrote another letter to attorney Catlow again denying coverage. Mr. Carroll explained:

> "the document (Form 6-3124A) . . . is in no way an endorsement, nor does it expand or change coverage for this matter. As stated in the prior denial, this policy covered specifically described vehicles, and the loss arose out of a vehicle that was not scheduled under this policy and thus is not a covered 'auto' ." (Trial Exhibit 9.)

Defendants Patricia Cordes, Christina Ramirez and Alizah Ramirez obtained an assignment of all rights against American States from HLCD and LaBastida in exchange for an agreement not to execute judgment on the arbitration award in the amount of $6,196,675.11. On June 22, 2007, their attorney Gregory L. Bentley of Shernoff, Bidart & Darras wrote Mr. Carroll asking him to reconsider his decision on behalf of American States to deny the claim and re-extended an offer to settle within policy limits. Trial Exhibit 10.

On July 20, 2007 Mr. Carroll wrote Mr. Bentley stating he had re-reviewed the matter and had the matter further reviewed by coverage counsel. Mr. Carroll replied "based on our review, our position remains that there is no coverage for the loss under our insured's policy of insurance with American States Insurance Company." Trial Exhibit 11.

On October 26, 2007, American States commenced this action by filing a Complaint for declaratory relief seeking a judicial determination that American States has no duty to defend HLCD, LaBastida or any other person against the underlying actions. On February 20, 2008, Defendants Patricia Cortes, Christina Ramirez and Alizah Ramirez filed a Cross-Complaint alleging causes of action for Breach of the Duty of Good Faith and Fair Dealing, Breach of Contract, and Declaratory Relief seeking a judicial determination that American States has duty to defend Cross-complainants, as assignees of the rights of LaBastida and HLCD against the underlying actions. A First Amended Cross-complaint was filed on May 23, 2008.

American states filed two separate motions for summary judgment. The first sought

summary judgment on American States' own Complaint for Declaratory Relief and was heard on September 9, 2009. Based on this Court's impression of the evidence submitted in support of the evidence, this Court ruled that there were triable issues of material fact as to whether American States' insurance policy provided coverage and whether American States owed a duty to defend and indemnify. The second motion filed by American States challenged Defendant and Cross-complainant's Cross-Complaint and sought summary judgment, or in the alternative, summary adjudication of the first cause of action for Breach of Implied Covenant of Good Faith and Fair Dealing. The second motion was heard the following day on September 10, 2009. This Court again ruled that there were triable issues of material fact as to whether American States' insurance policy provided coverage and whether American States owed a duty to defend and indemnify. However, based on the court's impression of the evidence submitted at the hearing of the two separate motions, this Court issued a ruling that granting American States' summary adjudication of the first cause of action for Breach of Implied Covenant of Good Faith and Fair Dealing on the grounds that American States' denial of coverage was reasonable because a triable issue of fact remained as to whether the policy provided coverage for the underlying accident. The matter was set for court trial.

The court trial commenced on July 6, 2010 and lasted two days. Two witnesses, Mr. Signaigo and Mr. Carroll testified. American States and Defendants submitted an Amended Stipulations of Law and Fact Pertaining to Court Trial on Issues of Insurance Coverage which is part of the Court's record. There was also a stipulation that the two issues to be adjudicated were: Did American States have a duty to defend HLCD and Hector LaBastida (LaBastida) in the underlying actions against them as a result of the automobile accident at issue in this matter? And Secondly, if Issue Number 1 is answered in the affirmative, are Defendants/Cross-Complainants entitled to recover the full value of the underlying arbitration award from American States based

on their cause of action for Breach of Contract, or is American States' liability capped at the limits of its policy, plus interest?

The stipulation agreement also sets forth the following stipulations of law and procedure: Absent a factual dispute as to the meaning of policy language, the interpretation, construction and application of an insurance contract is a question of law. (Citation). Expert testimony is not generally admissible on the question of the meaning of the particular policy language. (Citation). An insurer's claims personnel's interpretation of a policy is irrelevant since the interpretation of the insurance policy is a question of law and not a factual determination. (Citation). Hector Labastida's subjective intent or understanding is inadmissible and irrelevant since the interpretation of the insurance policy is a question of law. (Citation). American States can not collaterally attack the value of the underlying arbitration award. (Citation). The stipulation agreement sets forth a series of stipulated facts which this Court summarized in the above portion of this Statement of Decision. Following the presentation of evidence to the Court and argument, this Court took the matter under submission pending this Statement of Decision.

American States Argues That The Policy Clearly And Unambiguously Specifies Only Listed Autos Are Covered Under The Policy.

In argument and in three separate trial briefs, American States consistently argues that Labastida's personal vehicle, the H2 Hummer, is not listed in the policy and therefore is not covered. American States argues that under rules of contract interpretation relating to insurance policies, the court should first look to the fifty-two page policy contained in Exhibit 1 to determine if any ambiguity exists regarding the coverage issues presented in this case. Citing *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264-1265, *MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal. 4th 635, 648 and *Clarendon American Insurance Company v. North American Insurance Company*, supra, 2010 DJDAR 10549 at Head note 6. California law is absolutely

clear and unequivocal that if the terms of the policy are clear, they will govern. Citing *Bank of the West v. Superior Court, supra, at 1264-1265.* As American States points out, Defendants entered a stipulation that Exhibit 1 is the policy. At trial, Mr. Lawrence Signaigo testified that he was designated the person most knowledgeable regarding underwriting by American States. (Transcript: Page 86, Lines 10-13). Mr. Signaigo testified that page six of the policy lists covered auto symbols "one through nine" that indicate potential forms of vehicle coverage that American States provides its insured's. (Transcript Page 118, Line 25 to Page 120, Line 22). For example, according to the policy, symbol number "one" would indicate coverage for any auto. (Trial transcript at page 119, lines 2-5). Symbol number "nine" provides coverage for non-owned autos which are employees' personal autos used for the business of the company. (Trial transcript at page 119, lines 10-20). According to Mr. Signaigo, HLCD purchased symbol "seven" coverage which covers specifically described autos. (Trial transcript at page120, lines 1-3). Page 2 of the policy specifies two covered autos, a 1997 Ford, and a 1998 Chevy Flatbed. Page 40 of the policy specifies coverage for a 1994 International. Page 49 specifies coverage for a 2004 Ford. American States argues that since the policy explicitly limits coverage to specified automobiles, the policy, as a matter of law, is unambiguous. *Hartford Casualty Ins. Co. v. Cancilla*, (1994) 28 Cal.App. 4th 1305, 1308.

American States Argues That Form 6-3214A Is Extrinsic Evidence And Should Not Be Considered.

As stated above, *Bank of the West v. Superior Court*, the court looks to the policy to determine if ambiguity exists. Therefore, according to American States, the other documents inside the envelope including, Form 6-3214A, amount to extrinsic evidence and should not be considered when interpreting whether there is coverage under the policy.

There is one point that American States leaves out of its argument regarding the proper

interpretation of an insurance policy that is important to this case. Under the rules of policy interpretation, the court looks at both the policy and the circumstances of the case. Language in an insurance policy is interpreted as a whole, and in the circumstances of the case. *E.M.M. I. Inc. v. Zurich American Insurance Co.* (2004) 32 Cal.4th 465, 470, *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1265, *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18, *Clarendon American Insurance Company v. North American Capacity Insurance Company*, (June 15, 2010) 2010 DJDAR 10549, Head Note 10. In this case, according to the testimony of Mr. Signaigo, who was designated as the person most knowledgeable regarding underwriting by American States, the policy along with other documents were sent to HLCD and Mr. LaBastida in an envelope. (Trial transcript at page 88, lines 6-24, page 89, line 26 to page 90 line 3). Stipulated fact number five states "in connection with the policy, American States issued several documents to HLCD. These documents were mailed to HLCD with the policy. (Trial Exhibit "2"). The documents were not attached to the policy. (Trial transcript at page 89, lines 20-22). None of the documents within the envelope were fastened together. (Trial transcript at page 89, lines 23-25). Counting the pages of the policy and the other documents, there was a total of seventy-three loose and unattached documents were received by LaBastida. Mr. Signaigo explained that the first fifty-two documents contained the policy in Trial Exhibit One. He further explained that the other documents contained in Trial Exhibit Two were merely stuffers that in his opinion did not add or alter insurance coverage. However, the question remains whether an average insured that opened an envelope containing approximately seventy-three loose and unattached pages would know and recognize which documents were the policy and which documents were not. Since the policy was inserted in the envelope loosely with other papers, the circumstances of this case require an examination of all the documents contained in the envelope to determine what a reasonable insured would expect when interpreting all of the documents together as a whole in the manner

they were received.

Form 6-3214A Creates A Reasonable Expectation That Labastida's H2 Hummer Was Covered Under The Policy.

Under well established rules of interpretation, ambiguity exists when language is capable of two or more constructions and both of which are reasonable. *Bay Cities Paving and Granding, Inc. v. Lawyer's Mut. Ins.* (1993) 5 Cal.4th 854, 867. Form 6-3214A is a pre-printed form created by American States. The wording of the form states "Your policy has been issued based on the drivers listing below." At the bottom of the form appears the name "Labastida, Hector." A reasonable interpretation of this wording on the pre-printed form is that the policy covers LaBastida while he is driving any vehicle. This wording is consistent with coverage for "any vehicle" as set forth in Coverage Symbol "One". Even more ambiguous is the following language on the form: "Include employees who drive their own vehicles on company business . . ." This coverage is consistent with Coverage Symbol "Nine" which states coverage is provided for employees who drive their own personal vehicles on company business.

The words used in insurance documents interpreted according to the plain meaning a layperson would ordinarily attach to them. *Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal. 3d 800, 807. Looking at the ordinary and popular meaning of the words printed on the form "employees who driver their own vehicles on company business," a reasonable and plausible interpretation of this language is that employees who drive their own vehicles on company business are covered under the policy. This is particularly true when the wording is contained in 1 of 73 pages included in an envelope along with the policy. When determining whether coverage exists, wording and language is interpreted broadly so as to afford the greatest possible protection to the insured. *State Farm Mut. Ins. Co. v. Partridge* (19730 10 Cal. 3d 94, 101-102. Once a court determines that

construction of language can be subject to more than one reasonable interpretation, it does not make an attempt to decide which interpretation is the most reasonable. *De May v. Interinsurance Exchange*, 91995) 32 Cal.App. 1133, 1137.

During the trial testimony of Mr. Carroll, the American States representative who made the repeated decision to deny coverage, the following exchange occurred when question by Defendant's counsel:

> Question to Mr. Carroll- "Would you agree that when evaluating a form, that generally if the form is ambiguous, that then that form would be interpreted in favor of the insured?"
>
> Answer: Mr. Carroll's response was "I wouldn't agree with that, no."
> (Transcript Page 133, Lines 4-10.)

Mr. Carroll's testimony demonstrates that he was not making coverage decisions based on California legal principles of interpretation that favor ambiguity in favor of the insured. In essence, Mr. Carroll was putting the interest of American States over and above those of the insured, HCLD and Labastida. The fact that Mr. Carroll was not following the fundamental rules of interpretation established California law when he repeatedly denied coverage was presented for the first time at trial and was not evidence available to this Court when ruling on the two the separate motions for summary judgment. Had the Court been aware of this fact, the motion for summary adjudication regarding the first cause of action for Breach of Covenant of Good Faith and Fair Dealing would have been denied. Applying the correct rules of interpretation, Mr. Carroll should have recognized the existence of the ambiguity, the existence of a reasonable interpretation that a basis for coverage existed, and then accepted coverage.

American States Had A Duty To Defend HLCD And LaBastida

The policy states that the insurer "will pay all sums an insured legally must pay as damages because of bodily injury or property damage to which this insurance applies caused by an accident and resulting from the ownership, maintenance or use of a covered auto." Trial Exhibit 1, Page 7. The policy further states the insurer has "the right and duty to defend an insured against a suit asking for such damages. Trial Exhibit 1, Page 7.

During the course of the underlying litigation, copies of the complaints for each lawsuit were forwarded to American States' coverage representative Mr. Carroll. Additionally, Mr. Carroll was advised by multiple attorneys that an ambiguity existed in Form 6-3124A regarding whether the policy simply covered drivers listed in that form and/or whether employees driving personal vehicles for company business were also provided coverage. Mr. Carroll, was advised that LaBastida was acting in the course and scope of his employment when driving his personal vehicle during company business and was returning from a meeting at the time of the accident. An insurer "must defend a suit which potentially seeks damages within the coverage of the policy. *Gray v. Zurich Ins. Con* (1996) 65 Cal.2d 263, 275. A duty to defend is imposed whenever the insurer ascertains facts which give rise to the possibility of coverage. Mr. Carroll was aware there was at a minimum, a potential for coverage, and that a duty to defend existed under the policy. As set forth above, based on this Court's interpretation of the entirety of the documents received by the insured, including wording and language printed on Form 6-3214A, as a matter of law, HLCD employees, including LaBastida, who drove their personal vehicles on company business were covered under the American States Business Automobile Policy.

American States Is Responsible For Consequential Damages That Result From Their Failure To Settle Within The Limits of The Policy.

American States argues that in the event the Court finds that they had a duty to defend LaBastida and HLCD, damages should be limited to the policy limits in the amount of $750,000.00 American States primarily bases this argument on the Court's ruling that American States' decision to deny coverage was reasonable and this Court granting summary adjudication in their favor on the first cause of action for Breach of Implied Covenant of Good Faith and Fair Dealing. Defendants also alleged a second cause of action for Breach of Contract. In *Archdale v. American Int. Specialty Lines Ins. Co* (2007) 154 Cal.App.4th 449, the Plaintiffs sought recovery in both contract and in tort under the theory of breach of implied covenant of good faith and fair dealing. *Archdale v. American Int. Specialty Lines Ins. Co* (2007), *supra at page 456.* The court held that the tort claim was barred by the statute of limitations. *Archdale v. American Int. Specialty Lines Ins. Co* (2007), *supra at page 456.* However, under the Plaintiff's cause of action for Breach of Contract, the Court held that an insurer's failure to accept a reasonable settlement offer to resolve an underlying third party claim against the insured amounts to a breach of implied covenant of good faith and fair dealing in both contract and tort. (See also Comunale v. Traders & General Ins. Co 1958 50 Cal.2d 654, 661). Furthermore, the *Archdale* court held, if such a breach results in an excess judgment against the insured, the amount of the excess judgment is a consequential damage of such breach. *Archdale v. American Int. Specialty Lines Ins. Co* (2007), *supra at page 456.* The Court pointed out that there is a significant difference in remedies under the tort and contract breach of covenant of good faith and fair dealing remedies. If the insured proceeds in tort, recovery is possible for not only all unpaid policy benefits and other contract damages (consequential damages) but also extra-contractual damages such as those for emotional

distress and punitive damages and attorneys fees. Under the contract cause of action, the prevailing party is entitled to recover contractual and consequential damages.

The legal effect of this Court prior ruling in favor of American States' summary adjudication as to the first cause of action is that potential recovery for emotional distress and punitive damages and attorneys fees were eliminated. The ruling did not eliminate recovery of consequential damages for breach of implied covenant of good faith and fair dealing in the second cause of action for Breach of Contract.

American States could have avoided liability for consequential damages in excess of the policy in this case under a reservation of rights. As stated in *Archdale*, the Court explained:

> In order to mitigate the consequences should its coverage position be ultimately rejected, an insurer may reserve the right to dispute coverage but then go ahead and accept the reasonable settlement offer so as to protect its insured against exposure to an excess judgment. Such action would preclude any claim of bad faith against an insurer in the event coverage was later established. *Archdale v. American Int. Specialty Lines Ins. Co* (2007), *supra at page 46.*

(See also State Farm.Mut. Auto Ins. Co. v. Allstate Ins. Co (1970 9 Cal. App.3d 508, 528-531 rejection of settlement offer subjected insurer to liability for the judgment in excess of the policy limits.)

In this case, American States was put on notice of the underlying claims and the likelihood that a judgment in excess of the policy limits was probable. The existing ambiguities and potential for coverage were pointed out to Mr. Carroll multiple times. Despite this information, Mr. Carroll continued to deny coverage and refused demands to settle within the limits of the American States policy. Had Mr. Carroll accepted coverage and settled within policy

limits, the exposure would have been capped at the $750,000.00 policy limitation. However, as a result of Mr. Carroll's refusal, American States insured suffered a judgment in the amount of $6,196,675.11. In Archdale the court explained "an insurer who denies coverage solely on the ground of non-coverage, does so at its own risk, and, although its position may not have been entirely groundless, if the denial is found to be wrongful, it is liable for the full amount which will compensate the insured for all the detriment caused by the insurer's breach of implied and express obligations of the contract." *Archdale, supra, at page 465.*

American States also contends that at the time the policy was entered, it was not foreseeable that LaBastida would drive while intoxicated and become involved in a fatal traffic collision. The Court does not accept this argument. The primary purpose of automobile insurance is for protection against liability arising from traffic collisions. It is common knowledge that traffic collisions can result in death. That individuals drive while intoxicated is unfortunately also something that is within the range of common experience. The Court can not say as a matter of law that it was unforeseeable to American States at the time the policy was entered, that LaBastida would drive while intoxicated and be involved in a fatal traffic collision.

CONCLUSION

The Court answers the stipulated issues as follows:

1. Did American States have a duty to defend HLCD and Hector LaBastida (LaBastida) in the underlying actions against them as a result of the automobile accident at issue in this matter?

Ruling: Yes.

2. If Issue No. 1 is answered in the affirmative, are Defendants/Cross-Complainants entitled to recover the full value of the underlying arbitration award from American States based on their cause of action for Breach of Contract, or is American States' liability capped at the limits of its policy, plus interest?

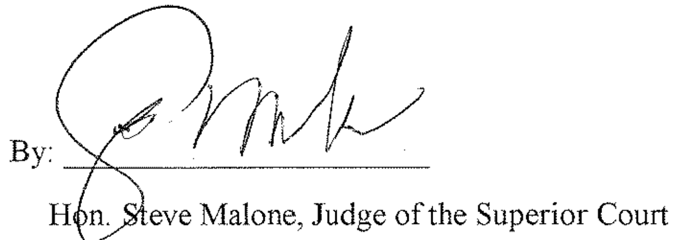
Ruling: Defendants, as assignees of Labastida's and HLCD's rights under the American

States policy may recover the consequential damages that resulted from American States' failure to accept a settlement offer within the policy limits. The resulting consequential damages are that instead of limiting the judgment against LaBastida and HLCD to $750,000, a subsequent judgment was obtained in the amount of $6,196,675.11. Therefore, Defendants Patricia Cortes, Christina Ramirez and Alizah Ramirez, as assignees, are not limited in their recovery to the policy limits but instead entitled to judgment against American States in the amount of $6,196,675.11.

Defendants, as assignees of Labastida's and HLCD's rights under the American States policy, are also awarded pre-judgment interest from the date of the arbitration award on August 26, 2008 pursuant to Stipulated Fact Number 31 and Civil Code Section 3287 (a) at the rate of 10%.

The Court directs Defendants to prepare an order consistent with this Statement of Decision.

DATED: November 19, 2010



By: ______________________

Hon. Steve Malone, Judge of the Superior Court

Lucy, please prepare a minute order under today's date: The court issues a supplemental statement of decision with the following modification at page 17:

"Defendants, as assignees of Labastida's and HLCD's rights under the American States policy may also recover are also awarded pre-judgment interest from the date of the arbitration award on August 26, 2008 pursuant to Stipulated Fact Number 31 and Civil Code Section 3287 (a) at the rate of 10%."

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