

**ARIZONA SUPREME COURT**

MICHAEL COREY CRAVENS,  
surviving spouse of SAMANTHA J.  
CRAVENS, deceased,

Plaintiff/Appellee,

v.

MARTIN A. MONTANO JR., a single  
man; and CASES CUSTOM FLOOR  
CARE, LLC., an Arizona limited liability  
company;

Defendants.

CINCINNATI INDEMNITY COMPANY,

Plaintiff in Intervention/  
Appellant,

MARTIN A. MONTANO JR.,

Defendant in Intervention.

Arizona Supreme Court  
No. CV-24-0143-PR

Arizona Court of Appeals  
No. 2 CA-CV 2023-0108

Pima County Superior Court  
No. C20192093

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**APPELLEE'S SUPPLEMENTAL BRIEF**

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## INTRODUCTION

On the first issue under review, this case involves every-day issues of contract interpretation that have been well-settled by the Court of Appeals on two occasions now: the phrase “in connection with” means a “link, association, or relationship.” *Cravens v. Montano*, CA-CV 2023-0108 (App. 2024) (“Memorandum Decision”); *Cal. Cas. Ins. Co. v. Am. Family Mut. Ins. Co.*, 208 Ariz. 416, ¶ 8 (App. 2004). Both times the Court of Appeals has resolved this issue, it did so on the plain and ordinary meaning of the words. This interpretive method allows individuals and businesses to correctly order their affairs by providing predictability in contracts. Further, Arizona has a strong public policy of protecting insureds and ensuring that insurance policies are interpreted in a way that is intelligible to those without legal training. Instead, Cincinnati would have this Court define the plain language “in connection with” as the complicated legal concept “course and scope of employment.” This would upset the law of contracts in Arizona.

On the second issue under review, under current law, *Morris* agreements are enforceable so long as they are “made fairly, with notice to the insurer, and without fraud or collusion on the insurer.” *United Servs. Auto. Ass’n v. Morris*, 154 Ariz. 113, 119 (1987). Put another way, they must not artificially increase liability to the insurer. There is nothing in the law which invalidates a *Morris* agreement solely by virtue of it being “contingent” so long as the other requirements are met. There is no

need to change Arizona's law.

Moreover, the *Morris* agreement in this case (the “Cravens-Montano *Morris* Agreement”) was not “contingent” and did nothing to increase potential liability against Cincinnati, Montano, or Casas, nor risk an advisory opinion. Instead, the Cravens-Montano *Morris* Agreement certainly reduced the personal liability of Montano and Casas so long as the material terms were performed. At bottom, the Cravens-Montano *Morris* Agreement was reasonable, and not fraudulent or collusive. It must be enforced.

**Issue 1: What is the proper interpretation of the phrase “in connection with your business” as used in a nonowned auto provision of an employer’s commercial automobile insurance policy?**

Answer: As used in a nonowned auto provision of an employer’s commercial automobile insurance policy, the phrase “in connection with your business” is properly interpreted as “linked, associated, or related to your business” based on the plain meaning of the words.

This is a non-controversial interpretation that achieves a common-sense result. Cincinnati has interpreted its own “Expanded Coverage Plus” policy endorsement (the “Expanded Coverage Endorsement”) to mean “**If [employee] was using his personal vehicle in connection with [employer]’s business...then the vehicle is a covered auto and he is an insured.**” (OB at ep. 23, bold added.).

**a. Arizona law is well-settled regarding the method of interpreting insurance contracts: the plain language controls**

Insurance policies are, first and foremost, contracts, Arizona law is clear on how to interpret contracts generally: a court should look to the plain language of the contract to determine the intent of the parties. *Teufel*, 244 Ariz. 383, 385, ¶ 10 (“We accord words used in policies their plain and ordinary meaning”). If there is only one reasonable interpretation (based on the plain language), the court should end its analysis with the plain language. *Id.*

This analysis is modified in the context of insurance policies. When the contract at issue is an insurance policy, the contract must be interpreted to protect the insured and interpret the contract as it would be understood by a layperson untrained in law or insurance. *Fidelity Nat. Title Ins. Co. v. Osborn III Partners, LLC*, 254 Ariz. 440, 443, ¶14 (2023); *see also Liberty Ins. Underwriters, Inc. v. Weitz Co., LLC*, 215 Ariz. 80, ¶ 8 (App. 2007) (“courts construe the written terms of insurance contracts to effectuate the parties’ intent, and to protect the reasonable expectations of the insured”) (internal quotations omitted).

**b. The Expanded Coverage Endorsement provides expanded coverage beyond the course and scope of employment provided by the base policy.**

At the time Martin Montano struck and killed Samantha Cravens, Montano was driving a personal vehicle from a Casas jobsite where he unloaded material on his way to the Casas office for the sole purpose of correcting his timesheet, a Casas business record. ([ROA 227](#), ep. 3, ¶ E; [ROA 301](#), ep 2:4-7). At the time of

Samantha’s death, Casas held a business auto policy issued by Cincinnati (the “Policy”) that included the Expanded Coverage Endorsement.

The Policy specifically promises that Cincinnati “will pay all sums an ‘insured’ legally must pay as damages because of ‘bodily injury’ . . . to which this insurance applies, caused by an ‘accident’ and resulting from the . . . use of a covered ‘auto.’” (Respondent’s Appendix dated August 2, 2024 “RA”) (RA 14). The Policy defines as insureds “[a]nyone . . . while using with your permission a covered ‘auto’ you own, hire or borrow.” (RA 14). The Policy defines “nonowned ‘autos’” as those “you do not own, lease, hire, rent or borrow that are used **in connection with your business.**” (RA 13, ¶ A.9). Item Two of the Declarations Page makes clear that insurance applies to nonowned autos. (RA 12).

The Expanded Coverage Endorsement states that it amends the Policy “by adding the following” as “insureds”: “[a]ny of your employees while using a covered ‘auto’ in your business or personal affairs, provided you do not own, hire or borrow that ‘auto.’” (RA 23 ¶ F). Neither the Policy nor the Expanded Coverage Endorsement define the phrase “in connection with.”

In interpreting its own policy, Cincinnati has admitted that “If [Montano] was using his personal vehicle in connection with CCFC’s business...**then the vehicle is a covered auto and he is an insured.**” (OB at ep. 23, bold added). In a reservation of rights letter it sent to Montano, Cincinnati also admitted that “In order for a

vehicle to qualify as a ‘non-owned auto’ it must be, at the time of the accident, being used in connection with Casas Custom Floor Care’s business.” ([ROA 189](#), ep. 41). In a later letter, Casas admitted that the purpose of nonowned autos coverage is “to protect an employer when autos not owned by it are used in its business.” ([ROA 189](#), ep. 50).

**c. Applying well-settled principles of contract interpretation to the Expanded Coverage Endorsement there is only one correct result: “in connection with your business” means activities “linked, associated, or related to your business.”**

In the absence of express definitions within a contract, courts may consider dictionary definitions to ascertain a lay person meaning. *Centerpoint Mech. Lien Claims, LLC v. Commonwealth Land Title Ins. Co.*, 255 Ariz. 261, ¶ 45, (App. 2023). “If the terms are clear, [courts] enforce them unless the [policy] is illegal or violates public policy.” *Apollo Educ. Grp., Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 250 Ariz. 408, ¶ 11 (2021). When interpreting policy provisions, courts “will not pervert or do violence to the language used, or expand it beyond its plain and ordinary meaning or add something to the contract which the parties have not put there.” *Emps. Mut. Cas. Co. v. DGG & CAR, Inc.*, 218 Ariz. 262, ¶ 24 (2008); quoting *D.M.A.F.B. Fed. Credit Union v. Emps. Mut. Liab. Ins. Co.*, 96 Ariz. 399, 403 (1964).

“The word ‘connection’ is commonly defined as a link, an association or a relationship.” *California Cas. Ins. Co. v. Am. Family Mut. Ins. Co.*, 208 Ariz. 416,

419, ¶ 8 (App. 2004); *see also* Random House Webster’s College Dictionary 282 (2d ed. 1999). Thus, the phrase “in connection with your business” means those uses that are linked, associated, or related to the insured’s business. This phrase is not ambiguous, and vitally Cincinnati has not offered an alternative definition of the phrase. *Teufel v. Am. Family Mut. Ins. Co.*, 244 Ariz. 383, 385, ¶ 10 (2018) (policy only ambiguous if subject to “conflicting reasonable interpretations”), *quoting State Farm Mut. Auto. Ins. v. Wilson*, 162 Ariz. 251, 258 (1989).

Instead, Cincinnati asks this Court to interpret the phrase “in connection with your business” to mean “within the course and scope of employment.” (PR p. 13). Cincinnati does not begin to provide a textual basis for this analysis. Instead, Cincinnati argues, without support, that “[m]ost workers readily understand when they are working or ‘on the clock’ and thus under their employer’s control, i.e., course and scope of employment.” (PR p. 12). But this argument ignores the fact that neither the Policy nor the Expanded Coverage Endorsement use the phrase “course and scope of employment.”

The phrase “in connection with your business” is not a synonym of “course and scope of employment.” First, “course and scope of employment” is not a well-defined phrase but is instead a legal test to determine vicarious liability. *Engler v. Gulf Interstate Eng’g, Inc.*, 230 Ariz. 55, ¶¶ 9, 13 (2012). Determining course and scope is usually a question of fact for the jury. *Id.* at ¶ 17, *quoting McCloud v. State*,

*Ariz. Dept. of Pub. Safety*, 217 Ariz. 82, 91, ¶ 29 (App. 2007). At best, the phrase “course and scope of employment” means something like “those acts taken by an employee that were assigned by the employer or engaging in a course of conduct subject to the employer’s control.” *Restatement (Third) of Agency* § 7.07(2). Second, definitions of course and scope of employment differ between areas of law and from state to state. *Engler*, 230 Ariz. 55, ¶ 15 (recognizing “course and scope” means something different in worker’s compensation contexts).

A careful review of Cincinnati’s Petition demonstrates that Cincinnati would have this Court employ a “carefully formulated . . . test for determining” whether a use was “in connection with a business” but does not attempt to provide such a test other than to reference the test used in *California Casualty* when comparing premises to determine if they were “in connection with” another premises. (PR pp. 9-10).

In *California Casualty*, the Court of Appeals looked at other Arizona cases to determine how “courts generally” “determine[e] whether premises are used ‘in connection with’ insured premises.” 208 Ariz. 416, ¶ 9. In essence, the Court of Appeals summarized the reasoning of those Courts to determine that “courts generally consider the proximity of the premises, the type of use of the premises, and the purpose of the insurance policy as a whole.” *Id.* Doing the same here is impossible, as there are no Arizona cases that have previously considered whether

an auto was “used in connection with” an insured’s business, but looking at Cincinnati’s out-of-state cases, there is no suggestion that other courts have interpreted “in connection with” to mean course and scope.

In *State Farm Fire and Casualty Company v. Aero Services*, 4:23-CV-00016-HRH, 2024 WL 4692288, at \*2 (D. Alaska Nov. 6, 2024), a federal district court in Alaska found that a vehicle was not used in connection with the named insured’s business where it was “undisputed that [employee] owned the accident vehicle. It is undisputed that [employee] was using the accident vehicle in furtherance of his personal affairs, not Aero Services’ business.” *Id.* at \*6.

In *Union Standard Ins. Co. v. Hobbs Rental Corp.*, 566 F.3d 950, 954 (10<sup>th</sup> Cir. 2009), the Tenth Circuit held that “the ‘non-owned’ auto provision does not provide coverage for vehicles under the operation and control of third-party independent contractors” but noted that “the use of personal vehicles by employees **acting on the company’s behalf** might be covered.” *Id.* The tenth circuit adopted a “sufficient nexus” test to determine whether a non-owned vehicle was being used “in connection with [an insured’s] business.” *Id.* This is not an adoption of “course and scope” as the standard.

The same is true in *Bartolomucci v. Federal Insurance Co.*, 770 S.E.2d 451 (Va. 2015). Virginia’s Supreme Court did not address the phrase “in connection with” but nonetheless rejected a “course and scope” analysis reasoning “we evaluate

contracts based on what the instruments actually say, not on what may have been intended.” *Id.* at n.3.

Instead of addressing the language “in connection with”, Cincinnati focuses on supposed “unintended and deleterious impact[s] on the public as well, particularly those with personal auto policies that exclude coverage for non-owned autos while used in one’s business or occupation.” (PR p. 9). But Cincinnati merely pays lip service to the idea of unintended consequences and does not identify any. Cincinnati is at liberty to change its policy language on its policies moving forward to protect itself or its insureds if it is truly concerned that the phrase “in connection with” “would further blur the distinction between a personal and commercial auto policy.” (PR p. 9). Moreover, Cincinnati provides no explanation why blurring such a distinction would be meaningful in the context of formulating Arizona law on the interpretation of contracts.

Ultimately, Cincinnati would ask this Court to interpret “in connection with” to mean “course and scope” without providing a meaningful reason why those two phrases are equal. Beyond that, Cincinnati does not meaningfully dispute that Montano’s use of his vehicle was linked, associated, or related to his employment; Cincinnati admits that Montano was driving “toward Casas’ yard to correct a time sheet” at the time of the accident (PR p. 3). Even if this Court were to change the standard for when a vehicle is used “in connection with” from that set forth in the

dictionary and under *California Casualty*, there is no need to remand for further proceedings.

**Issue 2: Is a contingent *Morris* agreement unenforceable?**

Answer: Contingent *Morris* agreements can be enforceable so long as they are “neither fraudulent, collusive, nor otherwise against public policy”, and the Cravens-Montano *Morris* Agreement is not contingent. See *Arizona Prop. & Cas. Ins. Guar. Fund v. Helme*, 153 Ariz. 129, 138 (1987)

Read broadly, *Morris* stands for the proposition that *Morris* agreements must not be unfair to the insurer by artificially increasing the insurer’s liability. Read narrowly, *Morris* stands for the proposition that an insured can make any agreement it sees fit so long as that agreement is not fraudulent or collusive and the stipulated judgment is reasonable. Under either reading, the Cravens-Montano *Morris* Agreement in this case is legally valid and enforceable, and does nothing in reality or in theory that would artificially increase Cincinnati’s liability under its insurance policy.

- a. To be enforceable *Morris* agreements must only be free from fraud, collusion, and reasonable in stipulated judgment amount.**

*Morris* agreements are an attempt by Arizona Courts to address a difficult situation. First, there are the complicated legal issues surrounding a breach of an indemnity agreement. In an insurance contract, the insured owes a duty of cooperation to the insurer. *Colorado Cas. Ins. Co. v. Safety Control Co., Inc.*, 230

Ariz. 560, ¶ 13 (App. 2012) (“The insured, in turn, must cooperate with the insurer and aid in his defense.”). That duty requires the insured to aid the insurer in the defense, and not settle with the claimant without the insurer’s consent *Morris*, 154 Ariz.113, 117. But once the insurer commits an antecedent breach of the insurance contract by failing to defend or proceeding under a reservation of rights, the insured’s duties under the cooperation clause are narrowed. *Helme*, 153 Ariz. at 137 (“Insurance policies, however, are governed by the basic contract law principle that if one party to a contract breaches the agreement, the other party is no longer obligated to perform his or her contractual obligations”). Freed from the cooperation clause, the insured would be free to enter into any contract necessary to protect his or herself that is “made fairly, with notice to the insurer, and without fraud or collusion on the insurer.” *Morris*, 154 Ariz. At 119. Put another way, *Helme/Morris* restrict such agreements to protect the insurer.

A majority of courts resolve this type of conflict by permitting an insured to reject a defense offered under a reservation of rights. The insured thus forces the insurer to elect either to defend unconditionally or to refuse to defend at its peril . . . This solution puts an insurer honestly attempting to perform its duties between Scylla and Charybdis. The insurer must either give up its right to raise tenable coverage defenses or its right to insist on full application of the cooperation clause . . . The better result would permit the insurer to raise the coverage defense, and also permit an insured to protect himself from the risk of noncoverage or excess judgment, while at the same time protecting the insurer from unreasonable agreements between the claimant and the insured.

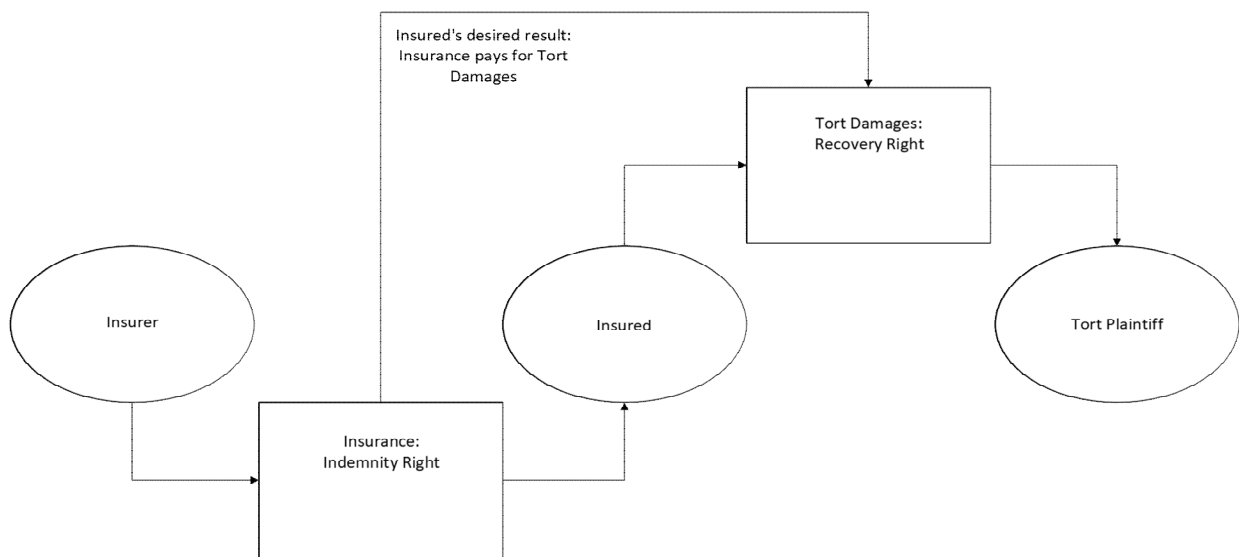
*Morris*, 154 Ariz. at 118-119 (emphasis added).

Consider first, the relationship between insured and insurer. The insured pays a premium to an insurer, and as a result, purchases a property right—a contingent contractual right to indemnity. In Arizona, and under American law generally, contractual property rights, such as rights to indemnity, are freely transferable at law. *Highland Vill. Partners, L.L.C. v. Bradbury & Stamm Const. Co., Inc.*, 219 Ariz. 147, 150, ¶ 11 (App. 2008) (“Generally, rights and duties under a contract are freely assignable”), quoting 6A C.J.S. *Assignments* § 32 (2008); see also Restatement (Second) of Contracts § 317(2). Thus, once premiums are paid and so long as the insured complies with its obligations under the contract, it owns a piece of property: a right to indemnity.

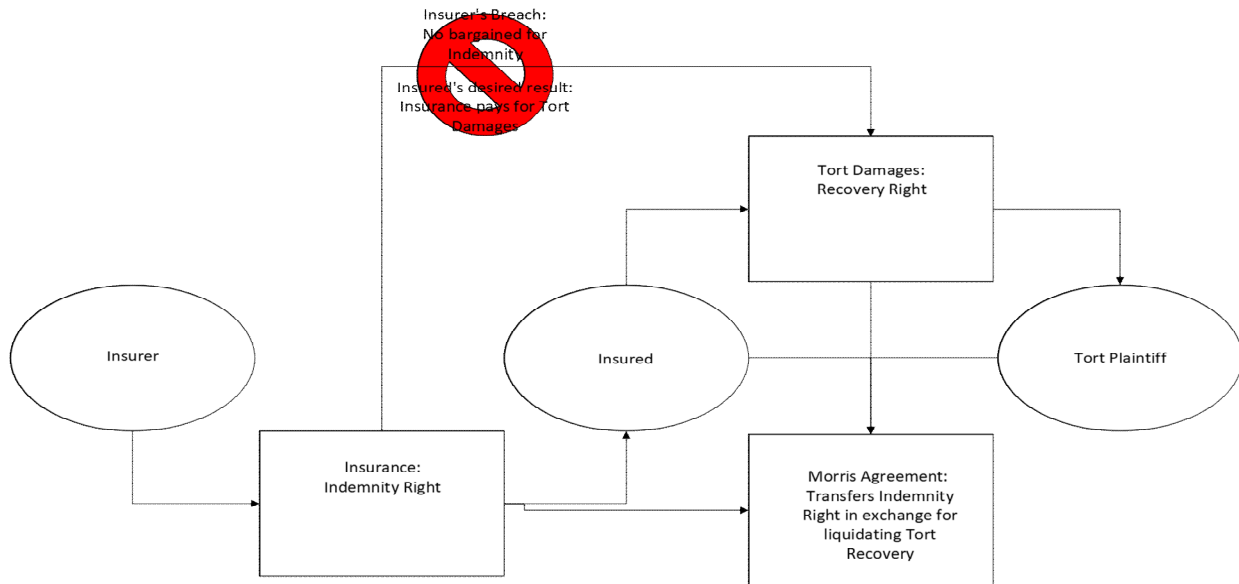
Tort claims are also considered a property right. *State v. Prell*, 21 Ariz. App. 249, 251 (1973) (“A claim for damages is a chose in action, and accordingly is properly classified as property”), quoting *City of Phoenix v. Dickson*, 40 Ariz. 403, 406 (1932). The moment a tortfeasor breaches a duty and causes damages, the tort plaintiff has a legal right to recovery of those damages—a chose in action, or a form of personal property. This property right is also contingent and unliquidated, but nonetheless a property right. Arizona has a public policy against the free transfer of tort claims, but some tort claims are transferrable. *Webb v. Gittlen*, 217 Ariz. 363, ¶ 13 (2008) (“claims generally are assignable except those involving personal injury; the legislature may specify whether particular claims are assignable, and absent

legislative direction, public policy considerations should guide courts in determining whether to depart from the general rule.”).

Thus, where an insured commits a tort against a plaintiff, two property rights are put at play: the indemnity contract and the tort claim. The point of the indemnity contract is to protect the insured. This situation is demonstrated by the following diagram:



But when the insurer breaches the insurance contract, things change. The insured does not lose its right to indemnity just because the insurer has breached. Instead, the insured has a claim for breach of contract and may execute on that claim. The insured is also exposed to liability for the tort damages. This is where a *Morris* agreement comes into play. Faced with the insurer’s breach, the insured makes an economically rational decision and enters into a contract with the tort plaintiff to trade its indemnity asset in exchange for liquidating the tort recovery liability. This situation is demonstrated by the following diagram:



Such an agreement is not, in any way, troubling under the law. Via contract, an insured exchanges an asset to satisfy an obligation. Where this situation can become troubling is that the insured, absent legal protections, has no incentive to liquidate its tort obligation (a notoriously difficult property right to value) in a reasonable manner. Understood at its most basic level, *Morris* stands for the proposition that such contracts require guard rails to ensure that the liquidation step is handled reasonably. Thus, as this Court set forth originally, and as this Court has reaffirmed time and again, an insured freed from the cooperation clause can enter into any settlement the insured deems appropriate so long as it is “made fairly, with notice to the insurer, and without fraud or collusion on the insurer.” *Morris*, 154 Ariz. at 119.

Some cases have seemed to use looser language implying another requirement: that a *Morris* agreement may not fall “outside the permitted

parameters.” *Safeway Ins. Co., Inc. v. Guerrero*, 210 Ariz. 5, 10, ¶ 16, (2005). But there is no “outside the permitted parameters requirement”; *Morris* agreements are invalid only if they involve an unreasonable liquidation step, or fraud or collusion, to unfairly increase liability for an insurance company beyond what was factually supportable. *Id.* at ¶ 24.

The case law governing *Morris* agreements also provides ample deterrence against “manufactured” bad faith claims. As noted above, if there has been no reservation of rights or bad faith by the insurer, the execution of the *Morris* agreement will constitute a breach of contract by the insured, and thus will relieve the insurer of any liability to indemnify the insured. Plaintiff's counsel therefore have every incentive to avoid creating what the court of appeals called “*Damron/Morris* agreements outside the permitted parameters.”

*Id.* (citations omitted).

In cases like *Leflet* and *Centerpoint*, where courts found *Morris* agreements unenforceable, the *Morris* agreements were non-compliant because they artificially increased the insurer’s liability under the indemnity contract—that is, failed to properly/fairly liquidate the tort claim. *Leflet v. Redwood Fire and Casualty Insurance Co.*, 226 Ariz. 297 (App. 2011); *Fidelity National Title Insurance Co. v. Centerpoint Mechanic Lien Claims, LLC*, 238 Ariz. 135 (App. 2016). In fact, in each case where a *Morris* agreement has been found non-compliant, the court has done so because of improper or unreasonable behavior at the liquidation step.

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**b. Nothing about the concept of “contingency” renders a *Morris* agreement unenforceable; but the Cravens-Montano *Morris* Agreement was not “contingent” and did not artificially increase the liability to Cincinnati nor provide any kind of “do-over”**

As set forth above, there is nothing under currently-extant law which would automatically invalidate a *Morris* agreement solely for it being “contingent.” A contract is “contingent” or “conditional” where its enforceability is “[d]ependent on something that might or might not happen in the future; conditional.” CONTINGENT, Black’s Law Dictionary (12th ed. 2024); *Restatement (Second) of Contracts* §§ 224 and 225 (1981) (“A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due”).

As set forth in section 2.a., above, *Morris* and its progeny only require that the settlement amount of the stipulated judgment be reasonable. There is nothing about a condition precedent in a *Morris* agreement that would run afoul of the parameters of *Morris* so long as it did not serve to artificially inflate liability for Cincinnati.

Importantly, however, there was no contingency or condition precedent in the *Morris* Agreement in this case. The only “contingency” that Cincinnati can point to is Section 6, the so-called Rescission Clause. But this does not make the Cravens-Montano *Morris* Agreement contingent.

All contracts in Arizona are subject to a right of rescission on a total or material failure of consideration, or mutual mistake. *Mortensen v. Berzell Investment Company*, 102 Ariz.348, at 350 (1967) (“Ordinarily a mutual mistake of material fact or a failure of consideration of an essential part of the contract will justify rescission.”); *Renner v. Kehl*, 150 Ariz. 94, 97 (1986) (“In Arizona a contract may be rescinded when there is a mutual mistake of material fact which constitutes ‘an essential part and condition of the contract.’”). If all contracts are subject to rescission, it would be nonsensical then to say that a rescission clause, alone, would invalidate a Morris Agreement.

Cincinnati appears to argue that the effect of the Rescission Clause is to “mandate[] rescission if the trial court’s future decisions are deemed unfavorable to plaintiff” but does not explain at all how that is accomplished. Looking at the plain language, the Rescission Clause does nothing of the sort. The Cravens-Montano *Morris* Agreement, by its plain language, operates to accomplish the following:

- I. Montano assigned his claims against Cincinnati to Cravens. (RA 7, ¶ 1).
- II. Cravens promised not to execute against any other personal assets of Montano. (RA 8, ¶ 2).
- III. Cravens promised not to execute against any other personal assets of Montano’s employer, Casas, **a non-party who gave no consideration for the covenant**. (RA 8, ¶ 3).
- IV. Cravens and Montano agreed that no one was intended to receive a release under the Morris Agreement. (RA 8, ¶ 6).
- V. Cravens and Montano agreed to rescind the Morris Agreement if a Court were to later interpret the covenant’s not to execute as a release. (RA 8, ¶ 6).

VI. Cravens and Montano agreed that the Morris Agreement would *not* be rescinded if “a court of law determines, on any other grounds independent of this Agreement, that Casas is not vicariously liable for Defendant’s actions.” (RA 9, ¶ 6).

There is nothing improper about this, and it does not provide a second bite at an apple. Instead, Cravens had lawsuits against Montano and Casas, and agreed that he would not execute against any of their personal assets besides their rights to insurance indemnity. Cravens provided no releases—a common (and in fact necessary) feature of *Morris* agreements. Nothing about the Cravens-Montano *Morris* Agreement increased Cincinnati’s actual or potential liability. Before Cravens-Montano *Morris* Agreement, Cincinnati had potential liability through a bad faith action by Montano and potential liability through a vicarious liability finding against Casas. After the Cravens-Montano *Morris* Agreement, Cincinnati had potential liability through a bad faith action by Cravens acting on Montano’s behalf and potential liability through the same vicarious liability suit against Casas. The only difference is that Montano stipulated to a judgment resolving the issue of liability and the amount of damages until the *Morris* reasonableness hearing could be held.

The Cravens-Montano *Morris* Agreement could not lead to an advisory opinion. Cravens stipulated with Montano to a judgment amount, and would be forced to accept whatever occurred at the reasonableness hearing. Cravens also pushed forward with his case against Casas to seek a determination whether Casas

also had liability. Because the stipulated judgment by Montano was not binding on Casas, that necessarily required Cravens to litigated damages against Casas. There is no aspect of the second lawsuit against Casas that was advisory – it sought, in binding fashion, a determination of Casas’ culpability under a theory of respondeat superior.

**c. Degree of protection to the insured is not a factor in Morris agreements.**

Cincinnati asks a rhetorical question: “If an intervening insurer cannot challenge . . . agreements” that do not give full immunity to the insured, “who can?” (PR p. 16). The answer is that the **insured** can, either by refusing to enter into an undesirable agreement or by vitiating his or her own rights in court. There is nothing anywhere in Arizona law which would permit an insured to challenge an agreement (to which it was not a party), on the grounds that one of the bargaining parties didn’t get a good deal (according to the insurer). Indeed, an insurer is limited to four challenges: (1) no coverage; (2) fraudulent or collusive agreement; (3) lack of notice; and (4) unreasonable in amount. *Morris*, 154 Ariz. at 118-119; *Arizona Prop. & Cas. Ins. Guar. Fund v. Helme*, 153 Ariz. 129, 138 (1987). Cincinnati does not object on any of these grounds. Instead, Cincinnati complains that Montano—a party adverse to Cincinnati by virtue of Cincinnati’s breach—should be protected by invalidating a contract that protected Montano’s personal assets and the assets of his employer. There is no basis in contract law to allow a non-party, that is in fact adverse to a

party, to intervene to challenge the enforceability of a contract. “Standing generally requires an injury in fact, economic or otherwise, caused by the complained-of conduct, and resulting in a distinct and palpable injury giving the plaintiff a personal stake in the controversy's outcome.” *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406, ¶ 8 (App. 2008). Arizona courts have never permitted an insurer to challenge a *Morris*-type agreement unless the complained-of contract prejudicially impacted the insurer, giving rise to intervenor standing. *See, e.g. Leflet*, 226 Ariz. 297, ¶¶ 2, 12-21; *Centerpoint Mech.*, 255 Ariz. 261, ¶ 46.

### CONCLUSION

This Court should affirm the Court of Appeals, and affirm well-settled principles of contractual interpretation and the law of *Morris* agreements, both of which were uncontroversially and correctly followed in this case.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of November, 2024.

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