IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2008-IA-00645-SCT

MARGARET AND DR. MAGRUDER S. CORBAN — APPELLANTS

VERSUS

UNITED SERVICES AUTOMOBILE ASSOCIATION
a/k/a USAA INSURANCE AGENCY — APPELLEE

ON INTERLOCUTORY APPEAL FROM
THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

BRIEF FOR APPELLEE
UNITED SERVICES AUTOMOBILE ASSOCIATION

ORAL ARGUMENT REQUESTED

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VERSUS	**NO. 2008-IA-00645-SCT**
UNITED SERVICES AUTOMOBILE ASSOCIATION a/k/a USAA INSURANCE AGENCY	**APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court may evaluate possible disqualification or recusal.

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This 10th day of February, 2009.

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REQUEST FOR ORAL ARGUMENT

This interlocutory appeal presents issues important to administration of numerous USAA

homeowners insurance claims in this state following Hurricane Katrina. It also presents some issues that have not previously been addressed by this Court. USAA adjusted and paid homeowners insurance claims following Katrina in accord with its approved homeowners policy provisions which provide coverage for damage caused solely by wind. However, the Corbans as Plaintiffs/Appellants seek to invalidate certain provisions of their USAA homeowners policy so as to require that it provide coverage for hurricane damage caused or contributed to by storm surge flooding – i.e., separate damage intended to be covered by flood insurance policies issued through the National Flood Insurance program. USAA respectfully submits that oral argument would be of assistance to the Court in its consideration of these issues.

INTRODUCTION

Without citation to any record support, the Corbans wrongly claim that ACC clauses have been the largest impediment to resolution of Katrina claims. This is simply not true, at least as to homeowners insurance claims advanced by USAA insureds.

The Corbans and their supporting amici have set up a straw man to knock down. They falsely suggest that USAA uses the ACC clause in its homeowners insurance policy to exclude coverage for damage caused solely by wind during a hurricane, simply because a property is later impacted by storm surge flooding. This false suggestion is made in an attempt to fulfill the Plaintiffs' ultimate goal – the goal of achieving coverage of flood damage under homeowners insurance policies. This Court should reject that goal. The Corbans were aware that their homeowners policy did not cover flood damage. That is why they bought a separate NFIP flood insurance policy. They made a claim under that policy after Katrina and received their full flood insurance policy limits of $350,000.

The truth is that USAA does ***not*** suggest its ACC clause operates to exclude hurricane

damage caused solely by wind, just because storm surge flooding later impacts a property. Whether other insurers (or their counsel) who are not parties to this matter have ever advanced such a contention based on language in non-USAA policies is of absolutely no relevance. This case is not about the policy language, contentions, or claims adjusting practices of other insurance companies, for which USAA is not responsible. The Court should disregard the attempts by the Corbans' counsel and their amici to use this case to litigate against ACC clause interpretations allegedly advanced by other insurers and claims adjusting practices allegedly used by other insurers. Affirmation of the trial court's ruling will, in fact, preclude the specter of wholesale claims denial that the Corbans conjure.

USAA's homeowners policy does, in fact, cover hurricane damage caused solely by wind, even if storm surge flooding later impacts a property and causes additional damage or destruction. Only damage caused or contributed to by storm surge flooding is excluded. This has consistently been USAA's position and reflects the way USAA adjusted its claims. Plaintiffs engage in misrepresentation when they suggest otherwise.

The Corbans' own homeowners insurance claim demonstrates that USAA does not take the ACC clause positions about which the Corbans complain in their brief. USAA paid for all damage to the Corbans' property that it could identify as being caused solely by wind, regardless of whether that damage occurred before or after storm surge impacted the property. The Corbans were paid for wind damage to the roofs, fascia and soffits of the house and outbuildings; damage to refrigerated products when electricity went out; and additional living expenses, all totaling $58,827.29. (Record Volume 14 at 1953.) These amounts based on wind damage were paid, despite that the property was very obviously impacted and severely damaged by storm surge flooding, for which the Corbans claimed and were paid their flood insurance policy limits of $350,000. (RV1 at 81, 89; RV14 at

1953.) The provisions of the Corbans' USAA homeowners policy validly exclude coverage for such water damage caused or contributed to by storm surge flooding. (RV2 at 151.)

There is nothing about the ACC clause or water damage exclusion in USAA's homeowners policy that is unclear, unusual, or contrary to public policy. The trial court correctly found the policy provisions to be clear, valid, and enforceable. Those rulings should be affirmed.

STATEMENT OF THE CASE

I. Course of Proceedings and Disposition Below

Dr. Magruder Corban and Margaret Corban filed a Complaint against United Services Automobile Association ("USAA") on October 5, 2006. The Corbans alleged that, following Hurricane Katrina, USAA breached the terms of their homeowners insurance policy covering property located at 822 East Beach Boulevard in Long Beach. (RV1 at 11-27.) USAA answered the suit on November 14, 2006, denying that it breached the Corbans' homeowners insurance contract. (RV1 at 30-39.) USAA asserted as an affirmative defense that the damages the Corbans seek in this case are excluded from coverage under the homeowners policy water damage exclusion, including its anti-concurrent causation ("ACC") clause. (RV1 at 35.)

The case was assigned to Judge Lisa P. Dodson, proceeded through discovery, and was set for trial on March 3, 2008. (RV1 at 46.) The parties filed cross-motions for summary judgment regarding the validity of the water damage exclusion and ACC clause contained in the USAA homeowners policy issued to the Corbans. (RV1 at 57-71; RV2 at 284-86; RV5 at 696-724; RV9 at 1241-56.) The parties also filed cross-motions concerning the effect of the Corbans' acceptance of flood insurance benefits under a separate NFIP flood insurance policy for damage caused by storm surge. (RV2 at 287-95; RV4 at 478-81; RV5 at 671-88; RV9 at 1257-67; RV9-10 at 1318-64.) Oral argument was held on those motions on February 22, 2008. (RV11-12 at 1506-1691.)

Subsequently, the trial judge held a phone conference with counsel for the parties and announced her rulings. During that phone conference, and at the Corbans' suggestion, the trial court and parties agreed to an interlocutory appeal. On February 28, 2008, the trial court entered an order continuing the trial and staying the case (RV10 at 1385-86.) Orders memorializing the trial court's rulings followed on March 27, 2008. (RE at 12-21, 58-64; RV10 at 1387-96, 1397-1406.)

One of those Orders held the water damage exclusion and ACC clause in the USAA homeowners policy to be clear and unambiguous. Additionally, Judge Dodson held that the water damage exclusion and ACC clause are valid, enforceable, and not against public policy. (RE at 12-21; RV10 at 1387-96.) The Corbans filed a Petition for Interlocutory Appeal regarding this Order, to which USAA responded. This Court granted the petition for interlocutory appeal on May 16, 2008. (RV12 at 1701-02.)

The trial court also entered an Order on March 27, 2008, finding that the Corbans' damage claim under their separate NFIP flood insurance policy and their acceptance of benefits under that policy constituted an admission that their property incurred some flood damage, at least up to the amount of flood insurance benefits accepted. Judge Dodson ruled that this admission would properly be introduced into evidence at trial, because the collateral source rule does not apply to preclude it. (RE at 58-64; RV10 at 1397-1406.) In their Petition for Interlocutory Appeal, the Corbans did not specifically seek review of that Order. (RV10-12 at 1433-1700.) However, they now seek to challenge its holdings. *See* Appellants' Brief at pp. 40-43.

II. Statement of Facts

A. The Impact of Katrina on the Corban property

Margaret and Dr. Magruder Corban owned a two-story house, constructed in the 1800's and located at 822 East Beach Boulevard, Long Beach, Mississippi. (RV1 at 18, 81-82, 100, 136.) There

were also outbuildings on the property, including a garage, cottage, gazebo, pool dressing room, and potting shed. (RV2 at 254-57.)

The Corbans evacuated from the property and were not present when Hurricane Katrina made landfall on August 29, 2005. (RV1 at 82.) There were no eyewitnesses to the damage that Katrina did to the Corban property. (RV9 at 1297.) However, the house was still standing after the storm, leaving the damage and causes of damage visible and determinable. (RV2 at 271.)

The Corbans had a homeowners insurance policy with USAA, under which they made a claim following Katrina. (RV1 at 13, 55; RV1-2 at 133-168.) They also had a separate NFIP flood insurance policy issued through USAA General Indemnity Company under which they made a claim. (RV1 at 16-17; 33, 81; RV2 at 169-94; RV14 at 1953.)

The wind damage versus water damage factual dispute between the parties centers around the Corbans' contention that the first floor of their house was destroyed by wind, versus USAA's contention that the first floor was destroyed by storm surge flooding. However, it remains beyond dispute that Katrina's winds at the Corban house blew the same or stronger at the second floor level as they did at the first floor level. (RV7 at 978.) Katrina's storm surge impacted the first floor but not the second floor. (RV1 at 81,82; RV2 at 224.) The second floor remains. The first floor is gone. (USAA RE at Tabs 1-5; RV1 at 72, 81, 82, 84: RV2 at 225.)

The first floor of the house was destroyed when its walls were washed away by storm surge. (RV 1 at 72; RV2 at 225.) The second floor of the house, including the roof, remained largely intact. (RV1 at 72, 81, 82, 84, 976.) The statements in the Corbans' brief that the house lost its roof are simply untrue, as is reflected in the photographs and deposition testimony of record. (Compare Appellant's Brief at 3, 40 with USAA RE at Tabs 1-5; RV1 at 72, 82; RV7 at 943, 967-68.) **As stated succinctly by the Corbans' own engineering expert, Ted Biddy:**

"the roof is still on this house."

(RV7 at 943.)

There were no windows broken on the second floor. (USAA RE at Tabs 1-4; RV1 at 81; RV2 at 250.) There was no damage to the interior of the second floor, other than some sagging from the first floor being washed away beneath it. (RV1 at 81, 82; RV2 at 225.) The roof over the second floor was intact, with some scattered shingle damage. (RV1 at 82; RV2 at 252; RV7 at 943, 967-68.) One section of first floor roof sagged downward when the structure underneath it was destroyed by storm surge. (USAA RE at Tabs 3 & 4; RV2 at 248, 252.) One section of copper roof was deformed at the edge when the first floor underneath it was destroyed. (RV1 at 88; RV2 at 268-69.)

There was no rainwater leakage whatsoever into the second floor, and the contents of the second floor were undamaged. (RV1 at 81, 82, 84; RV2 at 225.) A treehouse on the property was undamaged. It was situated in a tree above the level of the storm surge. (USAA RE at Tab 5; RV1 at 83, 102; RV2 at 256.) Rather than being shattered by wind or wind-borne debris, large glass panels from the glassed-in front porch were found lying near the house largely intact. (RV1 at 97; RV7 at 1000.) As admitted by the Corbans' engineering expert, the wood flooring and carpets on the first floor were destroyed by storm surge. (RV5 at 743.)

USAA assigned Haag Engineering Company to inspect the property and give an engineering opinion as to causes of damage. (RV2 at 213, 223.) Haag's engineers determined that all damage to the first floor of the house was caused by storm surge flooding, which breached the first floor walls and washed out the interior of the house. (RV2 at 242.) Haag measured a still water line of 36 inches on an interior wall of the house, and Dr. Corban acknowledged the existence of that 36-inch water line. (RV1 at 82-83; RV2 at 224.) Still water lines are created when flood waters recede. Velocity water in the house, including waves, was substantially higher. (RV2 at 225-26.) Despite

the 36-inch still water line, the Corbans' engineering expert maintains based on computer modeling that only 28 inches of surge entered the house. (RV7 at 922.) However, he agreed that storm surge of 3.5 to 4 feet would cause the structural damage seen at the Corban house. (RV7 at 926-27.)

Joe Howell, an adjuster with 25 years of experience in claims adjusting (including wind claims from hurricanes and tornadoes) completed the evaluation of the Corbans' homeowners insurance claim for wind damage. (RV2 at 203, 207, 208, 210, 227-28, 243.) He found compelling evidence of storm surge damage on the first floor of the house. (RV2 at 224-26.) Upon inspecting the Corban property, Mr. Howell found water damage and flood-borne debris all the way up to the crown molding of the 12-foot ceilings on the interior of the first floor of the house. (RV2 at 224-25, 241.) Floating storm surge debris left a gouge mark 13 feet above ground level on a tree on the neighboring property. (RV2 at 264.)

B. Payment of the Corbans' Flood and Homeowners Insurance Claims

A USAA adjuster, Chris Sims, initially inspected the property and approved payment of the full $350,000 limits of the Corbans' flood insurance policy. Evidence of damage from storm surge flooding that exceeded those policy limits was obvious. (RV2 at 213-15, 223, 235.) Dr. Corban was satisfied with the way his flood insurance claim was handled. (RV1 at 81.)

The adjuster who completed the homeowners claim, Joe Howell, inspected the property again and looked for wind damage for which he could pay. (RV2 at 214, 239, 246, 252, 253.) Mr. Howell approved payment to the Corbans for more than the items that were actually damaged by wind. (RV2 at 248, 249, 252.) For example, Mr. Howell wrote his adjusting estimate for replacement of all of the shingles on the Corbans' roof, despite that not all of the shingles were damaged. He did so based on his determination that replacement of all the shingles would be more feasible than patch repairs to the damaged areas. (RV2 at 248, 249, 252.)

Notably, Mr. Howell approved payment for damage to both shingles and sheathing on the portion of first floor roof that sagged downward when the structure underneath it was washed away. (RV2 at 248, 250, 252, 253, 254.) Haag's engineering report indicated that wind damage to the shingles and sheathing may have occurred *after* the structural sagging due to wash-out of the first floor underneath. (RV2 at 248, 250, 252, 253, 254.) Thus, USAA did not exclude payment for damage caused solely by wind, simply because it occurred after water had impacted the first floor, causing excluded structural damage to the framing of the first floor roof.

Mr. Howell determined that the outbuildings on the property were destroyed by storm surge flooding, although they also likely experienced roof, fascia and soffit damage from wind before that destruction. (RV2 at 254-57, 259-60, 264, 269.) He approved payment for that shingle, fascia, and soffit damage. (RV2 at 254-57, 259-60, 264, 269.)

Based on Mr. Howell's inspection and the Haag Engineering report, USAA paid the Corbans a total of $58,826.57 under their homeowners insurance policy – $39,971.91 for roof repairs and for repainting fascia and soffits on the house and outbuildings; $1,900 for refrigerated products; and $16,955.38 in additional living expenses. (RV1 at 89; RV14 at 1953.) The Corbans were paid an additional $21,077 under a personal articles floater that did not contain a water damage exclusion. (RV1 at 89; RV14 at 1953.) When added to their flood insurance payments, the Corbans have received $429,903.57 in insurance benefits for their Katrina losses. (RV1 at 89; RV14 at 1953.)

C. The Relevant Provisions of the Corbans' USAA Homeowners Policy

The USAA homeowners policy is an "all risk" policy for coverage of the dwelling and outbuilding structures. This means that all risks to the structures are covered, other than those risks specifically excluded from coverage. (RV1 at 145, 149: RV2 at 151.) However, as is typical in most homeowners policies, coverage of contents of the dwelling and outbuildings, is written on a "named

peril" basis. One of the named perils is wind that occurs during a windstorm, but water damage incurred during a windstorm is expressly excluded. (RV1 at 145, 150; RV2 at 151.) The relevant policy provisions providing coverage for damage caused solely by wind (including wind-driven rain entering a breach in a structure) are as follows, subject to the water damage exclusion and its ACC clause:

Section I – PROPERTY COVERAGES

COVERAGE A – Dwelling

We cover:

I. the dwelling on the **residence premises** shown in the Declarations, including structures attached to the dwelling;

. . . .

COVERAGE B – Other Structures

We cover other structures on the **residence premises** set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.

. . . .

COVERAGE C – Personal Property

We cover personal property owned or used by an **insured** while it is anywhere in the world.

. . . .

Section I – PERILS INSURED AGAINST

COVERAGE A – DWELLING
We insure against risks of direct, physical loss to property described in Coverage A and Coverage B; however, we do not insure loss:

. . . .

4. excluded under SECTION I - EXCLUSIONS.

. . . .

COVERAGE C – PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in SECTION I – EXCLUSIONS.

. . . .

2. Windstorm or hail.

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing and opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

. . . .

SECTION I – EXCLUSIONS

1. We do not insure for loss caused directly or indirectly by any of the following. *Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.* [emphasis added as to ACC clause]

   c. **Water Damage,** meaning:

      (1) flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind . . . .

(RE at 27, 34, 38-39, 40; RV1 at 145, 149, 150, 151.)[1] Accordingly, damage caused solely by wind is covered. However, the policy excludes coverage of any particular item of damage to a structure or its contents that is caused by water, acting alone or in combination with other forces, including wind. There is nothing about this exclusion and its ACC clause that is unclear, invalid, or

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[1] The Corbans' counsel engage in misrepresentation when they suggest the USAA homeowners policy contains a "hurricane deductible" which somehow affects analysis of the ACC clause. *See* Appellants' Brief at p. 15, note 7. A review of the policy's declarations page clearly reflects that the policy contains a "Wind And Hail" deductible applicable when those components of any type storm cause damage to insured property. (RE at 25; RV1 at 136.)

unenforceable.

SUMMARY OF THE ARGUMENT

The trial court correctly found that the water damage exclusion and ACC clause contained in the USAA homeowners insurance policy is clear and unambiguous. An insurance policy is nothing more than a contract. It is interpreted under the same law as other contracts. The clarity of insurance policy language is judged by the language itself – not by varying interpretations offered by parties, or even by courts. Argument about application of policy language to varying fact situations does not render clear policy language ambiguous.

The ACC clause and water damage exclusion of the USAA homeowners insurance policy clearly and unambiguously exclude coverage of damage caused or contributed to by storm surge flooding. Water damage includes storm surge. All courts that have considered the question have found storm surge to be a form of flood, tidal water, waves, or overflow of a body of water. This is true despite that storm surge is driven by wind. Both the policy's ACC clause and water damage exclusion expressly preclude coverage of those surface water events, whether or not they are driven by wind.

The USAA homeowners policy does cover damage caused solely by wind. This is true regardless of whether storm surge impacts a property. It is true regardless of whether the wind, by itself, causes damage either before or after storm surge impacts a property. That other insurers or their counsel may have advanced differing interpretations of the ACC clauses in their policies is completely irrelevant. USAA's ACC clause and water damage exclusion must be judged on their own language and are clear. USAA is responsible only for its own contentions and claims adjusting. It is not responsible for the contentions and claims adjusting of other insurance companies. The trial court's ruling does not provide for any wholesale denial of claims for hurricane wind damage, and

the Corbans are wrong to suggest that it does.

There is nothing contrary to Mississippi public policy about ACC clauses. Mississippi public policy does not frown on limiting homeowners insurance coverage to damage caused solely by wind. Exclusion of coverage for damage caused or contributed to by storm surge flooding is standard and valid. Damage caused by storm surge is covered under an entirely separate insurance regime – the National Flood Insurance Program – available to all homeowners.

The Corbans seek to have this Court impose an efficient proximate cause rule on all homeowners policies. They do so in pursuit of one ultimate goal – to require coverage of storm surge damage under homeowners insurance policies, because storm surge is driven by wind. Aside from the fact that such a ruling would wreak havoc on insurance markets, including the Mississippi Windstorm Underwriting Association (State Wind Pool), Mississippi does not require that insurance policies follow an efficient proximate cause rule. In Mississippi, the efficient proximate cause doctrine – i.e., that an insured may recover for all damage as long as a covered peril was the efficient proximate cause of the loss – is simply a default rule in the absence of contract language to the contrary. A majority of states that have considered the question have held that parties can validly contract out of efficient proximate cause as the rule for determination of coverage. That is what the ACC clause in USAA's policy validly does, and it is in conformity with Mississippi law.

Mississippi has no statutory prohibition of ACC clauses. The approved policy form for the State's Wind Pool, established under Mississippi Windstorm Underwriting Act, contains ACC language and excludes coverage of damage caused, contributed to, or aggravated by storm surge. USAA's policy form does the same and was approved by the Mississippi Insurance Commission. The Commission has in no way precluded ACC clauses in homeowners policies. Mississippi case law recognizes that insurance contracts can, through exclusions, negate applicability of the efficient

proximate cause rule. The ACC clause does nothing to improperly change the parties' burdens of proof as prescribed by Mississippi law.

The trial court also properly ruled that the Corbans' have admitted their property sustained at least some flood damage. Although the Corbans did not include the trial court's Order in that regard as part of their Petition for Interlocutory Appeal, they seek to challenge it now.

The Corbans made a claim under their flood insurance policy after Katrina. They accepted flood insurance benefits under that policy for flood damage. This was not a collateral source with regard to the damages they seek in this case. Here, they seek separate damages caused by a separate peril – wind. Because they have made a flood insurance claim and have accepted flood insurance benefits, the Corbans cannot disavow those acts and proceed to trial in this case claiming that 100% of the damage to their property was caused by wind. Fundamental fairness and justice preclude such blatantly inconsistent positions for the prospect of gain. Just as with any other admission by a party, USAA is entitled to point to this admission as part of the evidence that sustains its burden of proof regarding excluded damage from storm surge flooding. The trial judge's decision in that regard should be affirmed should this Court choose to review it.

ARGUMENT

I. The Standard of Review

A lower court's grant of summary judgment is given *de novo* review by this Court. *Webb v. Braswell*, 930 So. 2d 387 (¶ 12) (Miss. 2006). A grant of summary judgment is appropriate when the motion and supporting materials "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Miss. R. Civ. P. 56(c).

Decisions to admit or exclude evidence are generally reviewed for abuse of discretion. *Delashmit v. State*, 991 So. 2d 1215 (¶ 9) (Miss. 2008). However, if a question of law is involved

in the decision to admit or exclude evidence, the issue of law is reviewed *de novo*. *Id.*

II. The ACC Clause Contained in USAA's Homeowners Policy Is Clear and Unambiguous.

A. Mississippi Law on Insurance Policy Interpretation

An insurance policy is nothing more than a contract, and Mississippi law requires interpretation of insurance policies under the same law as other contracts. *Noxubee County Sch. Dist. v. United Nat'l Ins. Co.*, 883 So. 2d 1159 (¶ 16) (Miss. 2004); *Boteler v. State Farm Cas. Ins. Co.*, 876 So.2d 1067 (¶ 12) (Miss. Ct. App. 2004). If a provision of an insurance policy is clear and unambiguous, it is to be interpreted and applied as written, according to its plain meaning. *Noxubee*, 883 So. 2d at ¶ 13; *Robley v. Blue Cross/Blue Shield of Miss.*, 935 So.2d 990 (¶ 18) (Miss. 2006).

Whether a policy provision is unambiguous is judged by its own language, and is a question of law for the Court, not a fact question for a jury. *Noxubee*, 883 So. 2d at ¶ 13 (question of law for the court); *State Auto. Mut. Ins. Co. of Columbus v. Glover*, 253 Miss. 477, 176 So. 2d 256, 258 (1965) (provision judged by its own language).

> Ambiguity . . . can not be forced into a policy where there is none. This Court has held that it will not rewrite or deem a contract ambiguous where the language is clear and indicative of its contents.

Mississippi Farm Bureau Mut. Ins. Co. v. Walters, 908 So. 2d 765 (¶ 14) (Miss. 2005).

That parties to a case may advance differing interpretations of a policy provision does not make that provision ambiguous or unenforceable. *Delta Pride Catfish, Inc. v. Home Ins. Co.*, 697 So.2d 400, 404 (Miss. 1997); *Cherry, Anthony, Gibbs, Sage*, 501 So.2d 416, 419 (Miss. 1987). That courts have issued differing interpretations of a policy provision does not make the provision ambiguous. *Wooten v. Mississippi Farm Bureau Ins. Co.*, 924 So. 2d 519 (¶¶ 10-11) (Miss. 2006) (differing judicial interpretations of phrase within policy did not make the phrase ambiguous).