

JAI HOSPITALITY v. WESTERN WORLD INSURANCE CO.

2025 OK 13

Case Number: 121294

Decided: 02/25/2025

THE SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2025 OK 13, __ P.3d __

JAI HOSPITALITY, LLC, an Oklahoma limited liability company d/b/a Relax Inn, Plaintiff/Appellant,
v.
WESTERN WORLD INSURANCE COMPANY, an AIG company and a New Hampshire insurance corporation, Defendant/Appellee.

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS, DIVISION I

¶10 Insured brought an action against the Insurer alleging the Insurer's denial of its claim for damages from a fire loss was in bad faith. Both parties sought summary relief. The Honorable Leah Edwards, District Judge of Garvin County, on a motion to reconsider the denial of Insurer's motion for summary judgment, granted Insurer's motion finding that Insurer made a timely, legally effective offer to renew the insurance policy, and was not required to send its offer directly to the first named insured pursuant to the insurance contract and Oklahoma law, and the insured failed to accept Insurer's offer to renew, and no insurance contract existed at the time of the fire loss. The Court of Civil Appeals affirmed. We hold that the trial court erred in (1) finding that Insurer was not required to send its renewal offer directly to the first Named Insured; and (2) in failing to decide issues properly raised by Insured. We further hold that the terms of the insurance contract and 36 O.S. § 3639 (E) required Insurer to provide written notice of a renewal offer with premium increase directly to the first Named Insured; where such notice is not mailed or delivered in accordance with the contract and Section 3639 (E), "the premium, deductible, limits and coverage in effect prior to the changes will remain in effect" as outlined in the policy.¹

COURT OF CIVIL APPEALS' OPINION VACATED; DISTRICT COURT'S ORDER REVERSED; MATTER REMANDED FOR FURTHER PROCEEDINGS

Brett Agee and Jacob Yturri, Garvin Agee Carlton, P.C., Pauls Valley, Oklahoma, for Plaintiff/Appellant.

Phil R. Richards, Richards & Connor, Tulsa, Oklahoma, for Defendant/Appellee.

Edmondson, J.

¶1 Jai Hospitality, LLC, (Jai) sued Western World Insurance Company (Western World) seeking a determination that a surplus lines insurance policy issued to Jai was intact and provided coverage for property damage claims, and for damages arising from the alleged bad faith denial of Jai's claim by Western World. The claim arose from a fire that occurred at a motel owned by Jai on June 26, 2020. Western World denied Jai's claim and argued that its policy expired at the end of its policy term on June 1, 2020. Jai argued that Western World failed to provide Jai proper notice of nonrenewal and/or notice of a policy renewal with premium increase in accordance with the insurance policy terms and Oklahoma statutes, and this failure extended the policy term both pursuant to the insurance contract and by operation of law. Western World asserted that it was not required to send notice of nonrenewal directly to Jai, because it had extended a proper offer to renew the policy, and/or Jai had allegedly verbally told a J. Charles representative that it was going to take its business elsewhere. It is undisputed that Jai **never** agreed in writing that it was going to obtain replacement coverage. Jai first obtained replacement insurance coverage in July 2020, after the fire. Western World admitted that it would be required to send notice directly to Jai under the policy for a renewal with premium increase. Jai established that the renewal offer included a more than Three Thousand Dollar (\$3,000.00) premium increase from the prior year; and it argued that Western World violated its policy by failing to provide it as the first named insured, direct notice of the renewal offer. The only argument Western World offered was simply that notice to All Risks and J. Charles of the renewal offer constituted notice to Jai. Jai countered that this "notice" of policy renewal was not in accordance with the policy terms or statutes, that notice to Jai's insurance agent did not satisfy the notice mandated under the policy and statute. Both parties sought summary relief. Jai filed a motion for partial summary judgment seeking a determination that the policy was intact and reserving for later determination the amount of property damages and the issue of bad faith. Western World filed a motion for summary judgment arguing the policy expired by its terms on June 1, 2020, that notice of the policy renewal given to the insurance agent used by Jai was as a matter of law, notice to Jai; there was no policy intact and thus, no claim for bad faith could be sustained. The trial court initially denied both parties' motions. On motions for reconsideration from both parties, the trial court granted Western World's motion awarding summary judgment in its favor. Jai appealed, and the matter was assigned to the Court of Civil Appeals, Division I. The Court of Civil Appeals affirmed the trial court's judgment.

¶2 Western World Insurance Company issued a commercial lines insurance policy to Jai Hospitality LLC, dba Relax Inn, the "named insured," insuring the motel owned by Jai for property damage from June 1, 2019, to June 1, 2020.² Western World is not an admitted insurer in Oklahoma, and only issues insurance to Oklahoma insureds as a surplus lines insurer.³ J. Charles Insurance LLC,⁴ insurance agent, procured this initial policy through All Risks, Ltd. (All Risks), a surplus lines broker.⁵ Days before the policy was to expire, All Risks at the direction of Western World and **as its agent**⁶ prepared a renewal offer with a premium increase and transmitted this offer solely to the insurance agent, J. Charles. This offer was never transmitted to Jai. A fire occurred on June 26, 2020, causing property damage to the motel and Jai filed a claim for this loss. Western World denied the claim for damages asserting the policy lapsed after June 1, 2020. Western World, knowing this offer was never communicated to Jai, characterized the lack of an acceptance of a renewal offer as Jai opting to not renew the policy. Jai argued that because it was not provided direct notice, the policy extended past June 1, 2020, pursuant to the terms of Western World's policy and Oklahoma law. Jai initiated this action to recover money damages for the property loss caused by the fire and to pursue damages for Western World's alleged bad faith denial of its insurance claim. Western World argued as a matter of law, the policy expired on June 1, 2020, there was no policy in effect on the date of the fire, and Jai had no legal basis for its claim.

¶3 The questions central to resolution of this matter include: (1) did Western World have a duty to give Jai as the "named insured" written notice (a) of a renewal offer with a premium increase, or (b) nonrenewal; (2) was it error for the trial court to hold that as a matter of law, that knowledge of the proposed renewal offer by the surplus lines broker, All Risks, constituted notice to Jai, pursuant to 36 O.S.2021, § 1435.3; and (3) was it error for the trial court to hold that as a matter of law, written notice to the insurance agent, J. Charles constituted notice to Jai, pursuant to Section 1435.3? We answer each of these questions in the affirmative.

FACTUAL AND PROCEDURAL HISTORY

¶4 Western World issued a commercial lines policy to Jai Hospitality, LLC, Policy Number NPP8581504 for the policy period 06/01/2019 to 06/01/202 12:01 a.m. The policy endorsement titled "Oklahoma Changes Cancellation and Nonrenewal" provides in relevant part:

B. 1. Nonrenewal

a. If we elect not to renew this policy, we will mail or deliver written notice of nonrenewal to the first Named Insured at least 45 days before:

(1) The expiration date of this policy; or

(2) An anniversary date of this policy, if it is written for a term longer than one year or with no fixed expiration date.

b. Any notice of nonrenewal will be mailed or delivered to the first Named Insured at the last mailing address known to us.

d. If notice of nonrenewal is not mailed or delivered at least 45 days before the expiration date or an anniversary date of this policy, **coverage will remain in effect until 45 days after notice is given.** (*Emphasis added.*) Earned premium for such extended period of coverage will be calculated pro rata based on the rates applicable to the expiring policy.

e. We will **not** provide notice of nonrenewal if:

- (1) We, or another company within the same insurance group, have offered to issue a renewal policy; or
- (2) You have obtained replacement coverage or have agreed in writing to obtain replacement coverage.

f. If we have provided the required notice of nonrenewal as described in **B.1.a.** above, and thereafter extend the policy for a period of 90 days or less, we will **not** provide an additional nonrenewal notice with respect to the period of extension.

B. 2. Premium or Coverage Changes at Renewal

a. If we elect to renew this policy, **we will give written notice of any premium increase**, change in deductible, or reduction in limits of coverage, **to the first Named Insured, at the last mailing address** known to us.

b. Any such notice will be mailed or delivered to the first Named Insured **at least 45 days before:**

- (1) The expiration date of this policy;
- (2) An anniversary date of this policy, if it is written for a term longer than one year or with no fixed expiration date.

e. If notice is not mailed or delivered at least 45 days before the expiration date or anniversary date of this policy, the premium, deductible, **limits and coverage in effect prior to the changes will remain in effect until:**

(1) 45 days after notice is given; or

(2) The effective date of replacement coverage obtained by the insured;

whichever occurs first (*emphasis added*).⁷

B. As used in this section:

.....

5. "Nonrenewal" or "refusal to renew" means termination of a policy at its expiration date.

.....

D. An insurer *may refuse to renew a policy if the insurer gives to the first-named insured at the address shown on the policy written notice that the insurer will not renew the policy. Such notice shall be given at least forty-five (45) days before the expiration date.* If notice is given by mail, said notice shall be deemed to have been given on the day said notice is mailed. *If the notice is mailed less than forty-five (45) days before expiration, coverage shall remain in effect until forty-five (45) days after notice is mailed.* Earned premium for any period of coverage that extends beyond the expiration date shall be considered pro rata based upon the previous year's rate. For purposes of this section, the transfer of a policyholder between companies within the same insurance group is not a refusal to renew. In addition, changing deductibles, changes in premium, changes in the amount of insurance, or reduction in policy limits or coverage are not refusals to renew.

Notice of nonrenewal shall not be required if the insurer or a company within the same insurance group has offered to issue a renewal policy or, if the named insured has obtained replacement coverage or has agreed in writing to obtain replacement coverage.

E. An insurer *shall give to the named insured at the mailing address shown on the policy, written notice of premium increase,* change in deductible, reduction in limits or coverage *at least forty-five (45) days prior to the expiration date of the policy. If the insurer fails to provide such notice, the premium, deductible, limits and coverage provided to the named insured prior to the change shall remain in effect until notice is given or until the effective date of replacement coverage obtained by the named insured, whichever first occurs.* If notice is given by mail, said notice shall be deemed to have been given on the day said notice is mailed. If the insured elects not to renew, any earned premium for the period of extension of the terminated policy shall be calculated pro rata at the lower of the current or previous year's rate. If the insured accepts the renewal, the premium increase, if any, and other changes shall be effective the day following the prior policy's expiration or anniversary date.

36 O.S.2021 § 3639 (emphasis added.)

¶5 Western World cited the following statute to support its argument that J. Charles and/or All Risks were the legal agents of Jai and receipt of the offer to renew the policy by J. Charles or All Risks was as a matter of law notice to Jai which states:

B. Every surplus lines insurance broker who solicits an application for insurance of any kind shall, in any controversy between the insured or the insured's beneficiary and the insurer issuing any policy upon such application, be regarded as representing the insured or the insured's beneficiary and not the insurer. Any company which directly or through its agents delivers in this state to any insurance broker, a policy of insurance pursuant to the application or request of such broker, acting for an insured other than himself or herself, shall be deemed to have authorized such broker to receive on its behalf, payment of any premium which is due on such policy of insurance at the time of its issuance or delivery.

36 O.S. 2021, § 1435.3 (B). Western World also relied on *Knights & Ladies of Sec. v. Bell*, 1923 OK 479, Syll. 6 & ¶12, 220 P. 594 for the proposition that notice to agent and knowledge of agent obtained within scope of authority is imputable to principal. We note that *Knights* addressed the principal-agency relationship between an insurance company and an insurance agent for the company where the agent failed to disclose pertinent medical history given by the prospective insured at the time of application. This case did not address whether an insurance company or a surplus lines broker as a matter of law, was the designated agent to receive notice on behalf on an insured.

¶6 Even though Western World admitted that the evidence established this renewal offer was never communicated to Jai, it argued that "Jai, for whatever reason did not renew the policy, but the reason is completely irrelevant as to liability of Western World." ⁸ Western World concluded its argument that Jai's "failure to accept that offer of renewal, regardless of the reason, resulted in the policy expiring at the end of its term at 12:01 a.m. on June 1, 2020, before the fire loss occurred." ⁹

¶7 At oral argument before the trial court, Jai highlighted arguments raised in briefing that the insurance policy and Section 3639 (E) both required Western World to give Jai written notice of the premium increase in the proposed renewal offer, and this failure by operation of the contract as well as the statute, extended the policy. We also note that Western World had explicitly argued in its own brief, that it did have a duty to provide direct notice to any "first named insured" where there was a renewal offer with premium increase. The trial court determined as a matter of law that under Section B(1)(e)(1) of the policy endorsement, relating to nonrenewal, Western World did not have to provide notice of nonrenewal if it offered to issue a renewal policy. The trial court found that it was undisputed that a renewal offer was made by Western World and that "because it is a surplus lines insurer, All Risks and J. Charles are agents of Plaintiff and not of Defendant," ¹⁰ citing Section 1435 (B). The trial court went on to state that "the Court finds that the receipt of an offer to renew by All Risks and J. Charles was, as a matter of law, the receipt of an offer to renew and knowledge of it by Plaintiff... and now finds that Defendant made a timely, legally effective offer to renew the insurance policy, and was not required to send its offer directly to the first named insured, i.e. Jai Hospitality, LLC." ¹¹ The trial court goes on to conclude that because "Plaintiff failed to accept Defendant's offer to renew, no insurance contract existed at the time of the loss. Therefore, the Court grants Defendant Western World Insurance Company's Motion for Summary Judgment upon reconsideration." ¹² The trial court did not discuss the implication of a renewal offer with a premium increase as outlined in the policy at Section B(2) of the policy endorsement and Oklahoma statute Section 3639 (E).

¶8 Jai's appeal of the trial court's order granting Western World's motion to reconsider denial of summary judgment was reviewed by the Court of Civil Appeals, Division I. The Court of Civil Appeals issued its opinion, not for publication, on September 15, 2023, affirming the trial court's order. With respect to whether Jai was entitled to direct notice of nonrenewal, the Court of Civil Appeals found that 36 O.S. §1435.3 (B) "makes clear the surplus lines insurance broker is regarded as representing the insured or the insured's beneficiary and not the insurer." ¹³ The Court of Civil Appeals found that Western World did not have to provide notice of nonrenewal to Jai, and that it was sufficient to have given notice of the renewal to J. Charles and All Risks and it did not have to directly inform Jai of this offer. The Court of Civil Appeals did not address the issue raised by Jai regarding Western World's notice obligation where there is a renewal offer with premium increase. The Court of Civil Appeals also found that when Jai did not accept the offer to renew, there was no insurance policy in place at the time of Jai's loss and thus, no basis for a bad faith case against Western World.

¶9 Jai filed its Petition for Certiorari, including the following bases of error: (1) the trial court erred in holding that Western World made a timely and legally effective offer to renew the insurance policy; (2) the trial court and the Court of Civil Appeals erred by not addressing Jai's argument that Western World was required by its insurance contract and Section 3639 (E) to provide notice to Jai, as the first named insured, of a policy renewal offer with premium increase; (3) the trial court and the Court of Civil Appeals erred in finding that 36 O.S.2021, § 1435.3 supported a finding that an offer to J. Charles or All Risks constituted an offer to Jai; and (4) the Court of Civil Appeals erred in determining as a matter of law that Western World was not liable in bad faith to Jai. We granted certiorari on March 25, 2024.

STANDARD OF REVIEW

¶10 Summary judgments settle only questions of law, and we review a trial court's order granting summary judgment *de novo*. *Crown Energy Co. v. Mid-Continent Cas. Co.*, 2022 OK 60, ¶ 7, 511 P.3d 1064, 1067. We subject the record to a new and independent examination in applying the *de novo* standard without regard to the district court's reasoning or result. *Cherokee Nation v. Lexington Ins. Co.*, 2022 OK 71, ¶¶ 8-9, 521 P.3d 1261, 1266. The interpretation of an insurance policy is a question of law, reviewed *de novo*. *May v. Mid-Century Ins. Co.*, 2006 OK 100, ¶ 22, 151 P.3d 132, 140. The whole of a policy is to be taken together, each clause helping to interpret the others. 15 O.S.2021, ch. 3, § 157, <https://govt.westlaw.com/okjc>. *Cherokee Nation*, ¶¶ 8-9, 521 P.3d at 1266. We enforce the policy to carry out the parties' intentions at the time the parties entered into the contract. When a policy's terms are unambiguous and clear, the employed language is accorded its ordinary, plain meaning. *Bituminous Cas. Corp. v. Cowen Constr., Inc.*, 2002 OK 34, ¶ 9, 55 P.3d 1030, 1033. Statutory interpretation is also a question of law subject to *de novo* review. *Schiewe v. Cessna Aircraft Co.*, 2024 OK 19, ¶ 2, 546 P.3d 234, 235, cert. denied, No. 23-1305, 2024 WL 4426663 (U.S. Oct. 7, 2024). We will affirm summary judgment only if we determine from the pleadings and evidence there is no genuine dispute as to any material fact and one of the parties is entitled to judgment as a matter of law. *Id.* We have plenary, independent, and non-deferential authority to determine whether the district court erred in its legal rulings. *State ex rel. Protective Health Servs. State Dep't of Health v. Vaughn*, 2009 OK 61, ¶ 9, 222 P.3d 1058, 1064. The underlying facts contained in the record are to be considered in the light most favorable to the party opposing summary judgment. *U.S. Bank, N.A. v. Alexander*, 2012 OK 43, ¶ 13, 280 P.3d 936, 939.

DISCUSSION

¶11 Jai urged that the Court of Civil Appeals decided a substantive issue that has not previously been determined by this Court, including interpretation of Section 3639 and whether Section 1435 allows an insurer to provide notice to an agent when the policy requires notice be mailed to the insured at the address listed in the policy. Jai claims that it was entitled to direct notice of the policy renewal offer, the Court of Civil Appeals erred in ruling that notice to All Risks or to J. Charles constituted notice to Jai as a matter of law, and because of this failure the insurance policy was automatically extended under the specific terms of the policy and Section 3639, subparts (D) and/or (E), relating to nonrenewal and/or renewal with a premium increase. Our analysis will begin with examining the Western World insurance policy.

¶12 For more than one hundred years, this Court has held that insurance contracts are to be interpreted in the most favorable manner to the insured and construed most strictly against the insurer.¹⁴ To determine the liability of an insurance company under its insurance policy, it is construed to give effect to all of its provisions, if possible, and its terms are given their plain and ordinary sense.¹⁵ And where the policy language is ambiguous or susceptible of more than one construction, it will be strictly construed against the insurer and the construction most favorable to the insured is adopted.¹⁶ The Court will also not

engage in forced interpretations to create and then construe ambiguities in insurance contracts. An insurance contract is ambiguous only if it is susceptible to two constructions on its face from the standpoint of a reasonably prudent layperson.¹⁷

¶13 Jai's first, second, third and fifth assignments of error deal with Western World's obligation to provide direct notice to Jai, as the "first named insured" either under the policy provisions titled "Nonrenewal" or "Premium or Coverage Changes at Renewal." The trial court and the Court of Civil Appeals relied solely on the nonrenewal section of the "Oklahoma Endorsement" to the Western World policy. Western World urged that this policy simply "expired" by its terms because Jai failed to accept an offer that was never delivered to it, and never paid a premium, thus, it was not required to send notice under the nonrenewal provisions of the policy. We note that "nonrenewal" is defined by the legislature as "termination of a policy at its expiration date." 36 O.S.2021 § 3639 (B) (5). The general rule under Western World's policy, is that notice to the "first Named Insured" was required to be given at the last known policy mailing address **at least** forty-five (45) days prior to the policy expiration date. Western World stated very clearly what the consequence was of failure to provide notice within this time frame, "if notice of nonrenewal is not mailed or delivered at least 45 days before the expiration date or an anniversary date of this policy, **coverage will remain in effect until 45 days after notice is given.**"¹⁸ Western World's directive is clear and unambiguous; the intent is to insure that the "first Named Insured," in this instance, Jai, would have at least a forty-five day notice prior to its policy not being renewed and its coverage ending. Western World recognized two exceptions in its policy to having to provide notice of nonrenewal, where it was issuing an offer of renewal or when the insured had already obtained replacement insurance coverage or had provided written notice to Western World that it was getting replacement insurance coverage. We note that this record is devoid of any evidence that Jai had replacement coverage intact at the time of the fire loss on June 26, 2020, and likewise there is no evidence that Jai had given written notice of obtaining replacement coverage. Thus, we turn our focus to the exception of a renewal offer to Jai. Western World has urged that under Section B.1. Nonrenewal, the policy does not require that direct notice to the "first Named Insured" be given of a "renewal" offer and thus, notice to All Risks, the surplus lines broker, or to J. Charles, the insurance agent, should be deemed "notice to Jai" even where the undisputed evidence before us demonstrates that Jai **never** had notice of the renewal offer. As we have noted, Western World's **own policy required forty-five day notice prior to the expiration date of the policy** to the "first Named Insured."¹⁹ The "renewal offer" which Western World relies on was extended by All Risks to J. Charles on May 20, 2020. We note that this was only twelve (12) days prior to June 1, 2020, the stated policy expiration date. Forty-five days from the date of this "alleged" constructive notice to Jai, appears to have been July 4, 2020.

¶14 We next address the policy section, "B. 2. Premium or Coverage Changes at Renewal," where Western World agreed if it elected to renew the policy, "**we will give written notice of any premium increase, ... to the first Named Insured, at the last mailing address** known to us" (emphasis added.)²⁰ The undisputed evidence establishes that the renewal offer included a more than Three Thousand Dollar (\$3,000.00) increase in premium. The All Risks' representative alerted J. Charles that "**We are seeing an increase on this one.** I tried to push back with the carrier but they are standing firm. I just wanted to double check the exposures before I shop this around."²¹ Jai provided the trial court with evidence of the renewal offer premium, the prior policy premium, email correspondence noting the premium increase, and identified this policy section for renewals with premium increase. Jai urged that "when Western World decided that it would renew the policy in exchange for an increased premium, it was required to send the offer of renewal to the Plaintiff's address as shown on the policy."²² We note that Western World outlined that notice to Jai must be "mailed or delivered to the first Named Insured **at least 45 days before:** (1) The expiration date of this policy."²³ As noted earlier, the "notice" sent by All Risks to J. Charles occurred

only **twelve** days before the policy expiration date; this notice **does not** provide the notice promised by Western World. Western World contractually agreed that "If notice is not mailed or delivered at least 45 days before the expiration date or anniversary date of this policy, the premium, deductible, **limits and coverage in effect prior to the changes will remain in effect until: (1) 45 days after notice is given; or (2) The effective date of replacement coverage obtained by the insured; whichever occurs first.**" (Emphasis added.)²⁴ Western World **never** provided Jai a renewal notice at its mailing address. If one used the notice given to J. Charles as sufficient notice, even under the policy, **coverage will remain in effect until 45 days after notice is given.** In this instance, that would have been forty-five days from May 20, 2020, or July 4, 2020. Jai obtained replacement coverage on July 9, 2020. Because notice of renewal sent to All Risks and J. Charles is not treated as notice to Jai, coverage would have extended under the policy terms as written until the date of replacement coverage.

¶15 Western World also argued in its motion for summary judgment that there was a difference in the notice requirement between a renewal offer without policy changes and one with a premium increase. Citing the specific policy provisions in "Oklahoma Endorsement," B.2, Western World acknowledged that it was required to notify the first named insured where the renewal offer has a premium increase. Western World explained that "the plain meaning of this section, as is made evident by its title, concerns not a requirement to give the first named insured notice of an offer of renewal, **but of a premium or coverage change** to be effective as of the date upon which an offer of renewal is accepted." ²⁵ (Emphasis added.) It also pointed to the policy language where it agreed that "*we will give written notice of any premium increase, change in deductible, or reduction in limits of coverage, to the First Named Insured, at the last mailing address known to us.*" ²⁶

¶16 We next consider Western World's argument that Section 1435.3 bestowed a principal-agency relationship between either All Risks, surplus lines broker and/or J. Charles, the insurance agent and Jai. Western World has advocated in this litigation that All Risks was the "legal agent" of Jai under the above statute. However, this is in contrast with representations made by Western World's General Counsel and Associate VP, as well as the Western World Claims Attorney, **both of whom** referred to All Risks as "**its authorized surplus lines agent, All Risks**" and "**Western World's agent, All Risk Ltd. sent a renewal quote** to your client's agent, J. Charles Agency, LLC." (Emphasis added.)²⁷ We also note that Western World indicated that Jai allegedly dismissed J. Charles as its insurance agent, that it was allegedly taking its business elsewhere. And yet, Western World has urged that J. Charles was a legally authorized "agent" to receive notice of a renewal offer on behalf of Jai. We need not resolve whose agent All Risks was in this matter to determine whether Section 1435.3 bestowed an agency relationship between Jai and All Risks and/or J. Charles.

¶17 We begin with reviewing the plain language of the statute. We presume that the Legislature intended the plain and ordinary meaning of the statute as written.²⁸ Where "a statute is plain and unambiguous, it will not be subjected to judicial construction, but will receive the effect its language dictates."²⁹ Section 1435.3 (B) provides in part that "[e]very surplus lines insurance broker who solicits an application for insurance of any kind shall, *in any controversy* between the insured or the insured's beneficiary and the insurer issuing any policy upon such application, *be regarded as representing the insured* or the insured's beneficiary and not the insurer." 36 O.S.2021, §1435.3 (B). The second sentence in this subpart addresses issues relating to premium payments on policies. The plain and ordinary reading of this statute contains no language that authorizes All Risks or J. Charles to receive a policy renewal offer on behalf of Jai or any insured. Furthermore, such a strained interpretation would directly conflict with the more specific statute found in Section 3639 (D) and (E), which requires notice be given to the "first named insured." Western World's argument that All Risks or J. Charles was the "agent" of Jai and authorized to receive notice on its behalf is without merit pertinent to the issues presented in this case.

CONCLUSION

¶18 Following our rules of construction, policies of insurance are strictly construed against the insurer and the construction most favorable to the insured is adopted. ³⁰ The plain language of Western World's policy is clear when a renewal offer is made with a premium increase, notice must be given to the first Named Insured. In this instance, Jai, as the first Named Insured, never was provided such notice. We hold as a matter of law, notice to J. Charles ***did not constitute notice to Jai*** of the renewal offer. As discussed above, *even if we did*, under the plain terms of Western World's policy, Jai's coverage would remain in effect until forty-five (45) days after notice was given. In this instance, it appears that forty-five (45) days would have extended the policy to July 4, 2020, ***if*** the offer to J. Charles was considered a valid offer to Jai; we held this was not valid notice. Jai obtained replacement insurance coverage on July 9, 2020, after the date of the fire loss.

¶19 We hold that the trial court erred in granting summary judgment to Western World. We further hold as a matter of law that Western World was required to give Jai notice as the first Named Insured by mailing or delivering the renewal offer with premium increase to Jai's mailing address listed on the policy; Western World failed to do this. We hold that the notice of renewal offer provided to All Risks and to J. Charles as a matter of law, did not satisfy Western World's policy requirement to provide notice to Jai as the first Named Insured.

¶20 The opinion of the Court of Civil Appeals is vacated, the decision of the district court's grant of summary judgment is reversed, and this matter is remanded to the trial court for proceedings consistent with this Opinion.

COURT OF CIVIL APPEALS' OPINION VACATED; DISTRICT COURT'S ORDER REVERSED; MATTER REMANDED FOR FURTHER PROCEEDINGS

Rowe, C.J., Edmondson, Combs, Gurich, Darby, JJ., concur;

Kuehn, V.C.J., Winchester, Kane, JJ., dissent.

FOOTNOTES

¹ ROA, Def. Mot. S.J., p. 113; See also, 36 O.S.2021 § 3639 (E):

An insurer shall give to the named insured at the mailing address shown on the policy, written notice of premium increase, change in deductible, reduction in limits or coverage at least forty-five days prior to the expiration date of the policy. If the insurer fails to provide such notice, the premium, deductible, limits and coverage provided to the named insured prior to the change shall remain in effect until notice is given or until the effective date of replacement coverage obtained by the named insured, whichever first occurs. If notice is given by mail, said notice shall be deemed to have been given on the day said notice is mailed. If the insured elects not to renew, any earned premium for the period of extension of the terminated policy shall be calculated pro rata at the lower of the current or previous year's rate. If the insured accepts the renewal, the premium increase, or if any, and other changes shall be effective the day following the prior policy's expiration or anniversary date.

Edmondson, J.

² ROA, Plf. Mot. Partial S.J., Ex. D, Policy, pp. 13-87.

³ ROA, Def. Mot. S.J., p. 89.

⁴ J. Charles Insurance LLC was initially a named defendant in the trial court action. A Dismissal with Prejudice was filed because "all issues of law and fact have been fully compromised and settled with said defendant." Dismissal with Prejudice (As to J. Charles Insurance LLC Only), Case No. CJ-2022-5, In the District Court in and for Garvin County, State of Oklahoma, filed May 1, 2023.

⁵ *Supra.*, n. 3

⁶ ROA, Plf. Mot. Partial S.J., Ex. F., Letter from Western World Insurance Group, Associate VP & General Counsel, "In the underlying transaction, Western World was **represented by its authorized surplus lines agent, All Risks** ...;" "The policy was never cancelled but expired at the end of the policy period. No nonrenewal notice was ever issued either, **Western World's agent, All Risks, sent a renewal** quote to the complainant's [Jai's] agent, J. Charles Agency, LLC, and subsequently followed up with the Complainant's agent, but no response was ever received." (emphasis added.), See also, Ex. J, Letter from AIG Claims, Coverage Attorney for Western World, D. Hart, "Prior to expiration, **Western World's agent, All Risks Ltd. sent a renewal quote** to your client's agent, J. Charles Agency, LLC." (emphasis added.)

⁷ ROA, , Def. Mot. S.J., Ex. 2, Oklahoma Changes -- Cancellation and Nonrenewal, p. 118.

⁸ Suppl. ROA, #1, Tr. of Proceedings on Mot. for Partial S.J. had on May 22, 2022.

⁹ ROA, Def. Resp. to Plf. Mot. Partial SJ.

¹⁰ ROA, Order Granting Def. Western World Mot. to Reconsider Denial of its Mot. S.J., October 11, 2022.

¹¹ *Id.*

¹² *Id.*

¹³ *Jai Hospitality, LLC v. Western World Insurance Co.*, Appeal No. 121,294, Opinion of Court of Civil Appeals, Division I, September 15, 2023.

¹⁴ *Barnett v. Merchant's Life Ins. Co.*, 1922 OK 182, 208 P. 271.

¹⁵ *Great Am. Ins. Co. v. O. K. Packing Co.*, 1949 OK 253, ¶ 7, 211 P.2d 1014, 1016.

¹⁶ *Id.* at ¶ 8, 211 P.2d at 1016; See also, *Great N. Life Ins. Co. v. Cole*, 1952 OK 308, ¶ 12, 248 P.2d 608, 610, The rule is settled that an insurance policy must be construed to give effect to all of its provisions, where possible, and that its terms and provisions are to be accepted in their usual and ordinary sense, and that exceptions which are inserted by the insurer to exempt it from liability are to be construed, in case of doubt, strictly against the insurer.

¹⁷ *Cherokee Nation, supra.*, ¶ 10, 521 P.3d at 1266.

¹⁸ ROA, Def. Mot. S.J., Ex. 2, Policy, (Western World 070-071). (Emphasis added.)

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*, Ex. 3, email from All Risks to J Charles, May 20, 2020.

²² ROA, Plf. Resp. to Def. Mot. S.J., pp. 346-345.

²³ ROA, Mot. S.J., Ex. 2, p. 118.

²⁴ *Id.*

²⁵ ROA, Def. Resp. to Plf, Mot. Partial S.J.

²⁶ *Id.*

²⁷ *Supra.*, n. 6.

²⁸ *Hamilton v. Northfield Ins.Co.*, 2020 OK 28, ¶ 10, 473 P.3d 22, 26.

²⁹ *Yocum v. Greenbriar Nursing Home*, 2005 OK 27, ¶ 9, 130 P.3d 213, 219.

³⁰ See, *Great N. Life Ins. Co. v. Cole*, 1952 OK 308, ¶ 12, 248 P.2d 608, 610, The rule is settled that an insurance policy must be construed to give effect to all of its provisions, where possible, and that its terms and provisions are to be accepted in their usual and ordinary sense, and that exceptions which are inserted by the insurer to exempt it from liability are to be construed, in case of doubt, strictly against the insurer;

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Oklahoma Supreme Court Cases

Cite	Name	Level
<u>1952 OK 308</u> , <u>248 P.2d 608</u> , <u>207 Okla 171</u> ,	<u>GREAT NORTHERN LIFE INS. CO. v. COLE</u>	Discussed at Length
<u>1922 OK 182</u> , <u>208 P. 271</u> , <u>87 Okla. 42</u> ,	<u>BARNETT v. MERCHANTS' LIFE INS. CO.</u>	Discussed
<u>2002 OK 34</u> , <u>55 P.3d 1030</u> ,	<u>BITUMINOUS CASUALTY CORP. v. COWEN CONSTRUCTION, INC.</u>	Discussed
<u>1923 OK 479</u> , <u>220 P. 594</u> , <u>93 Okla. 272</u> ,	<u>KNIGHTS & LADIES OF SEC. v. BELL</u>	Discussed
<u>2005 OK 27</u> , <u>130 P.3d 213</u> ,	<u>YOCUM v. GREENBRIAR NURSING HOME</u>	Discussed
<u>2006 OK 100</u> , <u>151 P.3d 132</u> ,	<u>MAY v. MID-CENTURY INSURANCE COMPANY</u>	Discussed
<u>2009 OK 61</u> , <u>222 P.3d 1058</u> ,	<u>STATE ex rel. PROTECTIVE HEALTH SERVICES STATE DEPT. OF HEALTH v. VAUGHN</u>	Discussed
<u>2012 OK 43</u> , <u>280 P.3d 936</u> ,	<u>U.S. BANK, N.A. v. ALEXANDER</u>	Discussed
<u>2020 OK 28</u> , <u>473 P.3d 22</u> ,	<u>HAMILTON v. NORTHFIELD INSURANCE CO.</u>	Discussed
<u>2022 OK 60</u> , <u>511 P.3d 1064</u> ,	<u>CROWN ENERGY COMPANY v. MID-CONTINENT CASUALTY CO.</u>	Discussed
<u>2022 OK 71</u> , <u>521 P.3d 1261</u> ,	<u>CHEROKEE NATION v. LEXINGTON INSURANCE CO.</u>	Discussed
<u>2024 OK 19</u> , <u>546 P.3d 234</u> ,	<u>SCHIEWE v. CESSNA AIRCRAFT CO</u>	Discussed
<u>1949 OK 253</u> , <u>211 P.2d 1014</u> , <u>202 Okla. 231</u> ,	<u>GREAT AMERICAN INS. CO. v. O. K. PACKING CO.</u>	Discussed

Cite	Name	Level
<u>15 O.S. 157,</u>	<u>Whole of Contract Taken Together</u>	Cited
Title 36. Insurance		
Cite	Name	Level
<u>36 O.S. 1435.3,</u>	<u>Agency Status of Agent - Authority</u>	Discussed at Length
<u>36 O.S. 3639,</u>	<u>Cancellation Requirements - Notice - Reasons to Cancel - Premium Increases</u>	Discussed at Length