No. 19-689

IN THE

Supreme Court of the United States

MARK CHAPMAN, *et al.*,

Petitioners,

v.

ACE AMERICAN INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether the Eleventh Circuit correctly granted summary judgment in this state-law insurance coverage matter, which raises no issues of federal law.

Whether the Eleventh Circuit abused its discretion in denying Petitioners' motion to certify a public policy question to the Florida Supreme Court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, respondent ACE American Insurance Company states that it is a direct, wholly-owned subsidiary of INA Holdings Corporation. INA Holdings Corporation is a wholly-owned subsidiary of INA Financial Corporation. INA Financial Corporation is a wholly-owned subsidiary of INA Corporation. INA Corporation is a wholly-owned subsidiary of Chubb INA Holdings Inc. Chubb INA Holdings Inc. is owned 80% by Chubb Group Holdings Inc. and 20% by Chubb Limited. Chubb Group Holdings Inc. is a wholly-owned subsidiary of Chubb Limited. Chubb Limited is publicly traded on the New York Stock Exchange (symbol: CB). No publicly held corporation owns 10% or more of the stock of Chubb Limited.

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INTRODUCTION

This is a state law insurance coverage dispute that was originally filed by Petitioners[1] in Florida state court and removed to federal court on diversity grounds. There is no reason, compelling or otherwise, for this Court to grant certiorari.

This matter does not involve a circuit split; does not involve any decision of a state court of last resort; and does not involve any question of federal law. Rather, the Eleventh Circuit merely affirmed the trial court's grant of summary judgment for Respondent Ace American Insurance Company ("**ACE**"), correctly holding on undisputed material facts that the insurance policy at issue (the "**ACE Policy**") did not cover claims that Petitioners had made against a defendant in an underlying state court personal injury suit (the "**Underlying Suit**"). In so doing, the Eleventh Circuit correctly applied well-established Florida insurance law principles.

Petitioners now argue that the Eleventh Circuit misapplied Federal Rule of Civil Procedure 56 and also abused its discretion by denying their motion to certify two questions of law to the Florida Supreme Court. Neither argument has merit.

First, the Eleventh Circuit explicitly applied the correct summary judgment standard in its *de novo* review of the district court's decision. Pet. App. at 5a. The

1. Petitioners are Mark Chapman, individually and as personal representative of the estates of Gregory Chapman and Barbara Chapman, and Irene Chapman (the "Chapmans").

Circuit interpreted the ACE Policy's plain language and determined as a matter of law that the Underlying Suit did not fall within the ACE Policy's coverage grant. *Id.* In this process, the Eleventh Circuit carefully reviewed the factual allegations and credited all that were material.

Second, the Eleventh Circuit properly denied Petitioners' motion to certify two questions of law to the Florida Supreme Court, and there was no abuse of discretion. Petitioners never raised any novel or unsettled question of Florida law that warranted certification to the Florida Supreme Court. Rather, Petitioners urged the Eleventh Circuit to ask the Florida Supreme Court to fashion a broad public policy from a Florida statute that does not regulate insurers and is silent on the purported policy concern.

The Court should deny the petition.

STATEMENT OF THE CASE

Petitioners filed this state law insurance coverage case in the Hillsborough County, Florida 13th Judicial Circuit Court on June 9, 2016. ACE timely removed the case on diversity grounds to the United States District Court for the Middle District of Florida under 28 U.S.C. § 1332.

The Underlying Suit

Petitioners seek to collect on a consent judgment they obtained from Robert Taylor in an underlying Florida state court tort action known as *Chapman, et al. v. Taylor, et al.*, Florida 13th Circuit Court, Hillsborough County, No. 99-06242 (the "**Underlying Suit**").

Petitioners and others filed the Underlying Suit in 1999, alleging state law claims for wrongful death, unjust enrichment, deceptive trade practices, and infliction of severe emotional distress.[2] Petitioners alleged that between January and May of 1998, Mr. Taylor counseled their son, Gregory Chapman, a minor, for behavioral problems and Attention Deficit Hyperactivity Disorder ("**ADHD**"). Tragically, Gregory Chapman committed suicide in May 1998. Petitioners alleged that his suicide was a direct consequence of Mr. Taylor's counseling.

While Mr. Taylor allegedly "held himself out to the public as a licensed provider of mental health counseling and substance abuse services to minors," he was not either of those things. Pet. App. at 3a-4a. In fact, Mr. Taylor did *not* have a license to provide mental health counseling as required by Florida Statutes 491, *et seq.*, and he was *not* licensed to provide substance abuse counseling to minors.

In fact, Mr. Taylor was criminally charged and convicted for providing unlicensed counseling services:

> In 1999, Taylor pleaded guilty in state court to four felony counts of organized fraud and twenty felony counts of grand theft. Taylor's offense conduct included, among other things, providing—and collecting payment for—unlicensed counseling services to patients, including Gregory.

Pet. App. at 3a.

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2. Kathy and William Ruff and their daughter, Melissa LaGotte, were also plaintiffs in the Underlying Suit. They settled their separate claims with ACE and were not parties to this case at the time the district court decided ACE's summary judgment motion.

During the relevant time, ACE insured Mr. Taylor under an "Allied Health Care Provider Professional and Supplemental Policy" for the sole designated professional occupation of "Drug & Alcohol Abuse Counselor." Pet. App. at 7a.

Because the ACE Policy did not cover the type of counseling that Mr. Taylor was allegedly providing to Gregory Chapman, ACE declined to defend Mr. Taylor in the Underlying Suit. Pet. App. at 4a.

In 2012, Petitioners and Mr. Taylor stipulated in the Underlying Suit to the entry of a consent judgment and an assignment of rights against ACE under *Coblentz v. American Sur. Co. of New York*, 416 F.2d 1059 (5th Cir. 1969) (the "**Consent Judgment**").

The Suit Against ACE

In 2016, four years after entry of the Consent Judgment in the Underlying Suit, Petitioners sued ACE in Florida state court to collect on that judgment. As assignees, Petitioners asserted a state law claim for breach of contract based on ACE's refusal to defend and indemnify Mr. Taylor in the Underlying Suit. Pet. App. at 21a.

ACE moved for summary judgment on the basis that there was no coverage for the claims in the Underlying Suit and that the Consent Judgment was accordingly unenforceable. Petitioners cross-moved for partial summary judgment. Following briefing and oral argument, the district court granted ACE's motion and held that (1) ACE had no duty to defend the Underlying Suit; (2) none

of the damages in Petitioners' Consent Judgment were covered by the ACE Policy; and, alternatively, (3) none of the damages in the Consent Judgment were or could be allocated to only covered claims. Pet. App. at 11a-38a.

Petitioners appealed the district court's judgment to the Eleventh Circuit. After the parties completed briefing, Petitioners moved—for the first time—to certify two questions to the Florida Supreme Court:

- Does the statutory and regulatory scheme of Chapter 397 of the Florida Statutes,[3] including Fla. Stat. § 397.403(d)'s obligation of liability insurance coverage, require liability insurance that covers the service provider's liability under Fla. Stat. § 397.501(3)(a) and (10)?

- Must insurance coverage provided to a substance abuse provider pursuant to the statutory and regulatory scheme of Chapter 397 of the Florida Statutes be interpreted in light of the provisions of Chapter 397.

The Eleventh Circuit's Decision.

The Eleventh Circuit reviewed the district court's grant of summary judgment *de novo* and properly applied Federal Rule of Civil Procedure 56. The Eleventh Circuit made the basis of its review explicit: "Summary judgment is appropriate when the evidence, viewed *in the light*

3. Chapter 397 is known as the Alcohol and Other Drug Services Act and regulates substance abuse treatment.

most favorable to the nonmoving party, presents no genuine issue of material fact and compels judgment as a matter of law." Pet. App. at 5a (emphasis added). The court then acknowledged that, pursuant to *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), "[w]e are bound by the substantive law of Florida in deciding this diversity case." Pet App. at 5a. The Eleventh Circuit then applied the Florida Supreme Court's controlling decision in *Jones v. Fla. Ins. Guar. Ass'n, Inc.*, 908 So. 2d 435 (Fla. 2005), which makes clear that "[u]nder Florida law, an insurer owes a duty to defend its insured 'when the complaint alleges facts that fairly and potentially bring the suit within policy coverage.'" Pet. App. at 5a.

The Eleventh Circuit then analyzed the ACE Policy and the allegations made in the Underlying Suit and determined that ACE owed no duty to defend or indemnify Taylor against Petitioners' claims in the Underlying Suit. Pet. App at 10a.

The Eleventh Circuit explained that, under the ACE Policy's plain language, it applied only to claims arising out of "drug and alcohol abuse counseling." Pet. App. at 9a. The court then examined Petitioners' claims against Mr. Taylor from the Underlying Suit and determined that their claims—on their face—arose out of *mental health* counseling, which is a separate and distinct profession under Florida law. Pet. App. at 9a ("Under Florida law, mental health counseling and substance abuse counseling are treated as distinct professions, governed by different statutes, and licensing and training requirements. Compare Fla. Stat. § 491.02, et seq. (mental health and family counselors) with § 397.401, et seq. (substance abuse counselors)").

The Eleventh Circuit reached its conclusion after examining Petitioners' allegations against Mr. Taylor in the Underlying Suit, including the following paragraphs from their complaint:

- 10. At all material times, Taylor held himself out to the public as properly licensed to provide mental health consulting to minors and adults, and family counseling, as required by Florida Statute 491.012(2), when in fact he was not licensed to provide said services.

- 19a. Mark and Barbara Chapman were having behavioral problems with their son, Gregory Chapman, which included stealing little items out of Barbara's purse. . . . The Chapmans were . . . told that Taylor could help with Gregory's behavioral problems and had ADHD training and could help treat Gregory's ADHD problems.

- 36. Defendant Taylor was not qualified by education, experience or any license issued by the State of Florida to provide mental health counseling to juveniles or adults.

- 43. Taylor and Concepts breached their duties to the plaintiffs and are strictly liable for such breach, in that they concealed from Gregory Chapman and his parents that Taylor was not competent or licensed to provide mental health counseling to Gregory Chapman. In addition, at no time through

> the treatment course of Gregory Chapman did the Defendants refer Gregory Chapman to any qualified mental health provider or otherwise seek a qualified medical opinion as to Gregory Chapman's mental condition and appropriate treatment therefore.
>
> • 49. Defendants breached their duty to the Plaintiffs by failing to refer or suggest referral of Gregory Chapman to a qualified mental health provider.

Pet. App. at 7a-8a.

The Eleventh Circuit also noted that "[t]he amended complaint contained no allegations that Gregory struggled with substance abuse, that Plaintiffs hired Taylor to provide substance abuse counseling services for Gregory, or that Taylor provided substance abuse counseling for Gregory." Pet. App. at 8a.

The Eleventh Circuit correctly determined that, "[i] n the light of [Petitioners'] allegations in the Underlying Suit, Taylor's complained-of conduct *falls clearly outside the [ACE] Policy's definition of 'professional services.'* Under the plain language of the [ACE] Policy, 'professional services' means 'Drug & Alcohol Abuse Counsel[ing]' services for which Taylor was 'licensed, trained, or being trained to provide.'" Pet. App. at 9a (emphasis added).

The Eleventh Circuit also correctly rejected Petitioners' unsupported contention that Chapter 397 of the Florida Statutes somehow gives rise to a statutorily-mandated duty to defend the Underlying Suit. Pet. App. at 5a, n. 4. It does not.

In a separate order, the Eleventh Circuit denied Petitioners' motion to certify their questions regarding Chapter 397 to the Florida Supreme Court. Pet. App. at 39a-40a. Thereafter, the Eleventh Circuit denied the Chapmans' petitions for rehearing and *en banc* review. Pet. App. at 41a-42a.

REASONS FOR DENYING THE WRIT

There is no Compelling Reason for the Court to review this State-Law Insurance Coverage Question

This Court's rules make clear that it will only grant certiorari for "compelling reasons." S. Ct. Rule 10. There is no compelling reason here. This case does not involve a circuit split, the decision of a state court of last resort, or any question of federal law. *Id.* at (a)-(c). Petitioners argue only that the Eleventh Circuit (and the district court before it) somehow misapplied Federal Rule of Civil Procedure 56 in granting and then affirming summary judgment. But "certiorari is rarely granted when the asserted error consists of … the misapplication of a properly stated rule of law." S. Ct. Rule 10. The Petition offers no reason why this case should be the rare exception to these rules.

I. The Eleventh Circuit Properly Applied FRCP 56, and Summary Judgment Was Appropriate

The argument that the Eleventh Circuit "[v]iolate[d] *Tolan v. Cotton* and FRCP 56" has no merit. Pet. at 36.

First, *Tolan v. Cotton*, 572 U.S. 650 (2014), did not announce any new principle of law or method by which courts should approach summary judgment. Indeed, as Justice Alito made clear in his concurrence, "[t]here is no

confusion in the courts of appeals about the standard to be applied in ruling on a summary judgment motion." *Id.* at 661 (Alito, J., concurring). The Court simply applied Rule 56 to the facts *in that case* and determined that the Fifth Circuit had erred by not drawing all "factual inferences" "in favor of the nonmoving party." *Id.* at 660.

Here, the Eleventh Circuit *correctly* applied Rule 56 and "[v]iew[ed] the record in the light most favorable to [Petitioners]." Pet. App. at 10a. Unlike *Tolan*, this case does not involve any conflicting facts whatsoever, much less conflicting eyewitness accounts. Rather, as described above, the Eleventh Circuit decided the routine state law insurance coverage question of whether ACE had a duty to defend Taylor in the Underlying Suit and indemnify Taylor against the Consent Judgment in that suit. *See, e.g.*, *Fireman's Fund Ins. Co. v. Tropical Shipping & Constr. Co.*, 254 F.3d 987, 1003 (11th Cir. 2001) ("The question of the extent of coverage under an insurance policy is a question of law").

The *only* relevant facts that the Eleventh Circuit considered were the Petitioners' allegations in the Underlying Suit and the terms of the ACE Policy—and those facts were not in dispute or conflicting. *See Jones v. Fla. Ins. Guar. Ass'n, Inc.*, 908 So. 2d 435, 443 (Fla. 2005); *James River Ins. Co. v. Ground Down Eng'g, Inc.*, 540 F.3d 1270, 1275 (11th Cir. 2008) (duty to defend "depends solely on the facts and legal theories alleged in the pleadings and claims against the insured"). Based on those undisputed facts, the court held that "[b]ecause [Petitioners] have failed to allege facts that 'fairly and potentially bring the suit within policy coverage,' the district court concluded correctly—as a matter of Florida law—that ACE owed no duty to defend or to defend Taylor against [Petitioners'] claims in the Underlying Suit." Pet. App. at 5a, 10a.

Second, even a cursory review of the Eleventh Circuit's well-supported opinion refutes Petitioners' contention that the court somehow "selectively" reviewed the allegations in the Underlying Suit or "overlooked" or "reformed" any of those allegations. The decision below sets forth, verbatim, the relevant factual allegations in the Underlying Suit, provides detailed analysis of the reasons that the ACE Policy provided no coverage, and analyzes why other allegations (those pertaining to the Ruff and LaGotte plaintiffs, who are no longer parties to this case) did not obligate ACE to defend Petitioners' claims in the Underlying Suit. Pet. App. at 8a-9a, n. 3).[4]

The Eleventh Circuit correctly applied the Rule 56 standard and determined, under settled rules of Florida substantive law, that ACE was entitled to judgment.[5]

II. The Eleventh Circuit Exercised Sound Discretion in Denying Petitioners' Motion to Certify Questions to the Florida Supreme Court

Petitioners invite this Court to micromanage the Eleventh Circuit's decisions on whether and when to

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4. Petitioners also assert that the district court and the Eleventh Circuit "rejected sworn evidence" in violation of Rule 56 and *Tolan*. Pet. at 38. There is no basis for this assertion. Although ACE objected to certain evidence in its summary judgment briefing, neither the district court nor the Eleventh Circuit ever ruled on any of ACE's objections.

5. Even charitably read, Petitioners (at most) claim that the Eleventh Circuit made erroneous factual findings or misapplied a properly stated rule of law. That is not a basis for granting certiorari. S. Ct. Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law").

certify questions to a state supreme court. But such decisions are properly left to the sound discretion of federal judges, and Petitioners have not established that the Eleventh Circuit abused its discretion in denying their certification motion. *Cf. Lehman Bros. v. Schein*, 416 U.S. 386, 392 (Rehnquist, J. concurring) (emphasizing the "scope of the discretion of federal judges in deciding whether to use such certification procedures").

Moreover, the Eleventh Circuit *actually considered* the statute that was the subject of Petitioners' motion to certify and then *rejected* Petitioners' unsupported policy argument. Pet. App. at 10a, n.5 ("We reject Plaintiffs' contention that the public policy, legislative intent, or language of Florida's statutes governing substance abuse services (Fla. Stat. § 397 et seq.) give rise to a statutorily mandated duty to defend in this case.") The Eleventh Circuit got it right: there is no uncertainty on the questions Petitioners sought to have certified to the Florida Supreme Court.

Under Florida's certification procedure, the decision whether to certify a legal question rests in the federal court's sound discretion and is reserved for cases in which there is "no controlling precedent of the Supreme Court of Florida" or "substantial doubt" about the particular issue of state law. FLA. CONST. art. V, § 3(b)(6) (authorizing certification of questions "if the answer is determinative of the cause" and there is no controlling precedent); *Jones v. Dillard's, Inc.*, 331 F.3d 1259, 1268 (11th Cir. 2003) ("substantial doubt").

The essence of Petitioners' first proposed certified question was: *how should a statute be interpreted*? And

the essence of their second question was: *how should an insurance policy be interpreted*? Florida law on both of these issues is well settled, and the Eleventh Circuit was fully capable of answering those questions without further guidance from the Florida Supreme Court. *See, e.g.*, *Trinidad v. Florida Peninsula Ins. Co.*, 121 So. 3d 433, 439 (2013) (statutes, including statutes that potentially pertain to insurance coverage, are interpreted and applied according to their plain language); *Taurus Holdings, Inc. v. United States Fid. & Guar. Co.*, 913 So. 2d 528, 532 (2005) (insurance policies are interpreted according to their plain meaning). There was simply no uncertainty in Florida law relating to any aspect of Petitioners' case.

Florida law is settled: an insurer's obligations are governed by the terms of the insurance contract, state law contract principles, and the Florida Insurance Code. FLA. STAT., ch. 624. Nothing in Florida law suggests any uncertainty on this point. Rather, the Florida Supreme Court has held that non-automobile liability insurance policies, such as the ACE Policy, "'are not subject to statutory parameters and are simply a matter of contract not subject to statutory requirements.'" *Nunez v. Geico Gen. Ins. Co.*, 117 So. 3d 388, 391-92 (Fla. 2013) (quoting *Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So. 3d 1086, n.1 (Fla. 2010)).

CONCLUSION

For the foregoing reasons, ACE respectfully requests that the Court deny the Petition.

Respectfully submitted,

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