

**FILED**

**NOV 22 2002**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

HOMECOMINGS FINANCIAL NETWORK,  
a Delaware corporation,

Plaintiff - Appellant,

v.

GENERAL STAR INDEMNITY COMPANY,  
a Connecticut corporation,

Defendant - Appellee.

No. 01-56081

D.C. No. CV-00-00819-IEG(JFS)

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Irma E. Gonzalez, District Judge, Presiding

Argued and Submitted October 10, 2002  
Pasadena, California

Before: REINHARDT, TROTT and SILVERMAN, Circuit Judges

Homecomings Financial Network (“HFN”), the insured, appeals the district court’s summary judgment in favor of General Star Indemnity Company (“General Star”), the insurer. The district court granted summary judgment on the ground that

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

the policy was unambiguous and precluded HFN from increasing the insurable value of a piece of property after the property suffered a loss. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

**1. Standard of Review**

This court reviews a district court's grant of summary judgment de novo. Oliver v. Keller, 289 F.3d 623, 626 (9th Cir. 2002). Viewing the evidence in the light most favorable to General Star, this court must determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. Id.

Because it is sitting in diversity, this court must apply the substantive law of California, as interpreted by the California Supreme Court. Karen Kane, Inc. v. Reliance Ins. Co., 202 F.3d 1180, 1183 (9th Cir. 2000).

**2. The Policy is Unambiguous and Precludes HFN from Increasing the Value of the Property After a Loss Occurred**

The existence of ambiguity in an insurance contract is a question of law. HS Services, Inc. v. Nationwide Mut. Ins. Co., 109 F.3d 642, 644 (9th Cir. 1997); Waller v. Truck Ins. Exch., 900 P.2d 619, 627 (Cal. 1995). Under California law, California courts will enforce the plain meaning of an insurance policy if the language of the policy is clear and unambiguous after applying the meaning a

layperson would ascribe to the contract language. Waller, 900 P.2d at 18; AIU Ins. Co. v. Superior Court, 799 P.2d 1253, 1264 (Cal. 1990) (in bank). According to California law, “[a]n insurance policy is ambiguous if it is capable of two or more constructions, both of which are reasonable.” Bay Cities Paving & Grading, Inc. v. Lawyers’s Mutual Ins. Co., 855 P.2d 1263, 1271 (Cal. 1993) (quoting Suarez v. Life Ins. Co. of North America 254 Cal. Rptr. 377 (Cal. Ct. App. 1988)). California courts will not adopt a strained interpretation of a policy to find ambiguity. Id. (citation omitted). The policy must be interpreted as a whole and in context of the facts of a case. Id.

Here, the Policy is unambiguous. Paragraph No. 3, Endorsement No. 1, explicitly provides that HFN could not correct inaccurate reports after a property suffered loss without the prior written approval of General Star. HFN mistakenly insured the Property for \$38,000, and HFN did not attempt to correct the value until after it reported a loss for the Property. Under the unambiguous language of Paragraph No. 3, HFN was precluded from increasing the value of the Property without the consent of General Star.

Because there are no genuine issues of material fact, and the district court correctly applied the substantive law, we affirm the district court’s summary judgment.

**AFFIRMED.**