A Guide to Contract Interpretation

July 2014

by

Vincent R. Martorana

This guide is intended for an audience of attorneys and does not constitute legal advice – please see "Scope of this Guide and Disclaimer."

TABLE OF CONTENTS

CONTENTS **PAGE**

[1] Query whether "harmonize" means (1) to interpret a provision so as to reduce or eliminate surplusage or (2) to let other provisions (which might or might not be superfluous) guide the selection of one alternative interpretation over another. Meaning #2 is slightly broader.

[2] In addition to the principles listed below, there are various additional principles (which are not addressed in this guide) that a court might employ to determine whether or not a provision is ambiguous.

CONTENTS **PAGE**

[3] Listed below are principles of contract interpretation that are specific to certain substantive areas of contracts. These principles are based solely upon the limited case law that was reviewed in connection with compiling this guide and this guide does not purport to include a complete set of all such types of contract-interpretation principles.

CONTENTS **PAGE**

CONTENTS **PAGE**

INTRODUCTION

Transactional attorneys and litigators often take a very different approach toward contracts. Transactional attorneys focus on the *ex ante*—the relationship between the parties before there is a dispute. Sometimes their sole concern is making sure that the contract "works" sufficiently so that the deal gets done. More conscientious transactional attorneys weigh the various risks associated with contract drafting by regularly thinking about the "what-ifs."

But transactional attorneys would do well to put on their litigator's hats more often. Litigators think about what happens when things go south. When called upon to analyze a contract in the context of a burgeoning litigation, many litigators turn immediately to the "boilerplate" or "miscellaneous provisions." That's where the contract-interpretation and contract-construction "rules" hide, which, in addition to statutes, case law, and doctrine, will inform the contract reader how to interpret the provision at issue.

But if principles of contract interpretation and contract construction are so important for assessing who "wins" (or who at least has the better argument in the context of) a dispute, then why do transactional attorneys too often neglect to consider them?

One possibility is that formal training among transactional attorneys is lacking. Perhaps transactional attorneys bump up against the occasional contract-interpretation principle when analyzing a given contract. But we are rarely taught those principles in a *systematic* fashion.

Another possibility is that transactional attorneys are focused on "getting the deal done." They are viewing the contract as a manual for telling the parties what they can and can't do, what they are or are not asserting as true. To be sure, contracts serve that function. But contracts—and quality contract drafting—also serve to protect the parties from disputes down the road if things don't go as planned. For sophisticated transactional attorneys, it's not enough that the parties "get the idea" of what a contract is "supposed to do"; a contract must also guard against the "1% case." Of course, no contract can be completely air-tight and drafting compromises must often be made (sometimes from the onset of the drafting process). However, at a minimum, the drafter should—with respect to each provision in a contract—strive to *consciously* be making a decision as to whether or not that provision is subject to risk, misinterpretation, or ambiguity and then, in consultation with the drafter's client, assess whether or not to address that issue.

To effectively accomplish this, a contract drafter needs to seek to understand principles of contract interpretation and contract construction. An understanding of these principles will serve to not only improve the quality of an attorney's drafting; it will also serve to sharpen his or her ability to analyze contracts and provisions that have been entered into.

PURPOSE OF THIS GUIDE

This guide is meant to serve several purposes. First, it is meant to educate transactional attorneys (like the author) regarding principles of contract interpretation so that they can draft contracts with these principles in mind. Second, it is meant to serve as a resource for analyzing contracts that have already been drafted or that are already effective, whether that analysis precedes or is in response to a specific dispute. Finally, and in the same vein, the case law cited in this guide is meant to serve as a helpful starting point to those conducting research on the interpretation of a given contract or provision (from a positive or normative standpoint).

SCOPE OF THIS GUIDE AND DISCLAIMER

Most of the contract-interpretation principles in this guide were obtained from opinions rendered by New York and Delaware courts that were published by Westlaw between January 2012 and early July 2014. Certain of the canons of interpretation are based upon specific case-law searches for those principles.

The case-law portion of the guide is organized in an outline according contract-interpretation principle and enables the reader to get a sense of how widely adopted a given principle is by the consistency of that principle's use and articulation in the cases cited. Some principles are foundational, cited very often and articulated consistently in court opinions; others are more idiosyncratic.

Finally, because of the limited range of court opinions surveyed and because the opinions consulted span a limited time period, this guide is certainly not meant to be a comprehensive treatise on contract-interpretation principles. Rather, the author intends to update this guide from time to time with additional principles and nuances.

This updated version has been revised relative to the October 2013 version in three primary aspects. First, the analysis in this guide takes into account certain court opinions rendered by New York and Delaware courts and published from July 2013 to early July 2014. Second, depth has been added to certain sections to provide a more nuanced treatment of how courts approach interpretive issues. Third, new sections have been added that discuss both interpretive issues and certain types of contracts and contractual provisions that merit special attention.

The author of course welcomes any questions and comments. Please feel free to send your thoughts to: Vincent R. Martorana (vmartorana@reedsmith.com; (212) 549-0418).[†]

DISCLAIMER

This guide is intended for an audience of attorneys and does not constitute legal advice. This guide does not reflect research relating to opinions published after July 2, 2014 and does not purport to include a complete statement of court opinions or of contract-interpretation principles. The reader should be mindful of additional case law and other authority relating to contract interpretation that exists, as well as changes in the law that might have occurred, and that might occur, after July 2, 2014.

† The author would like to thank Michael K. Zitelli, formerly of Reed Smith LLP, for his contribution in co-authoring prior versions of this guide. The author would also like to thank Jordan M. Hook, Thomas James, and Aaron Spurlock for their assistance in preparing the current and prior versions of this guide.

ReedSmith

The business of relationships.

Vincent R. Martorana, Counsel
Tel: +1 212 549 0418
Email: vmartorana@reedsmith.com
Blog: www.draftingpoints.com

Vincent R. Martorana is Counsel in the Corporate & Securities Group with Reed Smith's New York office. His practice includes the representation of clients in domestic and cross-border mergers, stock and asset acquisitions and divestitures, joint ventures, strategic alliances, licensing arrangements, corporate restructurings, private equity investments, and securities offerings. He also regularly provides advice on corporate governance and state laws governing business entities (including Delaware and New York corporate, partnership, and limited liability company law). Vincent has represented a wide range of clients—from start-up and early-stage companies to well-established enterprises—in various industries, including technology, healthcare, pharmaceutical products, and consumer products.

Vincent has extensive experience providing advice on contract drafting, analysis, and interpretation relating to disputes, settlements, and negotiated transactions. He has presented his continuing legal education contract-drafting courses for in-house legal departments and at various other venues, including Practising Law Institute, Strafford Webinars, The Business Development Academy, the National Academy of Continuing Legal Education, the Commercial Law WebAdviser, the American Bar Association, the New York State Bar Association, the New York City Bar Association, the New York County Lawyers Association, the Brooklyn Bar Association, the Suffolk County Bar Association, and the Westchester County Bar Association.

He is also the author of *Drafting Points* (www.draftingpoints.com), a blog that is dedicated to contract-drafting issues, as well as several articles on contract drafting and interpretation.

Vincent received a J.D. from the University of Chicago Law School and a B.S. in Economics (with concentrations in Finance and Operations & Information Management), *magna cum laude*, from the Wharton School at the University of Pennsylvania.

CONTRACT-INTERPRETATION FLOW CHART

Over-arching Principle: Determine the intent of the parties with respect to the provision at issue at the time the contract was made

- Ask: Is the provision ambiguous?

What is Ambiguity?

Principle: A contract or provision is ambiguous if it is reasonably susceptible to more than one interpretation

- **Potential Refinements of Principle:**
  - Some courts look at whether the provision is reasonably susceptible to more than one interpretation when read by an *objective reader in the position of the parties*
  - Some courts factor in a reading of the provision "by one who is cognizant of the customs, practices, and terminology as generally understood by particular trade or business"
    - Potential Exception: When plain meaning of a word lends itself to only one reasonable interpretation, that interpretation controls
  - The contract should be viewed in light of circumstances under which it was made
  - As between two interpretations, the court will not adopt an interpretation that produces an absurd result
  - Contracts should be construed in a commercially reasonable manner
  - A provision is not ambiguous simply because the parties disagree as to its construction or urge alternative interpretations

Assessing Whether a Provision is Ambiguous

Note: Whether a contract or provision is ambiguous is a determination of law for the court to make on a claim-by-claim basis

Note: Parol evidence cannot be used to create an ambiguity

Principles for Determining Whether a Provision is Ambiguous

- *Holistic Principles*
  - Read the contract as a whole; do not read provisions in a vacuum
  - Provisions and terms should not be interpreted so as to render any provision or term superfluous or meaningless
  - Terms should be "harmonized" and read in context[1]
  - Contracts entered into contemporaneously and for the same purpose should be read and interpreted together
- *Canons of Construction*
  - *Ejusdem generis* (when a general word or phrase follows list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed)
  - *Expresio unius est exclusio alterus* (to express or include one thing implies the exclusion of another)
  - The specific governs over the general
  - The same words used in different parts of a writing have the same meaning
- *Other Principles* (in addition to the below, courts might also employ various other principles to assess ambiguity)
  - Preference for construing text as an obligation rather than a condition
  - When dealing with sophisticated parties, the court gives deference to the language used
  - Contractual silence does not necessarily create ambiguity, but an omission as to a material issue can create ambiguity
  - Punctuation is always subordinate to the text and is never allowed to create ambiguity or undermine otherwise clear meaning

Provision is unambiguous →

Court Interprets Contract as a Matter of Law

- **Principle: If provision is unambiguous, then the court should look ONLY to the text of the contract to determine the parties' intent ("four-corners rule")**
  - Best evidence of intent is the text of the contract
  - Use "manifested intent," not "actual intent"
  - Parol evidence cannot be used
  - Notions of equity and fairness cannot be used to alter the contract
  - Exception: Doctrine of scrivener's error (very high burden on party seeking to invoke the exception)

Provision is ambiguous →

Parties' Intent Becomes a Question of Fact

- **Principle: Parol evidence can be used to determine the intent of the parties**
- Summary judgment is inappropriate
  - Potential Exception: Summary judgment might be appropriate if parol evidence is uncontroverted or so one-sided that no reasonable person could decide otherwise
- An ambiguity is generally construed against the drafter (*contra proferentum*)
  - Potential Exception : Some courts only apply *contra proferentum* as one of last resort (i.e., only if parol evidence fails to resolve the ambiguity)
  - Note: Courts may apply *contra proferentum* without looking at parol evidence in certain types of contracts or when unequal bargaining power

[1] Query whether "harmonize" means (1) to interpret a provision so as to reduce or eliminate surplusage or (2) to let other provisions (which might or might not be superfluous) guide the selection of one alternative interpretation over another. Meaning #2 is slightly broader.

A. Determine the intent of the parties with respect to the provision at issue at the time the contract was made

Case	Principle
In re Motors Liquidation Co. 460 B.R. 603 Bkrtcy.S.D.N.Y., November 28, 2011	The cardinal rule of contract interpretation is to ascertain and "give effect to the expressed intentions of the parties."
Maser Consulting, P.A. v. Viola Park Realty, LLC 936 N.Y.S.2d 693, 2012 WL 234081 N.Y.A.D. 2 Dept., January 24, 2012	Fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent.
Hillside Metro Associates, LLC v. JPMorgan Chase Bank, Nat. Ass'n 2012 WL 1617157 E.D.N.Y.,2012, May 09, 2012	*Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 569 (2002) ("The fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent.").
In re Lehman Brothers Inc. 478 B.R. 570, S.D.N.Y., 2012, June 05, 2012	As a threshold matter, a contract must be interpreted according to the parties' intent. *Crane Co.*, 171 F.3d at 737.
XL Specialty Ins. Co. v. Level Global Investors, L.P. 2012 WL 2138044 S.D.N.Y.,2012, June 13, 2012	Under New York law, "an insurance contract is interpreted to give effect to the intent of the parties as expressed in the clear language of the contract." *Parks Real Estate Purchasing Grp. v. St. Paul Fire & Marine Ins. Co.*, 472 F.3d 33, 42 (2d Cir.2006).
Cordis Corp. v. Boston Scientific Corp. 868 F.Supp.2d 342, 2012 WL 2320799 D.Del.,2012, June 19, 2012	The primary consideration in interpreting a contract is to "attempt to fulfill, to the extent possible, the reasonable shared expectations of the parties at the time they contracted." *See Comrie v. Enterasys Networks, Inc.*, 837 A.2d 1, 13 (Del. Ch.2003).
Syncora Guar. Inc. v. EMC Mortg. Corp. Slip Copy, 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	When interpreting a written contract, the Court seeks "to give effect to the intention of the parties as expressed in the unequivocal language they have employed." *British Int'l. Ins. Co. Ltd. v. Seguros La Republica, S.A.*, 342 F.3d 78, 82 (2d Cir.2003) (citation omitted).
Point Mgmt., LLC v. MacLaren, LLC 2012 WL 2522074 Del.Ch.,2012, June 29, 2012	Intent, not knowledge, is the governing inquiry when interpreting an ambiguous deed. While knowledge may support an *inference* of intent, here, the evidence to the contrary is insurmountable.
In re Foothills Texas, Inc. 476 B.R. 143 Bkrtcy.D.Del.,2012. July 20, 2012	*SAS Institute, Inc. v. Breitenfeld*, 167 S.W.3d 840, 841 (Tex.2005) ("The intent of a contract is not changed simply because the circumstances do not precisely match the scenarios anticipated by the contract.")
Tobin v. Gluck --- F.Supp.2d ----, 2014 WL 1310347 E.D.N.Y.,2014. March 28, 2014	"When interpreting a contract [under New York law], the 'intention of the parties should control, and the best evidence of intent is the contract itself.' " *Gary Friedrich Enterprises, LLC v. Marvel Characters, Inc.*, 716 F.3d 302, 313 (2d Cir.2013).

B. Defining ambiguity

1. A contract or provision is ambiguous if it is reasonably susceptible to more than one interpretation

Case	Principle
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. 36 A.3d 776, 2012 WL 10916 Del.Supr., January 03, 2012	[A]n ambiguity exists when the provisions in controversy are fairly susceptible of different interpretations or may have two or more different meanings.
Reyes v. Metromedia Software, Inc. 840 F.Supp.2d 752, 2012 WL 13935 S.D.N.Y., January 04, 2012	A contractual provision is ambiguous only "when it is reasonably susceptible to more than one reading."
Alta Berkeley VI C.V. v. Omneon, Inc. 41 A.3d 381 Del.Supr., 2012, March 05, 2012	Contract language is not ambiguous merely because the parties dispute what it means. To be ambiguous, a disputed contract term must be fairly or reasonably susceptible to more than one meaning.
Gen. Teamsters Local Union 326 v. City of Rehoboth Beach 2012 WL 2337296 Del.Super.,2012, April 24, 2012	[T]here is an ambiguity in the contract . . . where a contract's provisions are reasonably susceptible to two or more meanings.
Natt v. White Sands Condo., 95 A.D.3d 848, 943 N.Y.S.2d 231 N.Y.A.D. 2 Dept.,2012, May 01, 2012	Contract language is ambiguous when it is "reasonably susceptible of more than one interpretation" . . . "and there is nothing to indicate which meaning is intended, or where there is contradictory or necessarily inconsistent language in different portions of the instrument"
Hamilton Partners, L.P. v. Highland Capital Mgmt., L.P. 2012 WL 2053329 Del.Ch.,2012, May 25, 2012	"[A] contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings."
China Privatization Fund (Del), L.P. v. Galaxy Entertainment Group Ltd. 95 A.D.3d 769, 945 N.Y.S.2d 659, 2012 N.Y.A.D. 1 Dept.,2012, May 31, 2012	An agreement is unambiguous if the language used "has a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion" . . . On the other hand, a contract is ambiguous if "on its face [it] is reasonably susceptible of more than one interpretation"
In re Lehman Brothers Inc. 478 B.R. 570, S.D.N.Y., 2012, June 05, 2012	A contract is unambiguous where the contract's terms have "a definite and precise meaning, as to which there is no reasonable basis for a difference of opinion."
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	Contract terms are only ambiguous "[w]hen the provisions in controversy are fairly susceptible [to] different interpretations or may have two or more different meanings."

Cordis Corp. v. Boston Scientific Corp. 868 F.Supp.2d 342, 2012 WL 2320799 D.Del.,2012. June 19, 2012	Ambiguity exists only when a contractual provision is "reasonably or fairly susceptible of different interpretations or may have two or more different meanings." *Rhone–Poulenc*, 616 A .2d at 1196; *accord* *SI Mgmt. LP. v. Wininger*, 707 A.2d 37, 42 (Del.1998). However, inconsistent contractual provisions may create ambiguity in a contract. *Fraternal Order of Police v. City of Fairmont*, 468 S.E.2d 712, 717 (W.Va.1996) ("Contract language usually is considered ambiguous where an agreement's terms are inconsistent on their face...."); *Weber v. Tillman*, 913 P.2d 84, 96 (Kan.1996) ("To be ambiguous, a contract must contain provisions or language of doubtful or conflicting meaning, as gleaned from a natural and reasonable interpretation of its language."); *Franklin v. White Egret Condo., Inc.*, 358 So.2d 1084 (Fla.Dist.Ct.App.1977), *aff'd*, 379 So.2d 346 (Fla.1979) (finding "two sections [of a disputed contract] are inconsistent, and inherently ambiguous.").
Syncora Guar. Inc. v. EMC Mortg. Corp. Slip Copy, 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	"As with contracts generally, a provision in an insurance policy is ambiguous when it is reasonably susceptible to more than one reading." *United Air Lines, Inc. v. Ins. Co. of State of* Pa., 439 F.3d 128, 134 (2d Cir.2006) (citation omitted).
GRT, Inc. v. Marathon GTF Tech., Ltd. *2012 WL 2356489* Del. Ch., 2012. June 21, 2012	A contract is unambiguous if, by its plain terms, the provisions in controversy are reasonably susceptible to only one meaning.
Matthew v. Laudamiel 2012 WL 2580572 Del.Ch.,2012, June 29, 2012	Ambiguity exists "when the provisions in controversy are reasonably or fairly susceptible [to] different interpretations or may have two or more different meanings."
Fehlhaber v. Board of Educ. of Utica City School Dist. WL 2571302 N.D.N.Y.,2012, July 03, 2012	The contract's language is ambiguous "if it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement." *Sayers v. Rochester Tel. Corp. Supplemental Mgmt. Pension Plan*, 7 F.3d 1091, 1095 (2d Cir.1993) (internal quotation marks omitted).
Board of Trustees ex rel. General Retirement System of Detroit v. BNY Mellon, N.A. --- F.Supp.2d ---, 2012 WL 3930112 S.D.N.Y.,2012. September 10, 2012	"Ambiguity in a contract is the inadequacy of the wording to classify or characterize something that has potential significance." *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of NY*, 375 F.3d 168, 178 (2d Cir.2004). "Ambiguity with respect to the meaning of contract terms can arise either from the language itself or from inferences that can be drawn from this language." *Alexander & Alexander*, 136 F.3d at 86.
Greenstar, LLC v. Heller 934 F.Supp.2d 672 D.Del.,2013. March 28, 2013	"[A] contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings." *Rhone–Poulenc Basic Chemicals Co. v. American Motorists Insurance Co*., 616 A.2d 1192, 1195 (Sup.Ct.Del. 1992).
Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co., N.A. 957 F.Supp.2d 316 S.D.N.Y.,2013. May 08, 2013	"No ambiguity exists where the contract language has 'a definite and precise meaning, unattended by danger of misconception in the purport of the [contract] itself, and concerning which there is no reasonable basis for a difference of opinion.' " *Law Debenture Trust Co. of NY. v. Maverick Tube Corp*., 595 F.3d 458, 467 (2d Cir.2010) (second alteration in original) (quoting *Hunt Ltd. v. Lifschultz Fast Freight*, 889 F.2d 1274, 1277 (2d Cir.1989)).

CP III Rincon Towers, Inc. v. Cohen --- F.Supp.2d ----, 2014 WL 1357323 S.D.N.Y.,2014. April 7, 2014	"Contract language is not ambiguous if it has 'a definite and precise meaning, unattended by danger of misconception in the purport of the [contract] itself, and concerning which there is no reasonable basis for a difference of opinion.' " *Id*. (citation omitted).
Mine Safety Appliances Company v. AIU Insurance Co. No. N10C-07-241, 2014 WL 605490 Del.Super.,2014. January 21, 2014	"A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." Hutchison v. Sunbeam Coal Co., 519 A.2d 385, 390 (Pa.2010).

a. Some courts look at whether the provision is reasonably susceptible to more than one interpretation when read by an *objective reader in the position of the parties*

Case	Principle
In re Motors Liquidation Co. 460 B.R. 603 Bkrtcy.S.D.N.Y., November 28, 2011	In [whether a contract is ambiguous,] the court looks to see whether it is: capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.
In re World Trade Center Disaster Site Litigation 834 F.Supp.2d 184, 2011 WL 6425111 S.D.N.Y., December 20, 2011	Although contractual silence does not always make a contract unclear, Evans v. Famous Music Corp., 1 N.Y.3d 452, 458, 775 N.Y.S.2d 757, 807 N.E.2d 869 (N.Y.2004), silence is capable of creating a gap that requires the court to construe the terms in light of the parties' intentions. This is an expression of the broader rule that "the understanding of each promisor in a contract must include any promises which a reasonable person in the position of the promisee would be justified in understanding were included." Rowe v. Great Atlantic & Pac. Tea Co., Inc., 46 N.Y.2d 62, 69, 412 N.Y.S.2d 827, 385 N.E.2d 566 (N.Y.1978) (quoting 5 Williston on Contracts § 1293 (rev. ed.1937)).
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. 36 A.3d 776, 2012 WL 10916 Del.Supr., January 03, 2012	Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language.
Shiftan v. Morgan Joseph Holdings, Inc. 2012 WL 120196 Del.Ch., January 13, 2012	In the first instance, the court therefore must attempt to discern the meaning of a contract and the intent of the parties from the language that they used, as read from the perspective of a reasonable third party.
In re Lehman Brothers Inc. 478 B.R. 570, 2012 WL 1995089 S.D.N.Y.,2012. June 05, 2012	If reasonable minds could differ about the meaning of contractual language, such language is ambiguous, *see* Lockheed Martin Corp., 639 F.3d at 69 (contractual language is ambiguous when it "is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement").
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	"A trial judge must review a contract for ambiguity through the lens of 'what a reasonable person in the position of the parties would have thought the contract meant.'"

Cordis Corp. v. Boston Scientific Corp. 868 F.Supp.2d 342, 2012 WL 2320799 D.Del.,2012. June 19, 2012	In ascertaining intent, Delaware courts adhere to the "objective" theory of contracts. Under this approach, a contract's "construction should be that which would be understood by an objective reasonable third party." > Where parties have entered into an unambiguous integrated written contract, the contract's construction should be that which would be understood by an objective reasonable third party. An inquiry into the subjective unexpressed intent or understanding of the individual parties [to the contract] is neither necessary nor appropriate where the words of the contract are sufficiently clear to prevent reasonable persons from disagreeing as to their meaning. *Demetree*, 1996 WL 494910, at *4 (citations omitted); *accord* *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del.1997) ("Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language."). The court, therefore, must determine whether the contractual language in dispute, when read in the context of the entire contract, is ambiguous.
Matthew v. Laudamiel 2012 WL 2580572 Del.Ch.,2012, June 29, 2012	Delaware adheres to the "objective" theory of contracts under which a contract is construed as it would be understood by an objective, reasonable third-party.
Fehlhaber v. Board of Educ. of Utica City School Dist. Slip Copy, 2012 WL 2571302 N.D.N.Y.,2012, July 03, 2012	The contract's language is ambiguous "if it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement." *Sayers v. Rochester Tel. Corp. Supplemental Mgmt. Pension Plan*, 7 F.3d 1091, 1095 (2d Cir.1993) (internal quotation marks omitted).
VAM Check Cashing Corp. v. Federal Ins. Co. 699 F.3d 727 C.A.2 (N.Y.),2012. November 07, 2012	Under New York insurance law, the plain language of an insurance policy, read "in light of 'common speech' and the reasonable expectations of a businessperson," *Belt Painting Corp. v. TIG Ins. Co*., 100 N.Y.2d 377, 763 N.Y.S.2d 790, 795 N.E.2d 15, 17 (2003), will govern if the language is unambiguous.
Kobrand Corp. v. Abadia Retuerta S.A., No. 12 Civ. 154(KBF), 2012 WL 5851139 S.D.N.Y., November 19, 2012	A contract is ambiguous when it could suggest multiple meanings to a reasonable, objective reader familiar with the context of the contract. When making this initial interpretation, the Court should take into account both the language of the contract and the inferences that can be drawn from that language. See id.
Universal Am. Corp. v National Union Fire Ins. Co. of Pittsburgh, PA 38 Misc.3d 859, 959 N.Y.S.2d 849 N.Y.Sup.,2013. January 07, 2013	"In determining whether a policy provision is ambiguous, the focus is on the reasonable expectations of the average insured upon reading the policy" *Villanueva v. Preferred Mut. Ins. Co.*, 48 A.D.3d 1015, 1016, 851 N.Y.S.2d 742 (3d Dept.2008) (citations and internal quotation marks omitted).
U.S. Bank Nat. Ass'n v. PHL Variable Ins. Co. Slip Copy, 2014 WL 2199428 S.D.N.Y.,2014. May 23, 2014	"[A] contract of insurance, drawn by the insurer, must be read through the eyes of the average man on the street or the average housewife who purchases it." *Lacks v. Fidelity & Cas. Co. of New York*, 306 N.Y. 357, 363 (N.Y.1954). This rule is "based on the fact that it is the insurance company that drafted the policy, and therefore the insurance company that is responsible for any ambiguities therein." *Checkrite Ltd., Inc. v.. Illinois Nat. Ins. Co.*, 95 F.Supp.2d 180, 189 (S.D.N.Y.2000).

b. Some courts factor in a reading of the provision "by one who is cognizant of the customs, practices, and terminology as generally understood by a particular trade or business"

Case	Principle
Corral v. Outer Marker LLC 2012 WL 243318 E.D.N.Y., January 24, 2012	Ambiguous language is "that which is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business."
RSUI Indem. Co. v. RCG Group (USA) 890 F.Supp.2d 315 S.D.N.Y.,2012. July 31, 2012	"An ambiguity exists where the terms of an insurance contract could suggest 'more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.'" *Parks Real Estate Purchasing Grp.*, 472 F.3d at 42 (quoting *Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 906 (2d Cir.1997)).
Banco Multiple Santa Cruz, S.A. v. Moreno 888 F.Supp.2d 356 F.D.N.Y.,2012. August 31, 2012	Insurance contracts in particular are to be interpreted based "on the reasonable expectations of the average insured upon reading the policy and employing common speech." *Mostow v. State Farm Ins. Cos.*, 88 N.Y.2d 321, 326–27, 645 N.Y.S.2d 421, 668 N.E.2d 392 (1996) (internal quotation marks and citations omitted).
CP III Rincon Towers, Inc. v. Cohen --- F.Supp.2d ----, 2014 WL 1357323 S.D.N.Y.,2014. April 7, 2014	"The language is 'capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.' " *Revson v. Cinque & Cinque, P.C.*, 221 F.3d 59, 66 (2d Cir.2000) (citation omitted).
Fabozzi v. Lexington Ins. Co. --- F.Supp.2d ----, 2014 WL 2440475 E.D.N.Y.,2014. May 30, 2014	"An ambiguity exists where the terms of an insurance contract could suggest more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." *Morgan Stanley Grp. Inc. v. New England Ins. Co.*, 225 F.3d 270, 275 (2d Cir.2000) (citation and internal quotation marks omitted).

i. Evidence of custom and practice in an industry is admissible to define an unexplained term

Case	Principle
Int'l Multifoods Corp. v. Commercial Union Ins. Co. 309 F.3d 76, 87 (2d Cir. 2002)	Of course, the line between a contract that is so clear as a matter of ordinary meaning that evidence of industry practice ultimately cannot alter the apparent plain meaning of the language and a contract where industry practice informs interpretation may prove difficult to draw. But that is not to say that evidence of custom and usage is irrelevant to the assessment of whether ambiguity exists.

Centurylink, Inc. v. Dish Network, L.L.C. 2012 U.S. Dist. LEXIS 107080, 2012 WL 3100782 (S.D.N.Y. July 31, 2012)	The proffered evidence, in order to demonstrate that an ambiguity exists, must concern objective understandings, such as common usage in the industry or trade terms. *Cf.* United States v. Lennox Metal Mfg. Co., 225 F.2d 302, 311 (2d Cir. 1955) (dictum) ("[I]t is regarded by many authorities as a fallacy that, in interpreting contractual language, a court may not consider the surrounding circumstances unless the language is patently ambiguous. Any such rule, like all rules of interpretation, must be taken as a guide, not a dictator. The text should always be read in its context. Indeed, text and context necessarily merge to some extent . . . ."); Greenfield v. Philles Records, Inc., 98 N.Y.2d 562, 780 N.E.2d 166, 170, 750 N.Y.S.2d 565 (N.Y. 2002). Therefore, the Court cannot rely on parol evidence to interpret the Contract unless it is ambiguous, but the Court can look to the surrounding circumstances to determine whether ambiguity exists in the first place.
Last Time Beverage Corp. v F & V Distrib. Co., LLC 98 A.D.3d 947, 951 N.Y.S.2d 77 N.Y.A.D. 2 Dept.,2012. September 12, 2012	Evidence of custom and practice in an industry is admissible to define an unexplained term (*see* Hoag v. Chancellor, Inc., 246 A.D.2d 224, 677 N.Y.S.2d 531; Boody v. Giambra, 192 Misc.2d 128, 744 N.Y.S.2d 803). A party who seeks to use trade usage to define language or annex a term to a contract must show either that the other party was actually aware of the trade usage, or that the usage was so notorious in the industry that a person of ordinary prudence in the exercise of reasonable care would be aware of it (*see Matter of Reuters Ltd. v. Dow Jones Telerate,* 231 A.D.2d 337, 662 N.Y.S.2d 450).

ii. When the plain meaning of a word lends itself to only one reasonable interpretation, that interpretation controls

Case	Principle
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. 36 A.3d 776, 2012 WL 10916 Del.Supr., January 03, 2012	Court will interpret clear and unambiguous contract terms according to their ordinary meaning.
Glencore Ltd. v. Degussa Eng'r Carbons L.P., 2012 WL 223240 S.D.N.Y., January 24, 2012	It is black-letter law, in both New York and Texas, that courts are to construe contract terms so as, where possible, to give rational meaning to all provisions in the document.
Ross v. Thomas Slip Copy, 2012 WL 335768 C.A.2 (N.Y.), February 03, 2012	Under Delaware law . . . we look at the "objective" meaning of a contract, i.e., the "words found in the written instrument." Sassano v. CIBC World Mkts. Corp., 948 A.2d 453, 462 (Del. Ch.2008). "When the plain, common, and ordinary meaning of the words lends itself to only one reasonable interpretation, that interpretation controls the litigation."
Martin Marietta Materials, Inc. v. Vulcan Materials Co. 2012 WL 1605146 Del.Ch.,2012, May 04, 2012	In focusing on the words, I apply the well-settled principles of contract interpretation that require this court to enforce the plain and unambiguous terms of a contract as the binding expression of the parties' intent.

Hillside Metro Associates, LLC v. JPMorgan Chase Bank, Nat. Ass'n Slip Copy, 2012 WL 1617157 E.D.N.Y.,2012. May 09, 2012	Thus, where the language of the PAA is unambiguous on its face, it must be enforced according to the plain meaning of its terms. *Greenfield*, 98 N.Y.2d at 569; *W.W.W. Assocs. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990) ("[C]lear, complete writings should generally be enforced according to their terms ....").
China Privatization Fund (Del), L.P. v. Galaxy Entm't Group Ltd. 95 A.D.3d 769, 945 N.Y.S.2d 659, N.Y.A.D. 1 Dept.,2012, May 31, 2012	"[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (*Greenfield v. Philles Records*, 98 N.Y.2d 562, 569 [2002]).
In re Lehman Brothers Inc. 478 B.R. 570, 2012 WL 1995089 S.D.N.Y.,2012. June 05, 2012	[I]n the absence of ambiguity, a court is required to give the words of the contract their plain meaning, *see Crane Co.*, 171 F.3d at 737. That intent is derived "from the plain meaning of the language employed in the agreements," … when the agreements are "read as a whole." When the parties' intent is clear— *i.e.*, unambiguous—the contract "must be enforced according to the plain meaning of its terms."
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	"When the plain, common, and ordinary meaning of the words lends itself to only one reasonable interpretation, that interpretation controls the litigation."
XL Specialty Ins. Co. v. Level Global Investors, L.P. 2012 WL 2138044 S.D.N.Y.,2012, June 13, 2012	*Essex Ins. Co. v. Laruccia Constr., Inc.*, 71 A.D.3d 818, 819 (2d Dep't 2010) (under New York law, courts must give "unambiguous provisions of an insurance contract... their plain and ordinary meaning").
Syncora Guar. Inc. v. EMC Mortg. Corp. 2012 WL 2326068 S.D.N.Y., 2012, June 19, 2012	Where a contract is unambiguous, however, the Court looks to the language of the agreement and gives the words and phrases their plain meaning, as "the instrument alone is taken to express the intent of the parties." *Klos v. Lotnicze*, 133 F.3d 164, 168 (2d Cir.1997). *Fed. Ins. Co. v. Am. Home Assurance Co.*, 639 F.3d 557, 568 (2d Cir.2011) (stating that when interpreting a contract, the "court should not find the language ambiguous on the basis of the interpretation urged by one party, where that interpretation would strain the contract language beyond its reasonable and ordinary meaning").
Matthew v. Laudamiel 2012 WL 2580572 Del.Ch.,2012, June 29, 2012	"Where contract language is 'clear and unambiguous,' the ordinary and usual meaning of the chosen words will generally establish the parties' intent."
In re Foothills Texas, Inc. 476 B.R. 143 Bkrtcy.D.Del.,2012. July 20, 2012	When reading the contract, "[l]anguage should be given its plain grammatical meaning unless it definitely appears that the intention of the parties would thereby be defeated." *Caldwell v. Curioni*, 125 S.W.3d 784, 792 (Tex.App.-Dallas 2004).
Harpercollins Publishers LLC v. Open Road Integrated Media, LLP --- F.Supp.2d ----, 2014 WL 1013838 S.D.N.Y.,2014. March 14, 2014	"[W]hen parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms." *W.W.W. Assocs., Inc*., 77 N.Y.2d at 162, 565 N.Y.S.2d 440, 566 N.E.2d 639. "In other words, our 'primary objective is to give effect to the intent of the parties as revealed by the language they chose to use.'" *Bolt Elec., Inc. v. City of New York*, 223 F.3d 146, 150 (2d Cir.2000).

Two Farms, Inc. v. Greenwich Ins. Co. --- F.Supp.2d ----, 2014 WL 53412 S.D.N.Y.,2014. January 7, 2014	An interpretation is not reasonable if it strains the policy language "beyond its reasonable and ordinary meaning." *Id*. (citing *Bethlehem Steel Co. v. Turner Constr. Co.*, 2 N.Y.2d 456, 161 N.Y.S.2d 90, 141 N.E.2d 590, 593 (1957)).

c. The contract should be viewed in light of the circumstances under which it was made

Case	Principle
Mosaid Technologies Inc. v. LSI Corp. --- F.Supp.2d ---, 2012 WL 3201747 D.Del.,2012. July 20, 2012	Against this seemingly clear framework for analyzing potential contractual ambiguity, New York courts have opened the door to a narrow category of extrinsic evidence at the initial assessment stage, so long as it relates to the context of the agreement, "the relation of the parties[,] and the circumstances under which [the contract] was executed." *Kass*, 91 N.Y.2d at 566, 673 N.Y.S.2d 350, 696 N.E.2d 174. [T]he Court may consider extrinsic evidence as to the context of the agreement and relationship of the parties, but that extrinsic evidence cannot be used to alter the plain language of the contract, or create an ambiguity where none exists in the contract itself.
Banco Espirito Santo, S.A. v. Concessionaria Do Rodoanel Oeste S.A. 100 A.D.3d 100, 951 N.Y.S.2d 19 N.Y.A.D. 1 Dept.,2012. September 18, 2012	The existence of ambiguity is determined by examining the " 'entire contract and consider[ing] *the relation of the parties and the circumstances under which it was executed*,' " with the wording viewed " 'in the light of the obligation as a whole and the intention of the parties as manifested thereby' " (*Kass v. Kass*, 91 N.Y.2d 554, 566, 673 N.Y.S.2d 350, 696 N.E.2d 174 [1998], quoting *Atwater & Co. v. Panama R.R. Co.*, 246 N.Y. 519, 524, 159 N.E. 418 [1927])….
Matter of Korosh v Korosh 99 A.D.3d 909, 953 N.Y.S.2d 72 N.Y.A.D. 2 Dept.,2012. October 17, 2012	"In making this determination, the court also should examine the entire contract and consider the relation of the parties and the circumstances under which the contract was executed" (*Ayers v. Ayers*, 92 A.D.3d at 625, 938 N.Y.S.2d 572).
Spanski Enterprises, Inc. v. Telewizja Polska, S.A. Slip Copy, 2013 WL 81263 S.D.N.Y.,2013. January 08, 2013	When Clause IE is viewed in light of the circumstances surrounding settlement, it is clear the intent of the parties was to release all claims between them arising under the Contract. *See Ruskay v. Waddell*, 552 F.2d 392, 395 (2d Cir.1977), cert. denied, 434 U.S. 911 (1977) (stating courts should look to the literal language and the circumstances surrounding execution when determining the intention of the parties as to the scope of a release).
In re Coudert Bros. 487 B.R. 375 S.D.N.Y.,2013. January 30, 2013	That said, in analyzing contractual text, a court need not turn a blind eye to context. Rather, "a court should accord [contractual] language its plain meaning giving due consideration to 'the surrounding circumstances [and] apparent purpose which the parties sought to accomplish.' " *Thompson v. Gjivoje*, 896 F.2d 716, 721 (2d Cir.1990) (quoting *William C. Atwater & Co. v. Panama R.R. Co.*, 246 N.Y. 519, 524, 159 N.E. 418 (1927) (second alteration in original)). Put differently, a court may consider the factual circumstances surrounding the execution of a contract, because the court's primary purpose in interpreting the agreement is to determine the parties' intentions, and interpreting the contract's terms in a factual vacuum would undermine that goal.

*Droplets, Inc. v. E*trade Financial Corp.* --- F.Supp.2d ----, 2013 WL 1411245 S.D.N.Y.,2013. April 04, 2013	The facts and circumstances surrounding a contract's execution, including the negotiations of the parties, may have some relevance in ascertaining the dominant purpose and intent of the parties and confirming that the words mean what they say. Sun Oil, 626 S.W.2d at 731 ("We are to take the wording of the instrument, considering the same in light of the surrounding circumstances, and apply the pertinent rules of construction thereto"). Consideration of the facts and circumstances surrounding the execution of a contract, however, is simply an aid in the construction of the contract's language; it cannot substitute for the plain meaning of the words themselves or be used to add to or vary what they do or do not say. *Id*.
Smartmatic Intern. Corp. v. Dominion Voting Systems Intern. Corp. Not Reported in A.3d, 2013 WL 1821608 Del.Ch.,2013. May 01, 2013	There may be occasions where it is appropriate for the trial court to consider some undisputed background facts to place the contractual provision in its historical setting without violating [the principle that, if a contract is unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract, or to create an ambiguity]. Thus, to the limited extent the License Agreement's language can only be understood through an appreciation of the context and circumstances in which it is used, I may consider undisputed background facts to place the Agreement in its historical setting.
Renco Group, Inc. v. MacAndrews AMG Holdings LLC Not Reported in A.3d, 2013 WL 3369318 Del.Ch., 2013 June 19, 2013	[I]f a contract is unambiguous, then the plain language of the agreement governs, and "extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or create an ambiguity." Eagle Indus., Inc. v. DeVilbiss Health Care, Inc., 702 A.2d 1228, 1232 (Del.1997). "There may be occasions where it is appropriate for the trial court to consider some undisputed background facts to place the contractual provision in its historical setting without violating this principle." *Id*. at 1232. Because the parties agree that the Holdco Agreement was structured to avoid potential pension liabilities under ERISA, the Court considers these undisputed background facts for this limited purpose.

d. As between two interpretations, the court will not adopt an interpretation that produces an absurd result

Case	**Principle**
Martin Marietta Materials, Inc. v. Vulcan Materials Co. 2012 WL 2819464 Del.Supr., May 14, 2012	[N]o reasonable reading of the Joint Defense and Confidentiality Agreement "support[s] that absurd result, which would reduce the JDA to a nullity...." That result would also violate the "cardinal rule ... that, where possible, a court should give effect to *all* contract provisions."
Convergent Wealth Advisors LLC v. Lydian Holding Co. Slip Copy, 2012 WL 2148221 S.D.N.Y.,2012. June 13, 2012	Where a contract provision lends itself to two interpretations, a court will not adopt an interpretation that leads to unreasonable results, but instead will adopt the construction that is reasonable and that harmonizes the affected contract provisions. An unreasonable interpretation produces an absurd result or one that no reasonable person would have accepted when entering the contract.
SPCP Group, LLC v. Eagle Rock Field Services, LP Slip Copy, 2013 WL 359650 S.D.N.Y.,2013. January 30, 2013	The Court must avoid interpreting a contract in a manner that would be "absurd, commercially unreasonable, or contrary to the reasonable expectations of the parties." Landmark Ventures, 2012 WL 3822624, at *3 (quoting In re Lipper Holdings, LLC, 766 N.Y.S.2d 561, 561 (1st Dep't 2003)).

Homeward Residential, Inc. v. Sand Canyon Corp. Slip Copy, 2014 WL 2510809 S.D.N.Y.,2014. May 28, 2014	"[A] court must avoid any interpretation that would be 'absurd, commercially unreasonable, or contrary to the reasonable expectations of the parties.' " *Landmark Ventures, Inc. v. Wave Sys. Corp*., No. 11 Civ. 8440, 2012 WL 3822624, at *3 (S.D.N.Y. Sept. 4, 2012) (citation and internal quotation marks omitted).

e. Contracts should be construed in a commercially reasonable manner

Case	Principle
ERC 16W Ltd. Partnership v Xanadu Mezz Holdings LLC, 95 A.D.3d 498, 2012 WL 1582783 N.Y. App. Div. 1st Dep't 2012	It is a longstanding principle of New York law that a construction of a contract that would give one party an unfair and unreasonable advantage over the other, or that would place one party at the mercy of the other, should, if at all possible, be avoided (*see* *Greenwich Capital Fin. Prods., Inc. v Negrin*, 74 AD3d 413, 415, 903 NYS2d 346 [2010] ["a contract should not be interpreted to produce a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties" (internal quotation marks and citation omitted)]; *HGCD Retail Servs., LLC v 44-45 Broadway Realty Co.*, 37 AD3d 43, 49-50, 826 NYS2d 190 [2006] [same]).
SPCP Group, LLC v. Eagle Rock Field Services, LP Slip Copy, 2013 WL 359650 S.D.N.Y.,2013. January 30, 2013	The Court must avoid interpreting a contract in a manner that would be "absurd, commercially unreasonable, or contrary to the reasonable expectations of the parties." *Landmark Ventures*, 2012 WL 3822624, at *3 (quoting *In re Lipper Holdings, LLC*, 766 N.Y.S.2d 561, 561 (1st Dep't 2003)).
Berkshire Bank v. Tedeschi Slip Copy, 2013 WL 1291851 N.D.N.Y.,2013. March 27, 2013	[The four corners] rule imparts "stability to commercial transactions" and is therefore "all the more compelling in the context of real property transactions, where commercial certainty is a paramount concern." *W.W.W. Assocs., Inc. v. Giancontieri*, 77 N.Y.2d 157, 565 N.Y.S.2d 440, 566 N.E.2d 639, 642 (N.Y.1990).
Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co., N.A. 957 F.Supp.2d 316 S.D.N.Y.,2013. May 08, 2013	A court should not interpret a contract in a way that would be "commercially unreasonable, or contrary to the reasonable expectations of the parties." *Samba Enters., LLC v. iMesh, Inc.*, No. 06 Civ. 7660 (DLC), 2009 U.S. Dist. LEXIS 23393, 2009 WL 705537, at *5 (S.D.N.Y. Mar. 19, 2009) (quoting *Lipper Holdings, LLC v. Trident Holdings, LLC*, 1 A.D.3d 170, 171, 766 N.Y.S.2d 561 (1st Dep't 2003)), aff'd, 390 F. App'x 55 (2d Cir. 2010) (summary order); *see also* *Newmont Mines Ltd. v. Hanover Ins. Co.*, 784 F.2d 127, 135 (2d Cir. 1986) (contracts should be examined "in light of the business purposes sought to be achieved by the parties" (citation omitted)).
Oppenheimer & Co. v. Trans Energy, Inc., 2013 U.S. Dist. LEXIS 73977, 2013 WL 2302439 (S.D.N.Y. May 23, 2013)	Further, a court must avoid any interpretation that would be "'absurd, commercially unreasonable, or contrary to the reasonable expectations of the parties.'" *Landmark Ventures, Inc. v. Wave Sys. Corp.*, No. 11 Civ. 8440 (PAC), 2012 U.S. Dist. LEXIS 125341, 2012 WL 3822624, at *3 (S.D.N.Y. Sept. 4, 2012) (quoting *In re Lipper Holdings, LLC*, 1 A.D.3d 170, 766 N.Y.S.2d 561, 561 (App. Div. 1st Dep't 2003)).

Fundamental Long Term Care Holdings, LLC v Cammeby's Funding LLC 20 N.Y.3d 438, 2013 WL 530581 N.Y. 2013	[A]n inquiry into commercial reasonableness is only warranted where a contract is ambiguous. Here, the option agreement is unambiguous, and therefore its reasonableness is beside the mark.[4]

f. A provision is not ambiguous simply because the parties disagree as to its construction or urge alternative interpretations

Case	Principle
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. 36 A.3d 776, 2012 WL 10916 Del.Supr., January 03, 2012	A contract is not rendered ambiguous simply because the parties do not agree upon its proper construction.
Reyes v. Metromedia Software, Inc. 840 F.Supp.2d 752, 2012 WL 13935 S.D.N.Y., January 04, 2012	A contract is not ambiguous simply because the parties have urged conflicting interpretations.
Corral v. Outer Marker LLC 2012 WL 243318 E.D.N.Y., January 24, 2012	"Language whose meaning is otherwise plain does not become ambiguous merely because the parties urge different interpretations in the litigation." *Hunt Ltd. v. Lifschultz Fast Freight, Inc.*, 889 F.2d 1274, 1277 (2d Cir.1989).
In re New York Skyline, Inc. 471 B.R. 69, 2012 WL 1658355 Bkrtcy. S.D.N.Y., 2012. May 11, 2012	Furthermore, a contract is not ambiguous where the interpretation urged by one party would "strain[ ] the contract language beyond its reasonable and ordinary meaning." "Language whose meaning is otherwise plain does not become ambiguous merely because the parties urge different interpretations in the litigation," unless each is a "reasonable" interpretation.
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	Contract terms are not rendered ambiguous simply because the parties disagree as to their construction.
Homeward Residential, Inc. v. Sand Canyon Corp. Slip Copy, 2014 WL 2510809 S.D.N.Y.,2014. May 28, 2014	"The language of a contract, however, 'is not made ambiguous simply because the parties urge different interpretations.' " *O.D.F. Optronics Ltd. v. Remington Arms Co.*, No. 08 Civ. 4746, 2008 WL 4410130, at *11 (S.D.N.Y. Sept. 26, 2008) (citation and internal quotation marks omitted).
Cordis Corp. v. Boston Scientific Corp. 868 F.Supp.2d 342, 2012 WL 2320799 D.Del.,2012, June 19, 2012	Contractual language "is not rendered ambiguous simply because the parties do not agree upon its proper construction." *Id.; see also City Investing Co. Liquidating Trust v. Conti Cas. Co.*, 624 A.2d 1191, 1198 (Del.1993) (finding contract language is not ambiguous "simply because the parties in litigation differ concerning its meaning.").

[4] Note the exception/nuance to the general rule: while the majority of courts use the "commercially reasonable manner" principle to determine whether an ambiguity exists, at least one court has indicated that the use of this principle is not appropriate until the contract is determined to be ambiguous.

Cypress Semiconductor Corp. v SVTC Technologies., LLC 2012 WL 2989169 Del.Super., 2012 June 29, 2012	Disagreement over interpretation does not render a contract ambiguous.
Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co., N.A. 957 F.Supp.2d 316 S.D.N.Y.,2013. May 08, 2013	That a text is complex or imperfect does not mean it is ambiguous. See Aramony v. United Way of Am., 254 F.3d 403, 411 (2d Cir.2001) (finding contract unambiguous and noting that "[t]he fact that we remanded to the district court for an initial determination of the meaning of this complex contract in no way implies that we found it ambiguous as a matter of law"); Carolina First Bank v. Banque Paribas, No. 99 Civ. 9002(NRB), 2000 WL 1597845, at *6 (S.D.N.Y. Oct. 26, 2000) (that a contract is not a "portrait of clarity" does not prevent a finding that it is unambiguous where the court finds only one reasonable interpretation); cf. Lamie v. U.S. Trustee, 540 U.S. 526, 535, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004) ("The statute is awkward, and even ungrammatical; but that does not make it ambiguous on the point at issue.").

C. Assessing whether a provision is ambiguous

1. Whether a contract or provision is ambiguous is a determination of law for the court to make on a claim-by-claim basis

Case	Principle
Reyes v. Metromedia Software, Inc. 840 F.Supp.2d 752, 2012 WL 13935 S.D.N.Y., January 04, 2012	Whether a contractual provision is ambiguous or not is a "threshold question of law to be determined by the court."
ADP Dealer Serv., Inc. v. Planet Automall, Inc. 2012 WL 95211 E.D.N.Y., January 12, 2012	Whether the language of a contract is ambiguous is a matter of law for determination by the Court, Nye, 783 F.Supp.2d at 759; *accord* Garden City, 852 A.2d at 541, and the Court concludes that none of the agreements at issue in this case is ambiguous or requires the consideration of extrinsic evidence by the jury.
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	"[T]he proper interpretation of language in a contract is a question of law."
XL Specialty Ins. Co. v. Level Global Investors, L.P. Slip Copy, 2012 WL 2138044 S.D.N.Y.,2012. June 13, 2012	"The initial interpretation of a contract 'is a matter of law for the court to decide.' " *10 Ellicott Square Court Corp. v. Mt. Valley Indem. Co.*, 634 F.3d 112, 119 n. 8 (2d Cir.2010) (quoting *Morgan Stanley Grp. Inc. v. New England Ins. Co.*, 225 F.3d 270, 275 (2d Cir.2000)). "Part of this threshold interpretation is the question of whether the terms of the contract are ambiguous." *Parks Real Estate Purchasing Grp.*, 472 F.3d at 42 (citing *Alexander & Alexander Servs., Inc. v. These Certain Underwriters at Lloyd's*, 136 F.3d 82, 86 (2d Cir.1998)).
Cordis Corp. v. Boston Scientific Corp. 868 F.Supp.2d 342, 2012 WL 2320799 D.Del., 2012, June 19, 2012	Construction of contract language is a question of law. *See* Rhone–Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co., 616 A.2d 1192, 1195 (Del.1992).

Syncora Guar. Inc. v. EMC Mortg. Corp. 874 F.Supp.2d 328, 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	Under New York law, "the initial interpretation of a contract is a matter of law for the court to decide." *K. Bell & Assocs., Inc. v. Lloyd's Underwriters*, 97 F.3d 632, 637 (2d Cir.1996).
Fehlhaber v. Bd. of Ed. of Utica City Sch. Dist. 2012 WL 2571302 N.D.N.Y.,2012, July 03, 2012	Whether a contract provision is ambiguous is a question of law to be decided by a court. *Mellon Bank, N.A. v. United Bank Corp. of N.Y.*, 31 F.3d 113, 115 (2d Cir.1994).
Cordell v. McGraw-Hill Companies, Inc. --- F.Supp.2d ---, 2012 WL 5264844 S.D.N.Y.,2012. October 23, 2012	Since "a contract may be ambiguous when applied to one set of facts but not another," "ambiguity is detected claim by claim." *Morgan Stanley Group Inc. et al.*, 225 F.3d at 278.
Oppenheimer & Co., Inc. v. Trans Energy, Inc. --- F.Supp.2d ----, 2013 WL 2302439 S.D.N.Y.,2013. May 23, 2013	In a dispute over the meaning of a contract, the threshold question is whether the contract terms are ambiguous, *see, e.g.*, *Krumme v. WestPoint Stevens Inc.*, 238 F.3d 133, 138 (2d Cir.2000), which is a question of law for the Court to decide on a claim-by-claim basis, *see, e.g.*, *Broder v. Cablevision Sys. Corp.*, 418 F.3d 187, 197 (2d Cir.2005); *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co.*, 375 F.3d 168, 178 (2d Cir.2004).

2. Parol evidence cannot be used to create an ambiguity

Case	Principle
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. 36 A.3d 776, 2012 WL 10916 Del.Supr., January 03, 2012	The "parol evidence rule" bars the admission of evidence from outside the contract's four corners to vary or contradict that unambiguous language; but, where reasonable minds could differ as to the contract's meaning, a factual dispute results and the fact-finder must consider admissible extrinsic evidence.
Galantino v. Baffone 46 A.3d 1076 Del.Supr.,2012. April 16, 2012	11 Williston on Contracts § 33:1 (4th ed.) ("[The parol evidence rule] seeks to achieve the related goals of insuring that the contracting parties, whether as a result of miscommunication, poor memory, fraud, or perjury, will not vary the terms of their written undertakings, thereby reducing the potential for litigation.").
In re Lehman Brothers Inc. 478 B.R. 570, 2012 WL 1995089 S.D.N.Y.,2012, June 05, 2012	Ambiguity, like intent, is determined by looking at the integrated agreement(s) "as a whole." *Kass v. Kass*, 91 N.Y.2d 554, 673 N.Y.S.2d 350, 696 N.E.2d 174, 180 (N.Y.1998) ("Ambiguity is determined by looking within the four corners of the document, not to outside sources."). As the New York Court of Appeals admonished, extrinsic evidence should never "be considered in order to *create* an ambiguity in the agreement." *WWW Assocs., Inc.*, 565 N.Y.S.2d 440, 566 N.E.2d at 642.
Renco Group, Inc. v. MacAndrews AMG Holdings LLC Not Reported in A.3d, 2013 WL 3369318 Del.Ch., 2013 June 19, 2013	[I]f a contract is unambiguous, then the plain language of the agreement governs, and "extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or create an ambiguity." *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del.1997). "There may be occasions where it is appropriate for the trial court to consider some undisputed background facts to place the contractual provision in its historical setting without violating this principle." *Id*. at 1232. Because the parties agree that the Holdco Agreement was structured to avoid potential pension liabilities under ERISA, the Court considers these undisputed background facts for this limited purpose.

Louisiana Mun. Police Employees' Retirement System v. JPMorgan Chase & Co. Slip Copy, 2013 WL 3357173 S.D.N.Y.,2013. July 03, 2013	Where contract language is unambiguous, extrinsic evidence of the parties' subjective intent may not be considered. *See* Law Debenture Trust Co., 595 F.3d at 466.

3. Principles for determining whether a provision is ambiguous

a. Holistic Principles

i. Read the contract as a whole; do not read provisions in a vacuum

Case	Principle
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. 36 A.3d 776, 2012 WL 10916 Del.Supr., January 03, 2012	The meaning inferred from a particular contract provision cannot control the meaning of the entire agreement if such an inference conflicts with the agreement's overall scheme or plan. [I]n upholding the intentions of the parties, a court must construe the agreement as a whole, giving effect to all provisions therein.
Westminster Securities Corp. v. Petrocom Energy Ltd. 2012 WL 147917 C.A.2 (N.Y.), January 19, 2012	"The rules of contract construction require us to adopt an interpretation which gives meaning to every provision of the contract."
Alta Berkeley VI C.V. v. Omneon, Inc. 41 A.3d 381 Del.Supr., 2012, March 05, 2012	Further, "[i]t is well established that a court interpreting any contractual provision, including preferred stock provisions, must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, reconcile all the provisions of the instrument."
Himmelberger v 40-50 Brighton First Rd. Apts. Corp. 94 A.D.3d 817, 943 N.Y.S.2d 118 N.Y.A.D. 2 Dept.,2012. April 10, 2012	As a general rule "'[a] lease is to be interpreted as a whole and construed to carry out the parties' intent, gathered, if possible, from the language of the lease' " (*Cobalt Blue Corp. v. 184 W. 10th St. Corp.*, 227 A.D.2d 50, 53, 650 N.Y.S.2d 720 quoting *Papa Gino's of Am. V. Plaza at Latham Assoc.*, 135 A.D.2d 74, 76, 524 N.Y.S.2d 536; *see International Chefs v. Corporate Prop. Invs.*, 240 A.D.2d 369, 370, 658 N.Y.S.2d 108).
General Teamsters Local Union 326 v. City of Rehoboth Beach 2012 WL 2337296 Del.Super.,2012, April 24, 2012	In interpreting a contract, the Court must first examine the entire agreement to determine whether the parties' intent can be discerned from the express words used or, alternatively, whether its terms are ambiguous.
Martin Marietta Materials, Inc. v. Vulcan Materials Co. 2012 WL 2819464 Del.Supr., May 14, 2012	[N]o reasonable reading of the Joint Defense and Confidentiality Agreement (or the Non-Disclosure Agreement) "support[s] that absurd result, which would reduce the JDA to a nullity...." That result would also violate the "cardinal rule ... that, where possible, a court should give effect to *all* contract provisions."
Severstal U.S. Holdings, LLC v. RG Steel, LLC 865 F.Supp.2d 430, 2012 WL 1901195 S.D.N.Y.,2012, May 25, 2012	*Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992) ("when interpreting this contract we must consider the entire contract and choose the interpretation ... which best accords with the sense of the remainder of the contract.").
Syncora Guar. Inc. v. EMC Mortg. Corp. Slip Copy, 2012 WL 2326068 S.D.N.Y.,2012.	When interpreting an unambiguous contract, "the court is to consider its '[p]articular words' not in isolation 'but in light of the obligation as a whole and the intention of the parties manifested thereby.' " *JA Apparel Corp. v. Abboud*, 568 F.3d 390, 397 (2d Cir.2009) (quoting *Kass v.*

	Kass, 91 N.Y.2d 554, 566 (1998)).
In re Lehman Brothers Inc. 478 B.R. 570, 2012 WL 1995089 S.D.N.Y.,2012, June 05, 2012	That intent is derived "from the plain meaning of the language employed in the agreements," . . . when the agreements are "read as a whole," *WWW Assocs., Inc.*, 565 N.Y.S.2d 440, 566 N.E.2d at 642.
XL Specialty Ins. Co. v. Level Global Investors, L.P. Slip Copy, 2012 WL 2138044 S.D.N.Y.,2012. June 13, 2012	"Part of this threshold interpretation is the question of whether the terms of the insurance contract are ambiguous." *Parks Real Estate Purchasing Grp.*, 472 F.3d at 42 (citing *Alexander & Alexander Servs., Inc. v. These Certain Underwriters at Lloyd's*, 136 F.3d 82, 86 (2d Cir.1998)). In resolving that question, a court may not view the particular terms at issue in a vacuum. Rather, it must view these terms from the perspective of one "who has examined the context of the entire integrated agreement." *Bank of N.Y. v. First Millennium, Inc.*, 607 F.3d 905, 914 (2d Cir.2010); *see also Int'l Multifoods Corp. v. Commercial Union Ins. Co.*, 309 F.3d 76, 83 (2d Cir.2002).
Anguilla RE, LLC v. Lubert-Adler Real Estate Fund IV, L.P. --- A.3d ---, 2012 WL 5417101 Del.Super.,2012. November 05, 2012	In addition, the court must be mindful that [a] contract should be read as a whole and every part should be interpreted with reference to the whole, and if possible should be so interpreted as to give effect to its general purpose. In this regard, the court must interpret the contract so as to conform to an evident consistent purpose and in a manner that makes the contract internally consistent." *Cedars Academy*, WL 5825343, at *5.
VAM Check Cashing Corp. v. Federal Ins. Co. 699 F.3d 727 C.A.2 (N.Y.),2012. November 07, 2012	Thus, the meaning of the phrase "overt felonious act" is ambiguous standing alone. We therefore examine whether it can be clarified by the second contested phrase, "committed in the presence and cognizance of such person," or by the remaining textual context. *See Fed. Ins. Co*., 942 N.Y.S.2d 432, 965 N.E.2d at 936 (before finding ambiguity, reviewing court must first "decide whether, affording a fair meaning to all of the language employed by the parties in the contract and leaving no provision without force and effect, there is a reasonable basis for a difference of opinion as to the meaning of the policy") (internal quotation marks, citations, and brackets omitted).
Harpercollins Publishers LLC v. Open Road Integrated Media, LLP --- F.Supp.2d ---, 2014 WL 1013838 S.D.N.Y. 2014. March 14, 2014	"In determining the meaning of a contract, this Court will 'look to all corners of the document rather than view sentences or clauses in isolation.'" *Int'l Klafter Co. v. Cont'l Cas. Co.*, 869 F.2d 96, 99 (2d Cir.1989) (internal quotation marks omitted); see also *Kass v. Kass*, 91 N.Y.2d 554, 566, 673 N.Y.S.2d 350, 696 N.E.2d 174 (1998).
Maryland Casualty Company v. Grigoli Enterprises Inc. No. 12-1290, 2014 WL 1022356 D.Del.,2014. March 13, 2014	The court must read the insurance contract as a whole, give effect to all provisions therein, and interpret the terms in a common sense manner. *See JFE Steel Corp. v. ICI Americas, Inc.*, 797 F.Supp.2d 452, 469 (D. Del. 2011); *Penn Mut. Life Ins. Co. v. Oglesby*, 695 A.2d 1146, 1149, 1151 (Del. 1997).

ii. Provisions and terms should not be interpreted so as to render any provision or term superfluous or meaningless

Case	Principle
JA Apparel Corp. v. Aboud 682 F.Supp 2d 294 2010 U.S. Dist. LEXIS 2151 (S.D.N.Y. 2010)	The rule against interpreting a contract so as to render one of its terms mere surplusage should nonetheless be applied with a grain or two of salt when examining a list of words having similar or even overlapping meaning in a commercial agreement. Such an itemization of terms may reflect an intent to occupy a field of meaning, not to separate it into differentiated parts.
Reyes v. Metromedia Software, Inc. 840 F.Supp.2d 752, 2012 WL 13935 S.D.N.Y., January 04, 2012	Importantly, a court must evaluate the disputed language "in the context of the entire agreement to safeguard against adopting an interpretation that would render any individual provision superfluous."It is a cardinal rule that a contract should not be read to render any provision superfluous.
MBIA Ins. Corp. v. Patriarch Partners VIII, LLC Slip Copy, 2012 WL 382921 S.D.N.Y., February 06, 2012	A contract interpretation "that has the effect of rendering at least one clause superfluous or meaningless is not preferred and will be avoided if possible." *LaSalle Bank Nat. Ass'n v. Nomura Asset Capital Corp.*, 424 F.3d 195, 206 (2d Cir.2005).
In re South Side House, LLC 470 B.R. 659, 2012 WL 907758 Bkrtcy.E.D.N.Y.,2012. March 16, 2012	"General canons of contract construction require that where two seemingly conflicting contract provisions reasonably can be reconciled, a court is required to do so and to give both effect." *Seabury Constr. Corp. v. Jeffrey Chain Corp.*, 289 F.3d 63, 69 (2d Cir.2002) (internal quotation marks omitted). *See In re Vanderveer Estates Holdings, Inc.*, 283 B.R. 122, 130–31 (Bankr.E.D.N.Y.2002) (observing that "[a]greements should not be interpreted in a way that renders any of the provisions superfluous or meaningless"). "It is an elementary rule of contract construction that clauses of a contract should be read together contextually in order to give them meaning...." *HSBC Bank USA v. Nat'l Equity Corp.*, 279 A.D.2d 251, 253, 719 N.Y.S.2d 20, 22 (N.Y.App. Div. 1st Dep't 2001). *See Sayers*, 7 F.3d at 1095 (stating that "[b]y examining the entire contract, we safeguard against adopting an interpretation that would render any individual provision superfluous").
Severstal U.S. Holdings, LLC v. RG Steel, LLC 865 F.Supp.2d 430, 2012 WL 1901195 S.D.N.Y.,2012. May 25, 2012	An interpretation of the exclusive-remedy provision . . . would render the "exceptions" . . . superfluous. Such an interpretation must be rejected according to rules of contract construction. *Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992) ("when interpreting this contract we must consider the entire contract and choose the interpretation ... which best accords with the sense of the remainder of the contract.").
In re Lehman Brothers Inc. 478 B.R. 570, 2012 WL 1995089 S.D.N.Y.,2012. June 05, 2012	Divining the parties' intent requires a court to "give full meaning and effect to all of [the contract's] provisions." *Katel Ltd. Liab. Co. v. AT & T Corp.*, 607 F.3d 60, 64 (2d Cir.2010) (quotation marks omitted). Courts must avoid "interpretations that render contract provisions meaningless or superfluous." *Manley v. AmBase Corp.*, 337 F.3d 237, 250 (2d Cir.2003).

Syncora Guar. Inc. v. EMC Mortg. Corp. 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	A contract should not be interpreted so as to render a clause superfluous or meaningless. *Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992). "[I]t is the general rule that written contracts executed simultaneously and for the same purpose must be read and interpreted together." *Liberty USA Corp. v. Buyer's Choice Ins. Agency*, 386 F.Supp.2d 421, 425 (S.D.N.Y.2005).
Dan Dong Dong Jin Garment Co. Ltd. v. KIK Fashions Inc. Slip Copy, 2012 WL 2433530 S.D.N.Y.,2012, June 27, 2012	It is a general rule of contract interpretation that "a contract should not be interpreted so as to render a clause superfluous or meaningless." *Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992).
Wells Fargo Bank, N.A. v. ESM Fund I, LP 2012 WL 3023985 S.D.N.Y.,2012. July 24, 2012	*See Law Debenture Trust Co. v. Maverick Tube Corp.*, 595 F.3d 458, 468 (2d Cir.2010) (explaining that a contract should be read as a whole to ensure that undue emphasis is not placed on particular words and phrases and to avoid an interpretation that would render a provision superfluous).
Tang Capital Partners, LP v. Norton --- A.3d ---, 2012 WL 3072347 Del.Ch.,2012. July 27, 2012	*U.S. West, Inc. v. Time Warner Inc.*, 1996 WL 307445, at *15 ("While redundancy is sought to be avoided in interpreting contracts, this principle of construction does not go so far as to counsel the creation of contract meaning for which there is little or no support in order to avoid redundancy.").

iii. The terms of the contract should be "harmonized" and read in context[5]

Case	Principle
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. 36 A.3d 776, 2012 WL 10916 Del.Supr., January 03, 2012	The meaning inferred from a particular contract provision cannot control the meaning of the entire agreement if such an inference conflicts with the agreement's overall scheme or plan.
In re South Side House, LLC 470 B.R. 659, 2012 WL 907758 Bkrtcy.E.D.N.Y.,2012. March 16, 2012	The court's role is neither more nor less than to "determine whether [specific] clauses are ambiguous when read in the context of the entire agreement." *Id.* (internal quotation marks omitted). "General canons of contract construction require that where two seemingly conflicting contract provisions reasonably can be reconciled, a court is required to do so and to give both effect."
Severstal U.S. Holdings, LLC v. RG Steel, LLC 865 F.Supp.2d 430, 2012 WL 1901195 S.D.N.Y.,2012, May 25, 2012	An interpretation of the exclusive-remedy provision . . . would render the "exceptions" . . . superfluous. Such an interpretation must be rejected according to rules of contract construction. *Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992) ("when interpreting this contract we must consider the entire contract and choose the interpretation ... which best accords with the sense of the remainder of the contract.").

[5] Query whether "harmonize" means (1) to interpret a provision so as to reduce or eliminate surplusage or (2) to let other provisions (which might or might not be superfluous) guide the selection of one alternative interpretation over another. Meaning #2 is slightly broader.

GRT, Inc. v. Marathon GTF Tech., Ltd. 2012 WL 2356489 Del.Ch.,2012, June 21, 2012	When interpreting a contract, a court must give effect to all of the terms of the instrument and read it in a way that, if possible, reconciles all of its provisions. That is, a court will prefer an interpretation that harmonizes the provisions in a contract as opposed to one that creates an inconsistency or surplusage.

iv. Contracts entered into contemporaneously and for the same purpose should be read and interpreted together

Case	Principle
Edelman Arts, Inc. v. Art Intern. (UK) Ltd. 841 F.Supp.2d 810, 2012 WL 183641 S.D.N.Y., January 24, 2012	Under New York law, "all writings which form part of a single transaction and are designed to effectuate the same purpose must be read together." New York courts applying this standard have held cover letters transmitted with and commenting upon a proposed contract to constitute part of the contract as a matter of law.
MBIA Ins. Corp. v. Patriarch Partners VIII, LLC Slip Copy, 2012 WL 382921 S.D.N.Y., February 06, 2012	"The mere fact that a contract refers to another contract does not mean that it has 'incorporated' the other contract." *Rosen v. Mega Bloks Inc.*, No. 06 Civ. 3474(LTS)(GWG), 2007 WL 1958968, at *10 (S.D.N.Y. July 6, 2007).
In re Autobacs Strauss, Inc. 473 B.R. 525, 2012 WL 1836263 Bkrtcy.D.Del.,2012. May 21, 2012	*Crystal Palace Gambling Hall, Inc. v. Mark Twain Indus., Inc.* for the "hornbook principle of contract interpretation" that "contracts should be construed together with other documents executed by the same parties, for the same purpose, and in the course of the same transaction." *Crystal Palace* found "strong support" of intent by comparing multiple documents against each other and searching for consistency. Although the analysis is not purely numerical, three of the four relevant documents in this case explicitly require a capital contribution.
Syncora Guar. Inc. v. EMC Mortg. Corp. 874 F.Supp.2d 328, 2012 WL 2326068 S.D.N.Y.,2012. June 19, 2012	"[I]t is the general rule that written contracts executed simultaneously and for the same purpose must be read and interpreted together." *Liberty USA Corp. v. Buyer's Choice Ins. Agency*, 386 F.Supp.2d 421, 425 (S.D.N.Y.2005).
Eastman Kodak Co. v. Kyocera Corp. --- F.Supp.2d ---, 2012 WL 5288770 W.D.N.Y.,2012. October 23, 2012	Furthermore, "[u]nder New York law, instruments executed at the same time, by the same parties, for the same purpose and in the course of the same transaction will be read and interpreted together." *Carvel Corp. v. Diversified Management Group, Inc.*, 930 F.2d 228, 233 (2d Cir.1991).
Fernandez v. City of New York 502 Fed.Appx. 48 C.A.2 (N.Y.),2012. November 09, 2012	Under New York law, "multiple agreements may be read as on contract only if the parties so intended, which we determine from the circumstances surrounding the transaction." *Arciniaga v. Gen. Motors Corp.*, 460 F.3d 231, 237 (2d Cir.2006). The "legally operative question," we have said, is whether the two agreements "were part of a single transaction intended to effectuate the same purpose." *TVT Records v. Island Def Jam Music Grp.*, 412 F.3d 82, 90 (2d Cir.2005).

County of Suffolk v Long Is. Power Auth. 100 A.D.3d 944, 954 N.Y.S.2d 619 N.Y.A.D. 2 Dept.,2012. November 28, 2012	"Generally, the rule is that separate contracts relating to the same subject matter and executed simultaneously by the same parties may be construed as one agreement" (*Williams v. Mobil Oil Corp.*, 83 A.D.2d 434, 439, 445 N.Y.S.2d 172). However, "[c]ontracts remain separate unless their history and subject matter show them to be unified" (*131 Heartland Blvd. Corp. v. C.J. Jon Corp.*, 82 A.D.3d 1188, 1190, 921 N.Y.S.2d 94). To determine whether contracts are separable or entire, " 'the primary standard is the intent manifested, viewed in the surrounding circumstances' " *948 (*G.K. Alan Assoc. Inc. v. Lazzari*, 66 A.D.3d 830, 833, 887 N.Y.S.2d 233, quoting *Williams v. Mobil Oil Corp.*, 83 A.D.2d at 439, 445 N.Y.S.2d 172).
Madeleine, L.L.C. v. Casden --- F.Supp.2d ----, 2013 WL 3146821 S.D.N.Y.,2013. June 20, 2013	Whether multiple documents should be read as constituting a single agreement also depends on the intent of the parties. *TVT Records*, 412 F.3d at 89; *Commander Oil*, 991 F.2d at 52–53. The determination as to whether the parties intended the writings to constitute an integrated agreement is a question of fact appropriately decided by the court in a bench trial. *TVT Records*, 412 F.3d at 89; *Rudman v. Cowles Commc'ns., Inc.*, 30 N.Y.2d 1, 13, 330 N.Y.S.2d 33, 280 N.E.2d 867 (1972) ("Whether the parties intended to treat both agreements as mutually dependent contracts ... is a question of fact ... [T]he primary standard is the intent manifested, viewed in the surrounding circumstances."); *see also Arciniaga v. Gen. Motors Corp.*, 460 F.3d 231, 237 (2d Cir.2006) (The circumstances surrounding the transaction is relevant to answering the question of whether multiple documents were meant to be read together.)

b. Canons of Construction

i. *Ejusdem generis* (when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed)

Case	**Principle**
Camperlino v. Bargabos 96 A.D.3d 1582, 946 N.Y.S.2d 814, 2012 WL 2164461 N.Y.A.D. 4 Dept.,2012. June 15, 2012	Where "'[a] release ... contain[s] specific recitals as to the claims being released, and yet conclude[s] with an omnibus clause to the effect that the releasor releases and discharges all claims and demands whatsoever which he [or she] ... may have against the releasee ..., the courts have often applied the rule of *ejusdem generis*, and held that the general words of a release are limited by the recital of a particular claim' "
Edgewater Growth Capital Partners, L.P. v Greenstar N. Am. Holdings, Inc., 2013 N.Y. Misc. LEXIS 351, 2013 NY Slip Op 30183(U) N.Y. Sup. Ct., 2013 Jan. 2, 2013	According to the contractual interpretation principal of ejusdem generis, "the meaning of a word in a series of words is determined 'by the company it keeps,'" 242-44 E. 77th St., *LLC v. Greater N.Y. Mut. Ins. Co.*, 31 A.D.3d 100, 103-104, 815 N.Y.S.2d 507 (1st Dep't 2006), when a general provision follows a series of specific provisions, the general provision is interpreted as being of the same type or class as the specific provisions that preceded it. *See Innophos, Inc. v. Rhodia, S.A.*, 38 A.D.3d 368, 372, 832 N.Y.S.2d 197 (1st Dep't 2007). In this case, the general provision … is preceded by a series of specific provisions relating to the promises that plaintiffs made regarding the business relationship contemplated by the LOI. Plaintiffs cannot rely on the specific provision to bring in an entirely new class of data.

Exec. Risk Specialty Ins. Co. v. First Health Group Corp. 2013 Del. Super. LEXIS 170, 2013 WL 1908664 Del. Super. Ct., 2013. May 7, 2013	Delaware recognizes the principle of *ejusdem generis*, which stands for the proposition that "where general language follows an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in the widest extent, but are to be held as applying only to persons or things of the game general kind or class as those specifically mentioned." Aspen Advisors v. United Artists Theater Co., 861 A.2d 1251, 1265 (Del. 2004).

ii. *Expresio unius est exclusio alterus* (to express or include one thing implies the exclusion of another)

Case	Principle
Shintom Co., Ltd. v. Audiovox Corp. 888 A.2d 225, Supreme Court of Del. October 31, 2005	We find the *ratio decidendi* in Gaskill to be persuasive. Section 151(c) provides that the holders of preferred shares "shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the certificate of incorporation" or applicable resolution(s). That is equivalent to stating that such shares shall have no other preferences. We reach that conclusion by applying the same general principle of statutory construction that was invoked in Gaskill: the expression of one thing is the exclusion of another (*expression unius est exclusio alteruis*). The unambiguous language makes the mandatory "shall" nature of a preferred stockholder's entitlement to receive dividends expressly contingent upon those rights, "if any," being set forth in the certificate of incorporation or applicable resolution(s).
Concord Real Estate CDO 2006-1, Ltd. v. Bank of America N.A. 996 A.2d 324, Del Chancery Court May 14, 2010	Under New York law, doctrine of *inclusio unius est exclusio alterius* is not a rule of law and is not always dispositive, and need not be mechanically applied.
Mastrocovo v. Capizzi 87 A.D.3d 1296, N.Y. App. Div 4th Dep't, September 30, 2011	"Under the standard canon of contract construction *expressio unius est exclusio alterius*, that is, that the expression of one thing implies the exclusion of the other" (*Matter of New York City Asbestos Litig.*, 41 AD3d 299, 302, 838 NYS2d 76 [2007]), the fact that the agreement refers only to the cohabitation prong of section 248 compels us to conclude that the parties did not intend to include the second prong of plaintiff holding herself out as another man's wife.
Ellington v. EMI Mills Music, Inc., 959 N.Y.S.2d 88 October 21, 2011	While the preamble looks back in time, by referring to "predecessors in interest," it never expressly discusses future affiliates. Agreement, at 1. "Under the standard canon of contract construction *expressio unius est exclusio alterius*, that is, that the expression of one thing implies the exclusion of the other (Black's Law Dictionary 602 [7th ed])" (*Matter of New York City Asbestos Litig.*, 41 AD3d 299, 302, 838 N.Y.S.2d 76 [1st Dept 2007]), by expressly including only predecessors in interest and affiliates of Mills Music, Inc., potential future affiliates are excluded from the definition of "Second Party" in the Agreement. Absent explicit language demonstrating the parties' intent to bind future affiliates of the contracting parties, the term "affiliate" includes only those affiliates in existence at the time that the contract was executed. VKK Corp. v National Football League, 244 F3d 114, 130-31 (2d Cir 2001).
Realtime Data, LCC v. Melone 104 A.2d 748, N.Y. App. Div 2d Dep't, March 13, 2013	Contrary to the defendant's contention, the language of paragraph 4.2 clearly limits bonus compensation to a share of distributions based upon either the sale of all of RDL's assets, or some of RDL's assets. Pursuant to the doctrine of "expressio unius est exclusio alterious," which means that the expression of one thing is the exclusion of the other (*see* Matter of Petersen v Incorporated Vil. of Saltaire, 77 AD3d 954, 909

	N.Y.S.2d 750), the references to the sale of assets implies that bonus compensation does not apply to distributions based upon something other than the sale of assets. If the parties had intended for bonus compensation to be based upon all distributions, these references to the sale of assets would have been unnecessary.
Quadrant Structured Products Co., Ltd. v. Vertin --- N.E.3d ----, 2-14 WL 2573378 N.Y.,2014 June 10, 2014	"Even where there is ambiguity, if parties to a contract omit terms—particularly, terms that are readily found in other, similar contracts—the inescapable conclusion is that the parties intended the omission. The maxim expressio unius est exclusio alterius, as used in the interpretation of contracts, supports precisely this conclusion" (*see generally* Glen Banks, New York Contract Law § 10 .13 [2006]; *see also* *In re Ore Cargo, Inc*., 544 F.2d 80, 82 [2d Cir1976] [where sophisticated drafter omits a term, expressio unius precludes the court from implying it from the general language of the agreement]).

iii. The specific governs over the general

Case	Principle
MBIA Ins. Corp. v. Patriarch Partners VIII, LLC Slip Copy, 2012 WL 382921 S.D.N.Y., February 06, 2012	Well-settled rules of contract construction require that a contract be construed as a whole, giving effect to the parties' intentions. Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one.
MCMC, LLC v. Riccardi Slip Copy, 2012 WL 5507519 E.D.N.Y.,2012. November 13, 2012	Plaintiff also relies upon the doctrine of contractual construction that "a specific provision ... governs the circumstance to which it is directed, even in the face of a more general provision," *Capital Ventures Int'l v. Republic of Argentina*, 652 F.3d 266, 272 (2d Cir.2011), and argues that the enforcement clause specifically addresses actions for injunctive relief and must govern in lieu of the more general forum selection clause. However, since the clauses may be interpreted to be consistent with one another, it is not clear that the enforcement clause was intended to govern any specific situation not covered by the forum selection clause.
Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co., N.A. 957 F.Supp.2d 316 S.D.N.Y.,2013. May 08, 2013	"[C]ourts construing contracts must give specific terms and exact terms . . . greater weight than general language." *Cnty. of Suffolk v. Alcorn*, 266 F.3d 131, 139 (2d Cir. 2001) (citation omitted); *see also* *John Hancock Mut. Life Ins. Co. v. Carolina Power & Light Co.*, 717 F.2d 664, 669 n.8 (2d Cir. 1983) [36] ("New York law recognizes that definitive, particularized contract language takes precedence over expressions of intent that are general, summary, or preliminary.")

iv. The same words used in different parts of a writing have the same meaning

Case	Principle
Imation Corp. v. Koninklijke Philips Elecs. N.V., 586 F.3d 980, 2009 U.S. App. LEXIS 24231 Fed. Cir., 2009. November 3, 2009	A proper interpretation of a contract generally assumes consistent usage of terms throughout the Agreement. *Finest Inv. v. Sec. Trust Co. of Rochester*, 96 A.D.2d 227, 230, 468 N.Y.S.2d 256, 258 (App. Div. 1983), aff'd, 61 N.Y.2d 897, 474 N.Y.S.2d 481, 462 N.E.2d 1199 (1984) (New York courts "presume that the same words used in different parts of a writing have the same meaning.").

Eastman Kodak Co. v. Altek Corp. --- F.Supp.2d ----, 2013 WL 1285293 S.D.N.Y.,2013. March 29, 2013	When considering the meaning of a contract term in the larger context of an entire agreement, a Court "may presume that the same words used in different parts of a writing have the same meaning." *Finest Investments v. Sec. Trust Co. of Rochester*, 96 A.D.2d 227, 468 N.Y.S.2d 256, 258 (4th Dep't 1983). Similarly, the use of the definite article "the" to modify a noun tends, in appropriate circumstances, to refer back to a previous appearance of the noun. *Id.*; *cf. National Foods, Inc. v. Rubin*, 936 F.2d 656, 660 (2d Cir.1991).

c. Other Principles[6]

i. In determining whether an ambiguity exists, courts look at the language of the contract itself *and* the inferences that can be drawn from that language

Case	Principle
In re Motors Liquidation Co. *460 B.R. 603* *Bkrtcy.S.D.N.Y., November 28, 2011*	[In determining whether ambiguity exists, courts look at] "whether the language of the contract *and* the inferences to be drawn from it are susceptible to more than one reasonable interpretation"
Bd. of Tr. ex rel. Gen. Retirement Sys. of Detroit v. BNY Mellon, N.A. 2012 WL 393011, S.D.N.Y.,2012. September 10, 2012	"Ambiguity with respect to the meaning of contract terms can arise either from the language itself or from inferences that can be drawn from this language." *Alexander & Alexander*, 136 F.3d at 86.
Kobrand Corp. v. Abadia Retuerta S.A., No. 12 Civ. 154(KBF), 2012 WL 5851139 S.D.N.Y., November 19, 2012	When making this initial interpretation, the Court should take into account both the language of the contract and the inferences that can be drawn from that language. See id.

ii. Preference for construing text as an obligation rather than a condition

Case	Principle
Edelman Arts, Inc. v. Art Intern. Ltd. 841 F.Supp.2d 810, 2012 WL 183641 S.D.N.Y., January 24, 2012	"Conditions are not favored under New York law, and in the absence of unambiguous language, a condition will not be read into the agreement." *Ginett v. Computer Task Group, Inc.*, 962 F.2d 1085, 1099–1100 (2d Cir.1992). [C]ourts typically "interpret doubtful language as embodying a promise or constructive condition rather than an express condition." Thus, New York courts have repeatedly stated that if contract "language is in any way ambiguous, the law does not favor a construction which creates a condition precedent." And "a contractual duty ordinarily will not be construed as a condition precedent absent clear language showing that the parties intended to make it a condition."
Bank of New York Mellon Trust Co., Nat. Ass'n v. Solstice ABS CBO II, Ltd. 910 F.Supp.2d 629 S.D.N.Y.,2012.	The Court will not read a condition precedent into a contract where it is not clear that the parties intended to create such a condition. *See, e.g.*, *Israel v. Chabra*, 537 F.3d 86, 93 (2d Cir.2008) ("New York courts are cautious when interpreting a contractual clause as a condition

[6] In addition to the principles listed below, there are various additional principles (which are not addressed in this guide) that a court might employ to determine whether or not a provision is ambiguous.

December 20, 2012	precedent, and they will 'interpret doubtful language as embodying a promise or constructive condition rather than an express condition,'...."); Sciascia v. Rochdale Vill., Inc., 851 F.Supp.2d 460, 477–78 (E.D.N.Y.2012) ("To conclude, absent from the 2005 CBA, relevant side letters, [memorandum of agreement], and 2008 CBA are any terms or phrases even suggesting the possibility of a condition precedent to the Defendant's contribution obligations, let alone language 'clearly imposing' such a condition.").
Mahoney v. Sony Music Entm't, 2013 U.S. 2013 WL 491526 Feb. 11, 2013 S.D.N.Y., 2013	"As a general rule, it must clearly appear from the agreement itself that the parties intended a provision to operate as a condition precedent. If the language is in any way ambiguous, the law does not favor a construction which creates a condition precedent." Kass v. Kass, 235 A.D.2d 150, 159, 663 N.Y.S.2d 581, 588 (2d Dep't 1997), aff'd, 91 N.Y.2d 554, 696 N.E.2d 174, 673 N.Y.S.2d 350 (1998).

iii. When dealing with sophisticated parties, the court gives deference to the language used

Case	Principle
China Privatization Fund (Del), L.P. v. Galaxy Entertainment Group Ltd. 95 A.D.3d 769, --- N.Y.S.2d --- N.Y.A.D. 1 Dept.,2012, May 31, 2012	"While it is not this Court's preference to find a triable issue of fact concerning the terms of a written agreement between two sophisticated contracting parties, our options are limited where the contractual provisions at issue are drafted in a manner that fails to eliminate significant ambiguities" (*NFL Enters. LLC v. Comcast Cable Communications, LLC*, 51 A.D.3d 52, 61 [2008]).
Camperlino v. Bargabos 946 N.Y.S.2d 814, 2012 WL 2164461 N.Y.A.D. 4 Dept.,2012. June 15, 2012	Particularly "in the context of real property transactions, where commercial certainty is a paramount concern, and where ... the instrument was negotiated between sophisticated, counseled business people negotiating at arm's length ... courts should be extremely reluctant to interpret an agreement as impliedly stating something which the parties have neglected to specifically include" (*Vermont Teddy Bear Co.*, 1 NY3d at 475 [internal quotation marks omitted]).
Cypress Semiconductor Corp. v SVTC Technologies., LLC 2012 WL 2989169 Del.Super., 2012 June 29, 2012	Courts must be circumspect when considering a contract's language, especially when the contact is between sophisticated, commercial entities. "[C]reating an ambiguity where none exists could, in effect, create a new contract with rights, liabilities and duties to which the parties had not assented." (*Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del.Super.2005)).
Ashwood Capital, Inc. v OTG Mgt., Inc. 99 A.D.3d 1, 948 N.Y.S.2d 292 N.Y.A.D. 1 Dept.,2012. July 10, 2012	According to well-established rules of contract interpretation, "when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms." We apply this rule with even greater force in commercial contracts negotiated at arm's length by sophisticated, counseled businesspeople. In such cases, "'courts should be extremely reluctant to interpret an agreement as impliedly stating something which the parties have neglected to specifically include.' "
In re Nortel Networks, Inc. Slip Copy, 2013 WL 1385271 Bkrtcy.D.Del.,2013. April 03, 2013	When interpreting a commercial contract negotiated by and entered into at arm's length between sophisticated business people, represented by an attorney, a court must enforce the agreement according to its terms, and extrinsic and parol evidence is not admissible to create an ambiguity in a written agreement that is complete, clear, and unambiguous on its face.

iv. Contractual silence does not necessarily create ambiguity, but an omission as to a material issue can create an ambiguity

Case	Principle
Yarde v Artoglou 2012 N.Y. Misc. LEXIS 5303, N.Y. Sup. Ct. Nov. 1, 2012	While silence does not equate to contractual ambiguity (*Greenfield v Philles Records*, *supra*, at 573, 98 N.Y.2d 562, 780 N.E.2d 166, 750 N YS2d 565), an omission as to a material issue can create an ambiguity and allow the use of extrinsic evidence where the context within the document's four comers suggests that the parties may have intended a result not expressly stated (*see Louis Dreyfus Energy Corp. v MG Ref. & Mktg., Inc.*, 2 NY3d 495, 500, 812 N.E.2d 936, 780 NYS2d 110 [2004]).
TWA Resources v. Complete Production Services, Inc. Not Reported in A.3d, 2013 WL 1304457 Del.Super.,2013. March 28, 2013	Silence in a contract does not necessarily create ambiguity. Provisions not included in an agreement are not the equivalent of ambiguous terms. However, the parties' course of performance "may be used to aid a court in interpretation of an ambiguous contract, [or] it may also be used to supply an omitted term when a contract is silent on an issue." *In re Mobilactive Media, LLC*, 2013 WL 297950, at *16 n. 195 (Del. Ch.)

v. Punctuation is always subordinate to the text and is never allowed to create ambiguity or undermine otherwise clear meaning

Case	Principle
Richied v. D.H. Blair & Co. 272 A.D.2d 170, 710 N.Y.S.2d 25 N.Y. App. Div. 1st Dep't, 2000	The motion court aptly characterized plaintiff's reading as "strained," noting that the word "may," completely ignored by plaintiff, evinces an intent not to condition the exclusion of compensation in paragraph 1 (b) upon the availability of compensation in paragraph 1 (d), and also noting that punctuation is an unreliable interpretive tool to which resort should be had only when other means of interpretation fail (*see*, *Reliance Grant El. Equip. Corp. v Reliance Ball-Bearing Door Hanger Co.*, 205 App Div 320, 323). We agree.
Interim Healthcare v. Spherion Corp., 884 A.2d 513, 2005 Del. Super. LEXIS 32, 2005 WL 280225 Del. Super. Ct. 2005	Court will not allow the imprecise placement of adverbs and commas to alter otherwise plain meaning of a contractual provision or to frustrate the overall plan or scheme memorialized in the parties' contract.
Viking Pump, Inc. v. Liberty Mut. Ins. Co. 2007 Del. Ch. LEXIS 43 Del. Ch. Apr. 2, 2007	Courts are typically chary about inserting punctuation that was not put there by its drafters, and this particular insertion results in a grating and awkward sentence, even by contractual prose standards. See, e.g., Wirth & Hamid Fair Booking, Inc. v. Wirth, 265 N.Y. 214, 219, 192 N.E. 297 (1934) (explaining that "punctuation and grammatical construction are reliable signposts in the search" for contractual intent); but see Reliance-Grant Elevator Equipment Corp. v. Reliance Ball-Bearing Door Hanger Co., 205 A.D. 320, 323, 199 N.Y.S. 476 (N.Y. App. Div. 1923) ("Punctuation is a most fallible standard by which to interpret a writing. . . . The court will take the contract by its four corners, and having ascertained . . . what its meaning is, will construe it accordingly, without regard to punctuation marks, or the want of them. . . . [T]he words control the punctuation marks, and not the punctuation marks the words.") (quotation omitted).

Segovia v. Equities First Holdings, LLC 2008 Del. Super. LEXIS 197, 65 U.C.C. Rep. Serv. 2d (Callaghan) 969 Del. Super. Ct. 2008	In this regard, Delaware courts will not allow "sloppy grammatical arrangement of the clauses or mistakes in punctuation to vitiate the manifest intent of the parties as gathered from the language of the contract."
Microstrategy Inc. v. Acacia Research Corp. 2010 Del. Ch. LEXIS 254, 2010 WL 5550455 Del. Ch. Dec. 30, 2010	In reaching that conclusion, I am mindful that grammar and punctuation are of secondary importance to a court in interpreting a contract where such grammar and punctuation reasonably would frustrate the parties' clear intent as evinced from the language used in the contract. Indeed, a court should "not allow the imprecise placement of adverbs and commas to alter the otherwise plain meaning of a contractual provision or to frustrate the overall plan or scheme memorialized in the parties' contract."
Ellington v. EMI Mills Music, Inc., 959 N.Y.S.2d 88 October 21, 2011	"Form should not prevail over substance and a sensible meaning of words should be sought." *Riverside S. Planning Corp. v CRP/Extell Riverside, L.P.*, 13 NY3d 398, 404, 920 N.E.2d 359, 892 N.Y.S.2d 303 (2009).
Gib. Private Bank & Trust Co. v. Boston Private Fin. Holdings, Inc., 2011 Del. Ch. LEXIS 183 (Del. Ch. Nov. 30, 2011)	Gibraltar contends that if Section 5.5(d) was meant to have the meaning proposed by Boston Private, a comma should have been inserted before the limiting clause. It is true that if this additional comma were present, this case would be much easier to decide, and its absence is an argument against Boston Private's interpretation. Still, where a contract provision is ambiguous, the absence of punctuation that would clearly support one interpretation does not necessarily render such an interpretation unreasonable.
Banco Espirito Santo, S.A. v. Concessionaria Do Rodoanel Oeste S.A. 100 A.D.3d 100, 951 N.Y.S.2d 19 N.Y.A.D. 1 Dept.,2012. September 18, 2012	It is a cardinal principle of contract interpretation that mistakes in grammar, spelling or punctuation should not be permitted to alter, contravene or vitiate manifest intention of the parties as gathered from the language employed (*Sirvint*, 242 App.Div. at 189, 272 N.Y.S. 555; *Wirth & Hamid Fair Booking*, 265 N.Y. at 219, 192 N.E. 297). [I]n a contract containing punctuation marks, the words and not the punctuation guide us in its interpretation (*see* 17A CJS Contracts § 406; 12 AM Jur. Contracts § 256). Punctuation is always subordinate to the text and is never allowed to control its meaning (*Sirvint v. Fidelity & Deposit Co. of Md.*, 242 App.Div. 187, 189, 272 N.Y.S. 555 [1st Dept.1934], *affd.*, 266 N.Y. 482, 195 N.E. 164 [1934]; *see also* 17A Jur. 2d Contracts § 366 [2011]; 68A N.Y. Jur. Insurance § 869). Of course, punctuation in a contract may serve as a guide to resolve an ambiguity that has not been created by punctuation or the absence therein, but it cannot, by itself, create ambiguity (*Wirth & Hamid Fair Booking, Inc. v. Wirth*, 265 N.Y. 214, 192 N.E. 297 [1934]).

D. When a provision is unambiguous

1. If the provision is unambiguous, then the court interprets the contract as a matter of law

Case	Principle
Reyes v. Metromedia Software, Inc. 840 F.Supp.2d 752, 2012 WL 13935 S.D.N.Y., January 04, 2012	"The proper interpretation of an unambiguous contract is a question of law for the court," and "courts are to enforce them as written."

Maser Consulting, P.A. v. Viola Park Realty, LLC 91 A.D.3d 836, 936 N.Y.S.2d 693, 2012 WL 234081 N.Y.A.D. 2 Dept., January 24, 2012	Construction and interpretation of an unambiguous written contract is an issue of law within the province of the court.
Himmelberger v 40-50 Brighton First Rd. Apts. Corp. 94 A.D.3d 817, 943 N.Y.S.2d 118 N.Y.A.D. 2 Dept., 2012, April 10, 2012	In those instances where the intent of the parties is clear and unambiguous from the language employed on the face of the agreement, the interpretation of the document is a matter of law solely for the court.
County of Suffolk v Long Is. Power Auth. 100 A.D.3d 944, 954 N.Y.S.2d 619 N.Y.A.D. 2 Dept.,2012. November 28, 2012	The threshold question of whether a contract is unambiguous, and the subsequent construction and interpretation of a contract determined to be unambiguous, are issues of law within the province of the court
In re Great Atlantic & Pacific Tea Co., Inc. v. Great Atlantic & Pacific Tea Co., Inc. 509 B.R. 430 S.D.N.Y.2014 March 31, 2014	"It is 'well settled' that '[t]he court, as a matter of law, determines the existence of an ambiguity and interprets the contract,' while 'the resolution of conflicting parol evidence relevant to what the parties intended by the ambiguous provision is for the trier of fact.' *Missett v. Hub Int'l Pennsylvania, LLC*, 6 A.3d 530, 541 (Pa.Super.Ct.2010).

2. If the provision is unambiguous, then the court should look only to the text of the contract to determine the parties' intent and parol evidence should not be used ("four-corners rule")

Case	Principle
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	Under New York law, the contract itself is the best evidence of intent; if an agreement is complete, clear and unambiguous on its face, it must be enforced according to the plain meaning of its terms.
In re World Trade Center Disaster Site Litigation 834 F.Supp.2d 184, 2011 WL 6425111 S.D.N.Y., December 20, 2011	It is a familiar proposition of contract law that courts enforce the intentions of the parties to a contract, and that the best expression of the parties' intent is their writing. Thus, where a contract is clear on its face, the court's obligation is to enforce it according to its terms. A contract is to be understood in relation to the manifest intention of the parties. "This means that the manifestation of a party's intention rather than the actual or real intention is ordinarily controlling, for a contract is an obligation attached, by the mere force of law, to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent."
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. 36 A.3d 776, 2012 WL 10916 Del.Supr., January 03, 2012	When interpreting a contract, the court will give priority to the parties' intentions as reflected in the four corners of the agreement . . .
Reyes v. Metromedia Software, Inc. 840 F.Supp.2d 752, 2012 WL 13935 S.D.N.Y., January 04, 2012	Under New York law, a court interpreting a contract must "give effect to the intent of the parties as revealed by the language they chose to use."
Corral v. Outer Marker LLC 2012 WL 243318 E.D.N.Y., January 24, 2012	"Where a 'contract is clear and unambiguous on its face, the intent of the parties must be gleaned from within the four corners of the instrument, and not from extrinsic evidence.' " *RJE Corp. v. Northville*

	Indus. Corp., 329 F.3d 310, 314 (2d Cir.2003) "If the language unambiguously conveys the parties' intent, extrinsic evidence may not properly be received, nor may a judicial preference be interjected since these extraneous factors would vary the effect of the contract's terms." The Court need not consider extrinsic evidence in the face of clear and unambiguous contractual language.
Maser Consulting, P.A. v. Viola Park Realty, LLC 91 A.D.3d 836, 936 N.Y.S.2d 693, N.Y.A.D. 2 Dept., January 24, 2012	Where a contract is clear and unambiguous on its face, the intent of the parties must be gleaned from within the four corners of the instrument, and not from extrinsic evidence.
Hillside Metro Associates, LLC v. JPMorgan Chase Bank, Nat. Ass'n 2012 WL 1617157 E.D.N.Y.,2012, May 09, 2012	"The best evidence of what the parties to a written agreement intend is what they say in their writing." *Niagara Frontier Transp. Auth. v. Euro–United Corp.*, 757 N.Y.S.2d 174, 176 (4th Dep't 2003) ("When interpreting a written contract, the court should give effect to the intent of the parties as revealed by the language and structure of the contract
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	"Delaware adheres to the objective theory of contract interpretation" under which "the court looks to the most objective indicia of [the parties'] intent: the words found in the written instrument." If the language in the contract "is clear and unambiguous on its face" courts may not "consider parol evidence to interpret it or search for the parties' intentions."
XL Specialty Ins. Co. v. Level Global Investors, L.P. 2012 WL 2138044 S.D.N.Y.,2012, June 13, 2012	"When the provisions are unambiguous and understandable, courts are to enforce them as written."
Anguilla RE, LLC v. Lubert-Adler Real Estate Fund IV, L.P. --- A.3d ---, 2012 WL 5417101 Del.Super.,2012. November 05, 2012	Upon a finding that the contract clearly and unambiguously reflects the parties' intent, the Court must refrain from destroying or twisting the contract's language, and confine its interpretation to the contract's "four corners."*Doe v. Cedars Academy*,LLC,2010 WL 5825343 at 5 (DelSuper)

a. If the provision is unambiguous, then the court cannot use notions of equity and fairness to alter the contract

Case	Principle
In re New York Skyline, Inc. 471 B.R. 69, 2012 WL 1658355 Bkrtcy. S.D.N.Y., 2012. May 11, 2012	"[I]f the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity."
Cornell Glasgow, LLC v. LaGrange Properties, LLC --- A.3d ---, 2012 WL 6840625 Del.Super.,2012. December 07, 2012	The Court will not rewrite Exhibit A under the guise of interpreting it. *Union Fire Ins. Co. of Pittsburgh, P.A. v. Pan American Energy, LLC*, 2003 WL 1432419 at *4 (Del. Ch. March 19, 2003)("The courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing.").
Dormitory Authority of New York v. Continental Cas. Co. Slip Copy, 2013 WL 840633 S.D.N.Y.,2013. March 05, 2013	The Court cannot rewrite the Policy to better correspond to the Court's notions of fairness and equity. *See Greenfield v. Philles Records*, 98 N.Y.2d 562, 569, 750 N.Y.S.2d 565, 780 N.E.2d 166 (2002).

Morris James LLP v. Continental Cas. Co. --- F.Supp.2d ----, 2013 WL 943459 D.Del.,2013. March 12, 2013	However, when the language is clear and unequivocal, the parties are bound by its plain meaning. *Laird v. Emp'rs Liab. Assur. Corp.*, 18 A.2d 861, 862 (Del.Super.1941) ("[T]he courts cannot change or ignore the language of a contract merely to avoid hardships or to meet special circumstances against which the parties have not protected themselves.").
Masonic Home of Delaware, Inc. v. Certain Underwriters at Lloyd's London --- A.3d ---, 2013 WL 3006909 Del.Super., 2013 May 22, 2013	The Court may not consider extrinsic evidence or change terms to reflect its own "notions of fairness and equity."

E. When a provision is ambiguous

1. If the provision is ambiguous, then the parties' intent becomes a question of fact

Case	Principle
Reyes v. Metromedia Software, Inc. 840 F.Supp.2d 752, 2012 WL 13935 S.D.N.Y., January 04, 2012	"However, when the meaning of the contract is ambiguous and the intent of the parties becomes a matter of inquiry, a question of fact is presented."
Syncora Guar. Inc. v. EMC Mortg. Corp. 874 F.Supp.2d 328, 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	Where a contract is ambiguous, the issue "should be submitted to the trier of fact." *Consarc Corp. v. Marine Midland Bank N.A.*, 996 F.2d 568, 573 (2d Cir.1993).
Pacific Employers Ins. Co. v. Global Reinsurance Corp. of America 693 F.3d 417, C.A.3 (Pa.),2012. September 07, 2012	If, however, we conclude that the language is ambiguous, we leave it to a fact-finder to decide its meaning. *See Ins. Adjustment Bureau, Inc. v. Allstate Ins., Inc.*, 588 Pa. 470, 905 A.2d 462, 469 (2006).
Anguilla RE, LLC v. Lubert-Adler Real Estate Fund IV, L.P. --- A.3d ---, 2012 WL 5417101 Del.Super.,2012. November 05, 2012	"[W]here reasonable minds could differ as to the contract's meaning, a factual dispute results and the fact-finder must consider admissible extrinsic evidence." *GMG Capital Invs*, 36 A.3d at 776.
Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co., N.A. 957 F.Supp.2d 316 S.D.N.Y.,2013. May 08, 2013	Where the language of a contract is held ambiguous, the factfinder—here, the Court—may properly consider "extrinsic evidence as to the parties' intent." *JA Apparel Corp. v. Abboud*, 568 F.3d 390, 397 (2d Cir. 2009); *see also Collins v. Harrison-Bode*, 303 F.3d 429, 433-34 (2d Cir. 2002) ("[W]here . . . there are internal inconsistencies in a contract pointing to ambiguity, extrinsic evidence is admissible to determine the parties' intent." (citation omitted)). "Where there is such extrinsic evidence, the meaning of the ambiguous contract is a question of fact for the factfinder." *U.S. Naval Inst. v. Charter Commc'ns, Inc.*, 875 F.2d 1044, 1048 (2d Cir. 1989) ("In determining the meaning of an ambiguous contract term, the finder of fact seeks to fathom the parties' intent. That intent may be proven by extrinsic evidence.").
Catlin Speciality Ins. Co. v. QA3 Financial Corp. Slip Copy, 2014 WL 2990520 S.D.N.Y.,2014. July 02, 2014	"If, however, the language in the insurance contract is ambiguous and susceptible of two reasonable interpretations, the parties may submit extrinsic evidence as an aid in construction, and the resolution of the ambiguity is for the trier of fact." *State v. Home Indem. Co.*, 66 N.Y.2d 669, 495 N.Y.S.2d 969, 486 N.E.2d 827, 829 (N.Y.1985); *see also Fed.*

	Ins. Co. v. Am. Home Assur. Co., 639 F.3d 557, 567 (2d Cir.2011).

2. If the provision is ambiguous [or incomplete], then parol evidence can be used to determine the intent of the parties

Case	Principle
Bison Capital Corp. v. ATP Oil & Gas Corp. 2011 WL 8473007, S.D.N.Y.,2011. March 08, 2011	"Where ambiguity is present in a contract, the subsequent conduct of the parties may be used to indicate their intent." (*Gordon v. Vincent Youmans, Inc.*, 358 F.2d 261, 264 (2d Cir.1965))
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. 36 A.3d 776, 2012 WL 10916 Del.Supr., January 03, 2012	Where a contract is ambiguous, the interpreting court must look beyond the language of the contract to ascertain the parties' intentions. The "parol evidence rule" bars the admission of evidence from outside the contract's four corners to vary or contradict that unambiguous language; but, where reasonable minds could differ as to the contract's meaning, a factual dispute results and the fact-finder must consider admissible extrinsic evidence.
Reyes v. Metromedia Software, Inc. 840 F.Supp.2d 752, 2012 WL 13935 S.D.N.Y., January 04, 2012	If a court determines that a contractual provision is ambiguous, "the court may accept any available extrinsic evidence to ascertain the meaning intended by the parties during the formation of the contract."
Maser Consulting, P.A. v. Viola Park Realty, LLC 91 A.D.3d 836, 936 N.Y.S.2d 693, N.Y.A.D. 2 Dept., January 24, 2012	Extrinsic evidence will be considered in interpreting a contract only if the contract is deemed ambiguous.
General Teamsters Local Union 326 v. City of Rehoboth Beach 2012 WL 2337296 Del.Super.,2012, April 24, 2012	Where there is an ambiguity in the contract-that is, where a contract's provisions are reasonably susceptible to two or more meanings-the Court should consider extrinsic evidence to glean the reasonable shared expectation of the parties at the time of contracting.
Martin Marietta Materials, Inc. v. Vulcan Materials Co. 2012 WL 1605146 Del.Ch., 2012, May 04, 2012	But, if words in contract are ambiguous, then I must look to extrinsic evidence to determine the parties' intent. Most relevant here, consider how the drafting history of the NDA, Martin Marietta's own conduct, and interpretive gloss provided by JDA bear on interpretive question.
In re Autobacs Strauss, Inc. 473 B.R. 525, 2012 WL 1836263 Bkrtcy.D.Del.,2012, May 21, 2012	[B]ecause the inconsistency gives rise to ambiguity, extrinsic evidence should be allowed to interpret the R & S APA.
In re Lehman Brothers Inc. 478 B.R. 570, 2012 WL 1995089 S.D.N.Y., 2012, June 05, 2012	Court first examines language for ambiguity; in absence of ambiguity, a court is required to give words of contract their plain meaning; only if a court *finds* ambiguity does the extrinsic evidence become relevant.
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	When faced with an ambiguous contract provision, "the interpreting court must look beyond the language of the contract to ascertain the parties' intentions" at time of drafting. In making such determination, the court may consider objective parol evidence, including the overt statements and acts of the parties, the business context, the parties' prior dealings, and industry custom.'"

GRT, Inc. v. Marathon GTF Tech., Ltd. 2012 WL 2356489, Del. Ch., 2012.	When a contract is ambiguous, a court must look to extrinsic evidence to determine the shared intent of both parties.
Zaidi v New York Bldg. Contrs., Ltd. 99 A.D.3d 705, 951 N.Y.S.2d 573 N.Y.A.D. 2 Dept.,2012. October 03, 2012	"Extrinsic evidence of the parties' intentions may be considered only if the agreement is ambiguous or incomplete" (*Knight v. Barteau*, 65 A.D.3d 671, 672, 884 N.Y.S.2d 470; *see* *Henrich v. Phazar Antenna Corp.*, 33 A.D.3d 864, 867, 827 N.Y.S.2d 58). However, courts may not add terms to a contract and thereby make a new contract. "Where a valid contract is incomplete, extrinsic evidence is admissible to complete the writing if it is apparent from an inspection of the writing that all the particulars of the agreement are not present, and that evidence does not vary or contradict the writing" (*Matthius v. Platinum Estates, Inc.*, 74 A.D.3d 908, 909, 903 N.Y.S.2d 477.
Police Benev. Ass'n of New York State, Inc. ex rel. Vilar v. New York Slip Copy, 2012 WL 6020029 N.D.N.Y.,2012. December 03, 2012	A district court may not base its finding of ambiguity on the absence of language, and the court may only consider oral statements or other extrinsic evidence after it first finds language in the documents that may reasonably be interpreted as creating a promise to vest benefits.
Catlin Speciality Ins. Co. v. QA3 Financial Corp. Slip Copy, 2014 WL 2990520 S.D.N.Y.,2014. July 02, 2014	"If, however, the language in the insurance contract is ambiguous and susceptible of two reasonable interpretations, the parties may submit extrinsic evidence as an aid in construction, and the resolution of the ambiguity is for the trier of fact." *State v. Home Indem. Co.*, 66 N.Y.2d 669, 495 N.Y.S.2d 969, 486 N.E.2d 827, 829 (N.Y.1985); *see also* *Fed. Ins. Co. v. Am. Home Assur. Co.*, 639 F.3d 557, 567 (2d Cir.2011).
Non-Instruction Adm'rs, Sup'rs Retirees Ass'n ex rel. Tattersall v. School District of City of Niagara Falls, --- N.Y.S.2d ----, 2014 WL 2619829 N.Y.A.D. 4 Dept., 2014. June 13, 2014	Where, however, contract language "is 'reasonably susceptible of more than one interpretation,' ... extrinsic or parol evidence may be then permitted to determine the parties' intent as to the meaning of that language" (*Fernandez v. Price*, 63 AD3d 672, 675, quoting *Chimart Assoc. v. Paul*, 66 N.Y.2d 570, 572–573).

3. If the provision is ambiguous, then summary judgment is not appropriate unless the parol evidence is uncontroverted or so one-sided that no reasonable person could decide otherwise

Case	Principle
Mexican Hass Avocado Importers Ass'n v. Preston/Tully Group Inc. Slip Copy, 2012 WL 194976 E.D.N.Y., January 23, 2012	"Although generally interpretation of ambiguous contract language is a question of fact to be resolved by the factfinder, the court may resolve ambiguity in contractual language as a matter of law if the evidence presented about the parties' intended meaning is so one-sided that no reasonable person could decide the contrary."
Corral v. Outer Marker LLC 2012 WL 243318 E.D.N.Y., January 24, 2012	"When the question is a contract's proper construction, summary judgment may be granted when its words convey a definite and precise meaning absent any ambiguity." "Where the language used is susceptible to differing interpretations, each of which may be said to be as reasonable as another, and where there is relevant extrinsic evidence of the parties' actual intent, the meaning of the words become an issue of fact and summary judgment is inappropriate."

China Privatization Fund (Del), L.P. v. Galaxy Entertainment Group Ltd. 95 A.D.3d 769, N.Y.A.D. 1 Dept.,2012, May 31, 2012	"If the court concludes that a contract is ambiguous, it cannot be construed as a matter of law, and dismissal … is not appropriate" (*Telerep, LLC v. U.S. Intl. Media, LLC*, 74 A.D.3d 401, 402 [2010]).
Cordis Corp. v. Boston Scientific Corp. 868 F.Supp.2d 342, 2012 WL 2320799 D.Del.,2012, June 19, 2012	If "the court finds that a contract is ambiguous and that extrinsic evidence is undisputed, then the interpretation of the contract remains a question of law for the court to decide." *In re Columbia Gas Sys .*, 50 F.3d 233 (3d Cir.1995).
GRT, Inc. v. Marathon GTF Tech., Ltd. 2012 WL 2356489 Del. Ch., 2012. June 21, 2012	In cases involving questions of contract interpretation, a court will grant summary judgment under either of two scenarios: when the contract in question is unambiguous, or when the extrinsic evidence in the record fails to create a triable issue of material fact and judgment as a matter of law is appropriate. But, the ambiguity may be resolved on a summary judgment motion based on extrinsic evidence "when the moving party's record is not ... rebutted so as to create issues of material fact."
Fehlhaber v. Bd. of Ed. of Utica City Sch. Dist. 2012 WL 2571302 N.D.N.Y.,2012, July 03, 2012	If the contract is deemed ambiguous, and there is relevant extrinsic evidence related to the parties' intent, the provision's interpretation "becomes a question of fact and summary judgment is inappropriate." *Mellon Bank, N.A.*, 31 F.3d at 116.
Buyse v. Colonial Sec. Service, Inc. 2012 WL 3025843 Del.Super.,2012. July 19, 2012	Where the Court finds that a contract or contractual term is ambiguous, the meaning of the contract or of the term at issue becomes a question of fact to be decided by the fact finder. Summary judgment may still be appropriate, however, if the "moving party's record is not *prima facie* rebutted so as to create material issues of fact."
Sompo Japan Ins. Co. of America v. Norfolk Southern Ry. Co. 891 F.Supp.2d 489 S.D.N.Y.,2012. September 04, 2012	The point is that these provisions are ambiguous. In such instances, we look to evidence of the intent of the parties. *See JA Apparel Corp. v. Abboud*, 568 F.3d 390, 397 (2d Cir.2009). Based on the record before me, however, there is insufficient evidence to discern such intent, and therefore, summary judgment on this issue is not proper. *See id.* at 399 (holding that, in light of "conflicting interpretation" of and "ambiguity" in contract, "parties were entitled to submit extrinsic evidence as to the intent with which they entered the [a]greement").
Impact Investments Colorado II v. Impact Holding, Inc. --- A.3d ---, 2012 WL 3792993 Del.Ch.,2012. August 31, 2012	Determining intent from extrinsic evidence "may be accomplished by the summary judgment procedure in certain cases where the moving party's record is not *prima facie* rebutted so as to create issues of material fact." *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del.1997). Generally, on a motion for summary judgment, the moving party must show there is no genuine issue of material fact, and "summary judgment may not be awarded if the [disputed contract] language is ambiguous and the moving party has failed to offer uncontested evidence as to the proper interpretation."
Ross University School of Medicine, Ltd. v. Brooklyn-Queens Health Care, Inc. Slip Copy, 2012 WL 6091570 E.D.N.Y.,2012. December 07, 2012	Where a reasonable jury could find that the extrinsic evidence supported the non-movant's interpretation of the contract, summary judgment must be denied. In rare cases, however, a court may interpret ambiguous language as a matter of law, if the evidence of the parties' intent is so one-sided that no reasonable person could reach the contrary conclusion or if the non-moving party fails to point to any relevant extrinsic evidence supporting that party's interpretation of the contractual language.

Tobin v. Gluck --- F.Supp.2d ----, 2014 WL 1310347 E.D.N.Y.,2014. March 28, 2014	"To the extent the moving party's case hinges on ambiguous contract language, summary judgment may be granted only if the ambiguities may be resolved through extrinsic evidence that is itself capable of only one interpretation, or where there is no extrinsic evidence that would support a resolution of these ambiguities in favor of the nonmoving party's case." *Id*.; *see also* Rothenberg, 755 F.2d at 1019 ("[W]here contractual language is susceptible of at least two fairly reasonable interpretations, this presents a triable issue of fact, and summary judgment [is] improper." (second alteration in original) (internal quotation marks omitted)); *Leon v. Lukash*, 121 A.D.2d 693, 504 N.Y.S.2d 455, 455 (1986) (noting that an ambiguous contract "presents a question of fact which may not be resolved by the court on a motion for summary judgment").

4. An ambiguity is generally construed *contra proferentum* (i.e., against the drafter), particularly in adhesion contracts

Case	Principle
Shiftan v. Morgan Joseph Holdings, Inc. 2012 WL 120196 Del.Ch., January 13, 2012	RESTATEMENT OF CONTRACTS § 206 (1981) "In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds." *Wininger*, 707 A.2d at 43 (holding that ambiguous terms in a partnership agreement that was drafted only by the general partner should be construed against the general partner under the principle of *contra proferentem*)
Compania Sud Americana de Vapores S.A. v. Global Terminal & Container Services, LLC, Slip Copy, 2012 WL 4948128 S.D.N.Y.,2012. March 14, 2012	In admiralty cases, courts apply the "traditional rule of construction" and construe "contract language ... most strongly against its drafter. That maxim only applies, however, where the contract language is ambiguous where it is susceptible of two reasonable and practical interpretations." *Navieros Oceanikos, S.A., Liberian Vessel Trade Daring v. S.T. Mobil Trader*, 554 F.2d 43, 47 (2d Cir.1977) (internal quotation and citation omitted). Factors that bear on the interpretation of an indemnity clause include "the breadth of the language of the disputed provision; the existence of limiting definitions in the clause; whether a particular interpretation creates or avoids redundancy; and the surrounding provisions of the entire agreement." *Id*.
In re South Side House, LLC 470 B.R. 659, 2012 WL 907758 Bkrtcy. E.D.N.Y.,2012, March 16, 2012	And ambiguity in a contract is interpreted against the drafter. *See, e.g.*, *McCarthy v. Am. Int'l Group, Inc.*, 283 F.3d 121, 124 (2d Cir.2002).
Natt v. White Sands Condominium 95 A.D.3d 848, 943 N.Y.S.2d 231 N.Y.A.D. 2 Dept.,2012. May 01, 2012	"It has long been the rule that ambiguities in a contractual instrument will be resolved *contra proferentem*, against the party who prepared or presented it" Hence, a contract which is internally inconsistent in material respects or that reasonably lends itself to two conflicting interpretations is subject to the rule invoking strict construction of the contract in the light most favorable to the nondrafting party.
XL Specialty Ins. Co. v. Level Global Investors, L.P. 874 F.Supp.2d 263 S.D.N.Y.,2012. June 13, 2012	"If the terms of a policy are ambiguous, however, any ambiguity must be construed in favor of the insured and against the insurer." Similarly, any ambiguity in the terms of an insurance policy application is also to be construed in favor of the insured.

Highland Capital Management, L.P. v. Global Aerospace Underwriting Managers Ltd. 2012 WL 2510157 C.A.2 (N.Y.),2012, July 02, 2012	The innocent coinsured doctrine is a rule of contractual interpretation that looks to the terms of the insurance policy, reading ambiguous language against the insurer. *See id.* Thus, parties to an insurance policy may vary this rule through policy language unambiguously conveying a contrary intent.
Siaci Saint Honore v. Ironbound Exp., Inc. 884 F.Supp.2d 100 S.D.N.Y.,2012. August 06, 2012	Ambiguities in a bill of lading should be interpreted against the carrier, as such contracts are considered to be "contracts of adhesion." Monica Textile Corp. v. S.S. Tana, 952 F.2d 636, 643 (2d Cir.1991) (*quoting* Mitsui & Co. v. Am. Exp. Lines, Inc., 636 F.2d 807, 822–23 (2d Cir.1981)).
Chanel Fabrics, Inc. v. Hartford Fire Ins. Co. ---F.Supp.2d ---, 2012 WL 3283484 S.D.N.Y,2012, August 13, 2012	"[The innocent coinsured] rule gains added force when ambiguities are found in an exclusionary clause." Haber, 137 F.3d at 698. To "negate coverage by virtue of an exclusion, an insurer must establish that the exclusion is stated in clear and unmistakable language, is subject to no other reasonable interpretation, and applies in the particular case and that its interpretation of the exclusion is the only construction that [could] fairly be placed thereon."
Norton v. K-Sea Transp. Partners L.P., 2013 Del. LEXIS 251, 2013 WL 2316550 (Del. May 28, 2013)	If the contractual language at issue is ambiguous and if the limited partners did not negotiate for the agreement's terms, we apply the *contra proferentem* principle and construe the ambiguous terms against the drafter.
TDG Acquisition Co., LLC v. Vuzix Corp. Slip Copy, 2013 WL 1915809 W.D.N.Y.,2013. May 08, 2013	As *Mastrobuono* makes clear, the common-law rule of contract interpretation that "a court should construe ambiguous language against the interest of the party that drafted it" applies in interpreting arbitration agreements. 514 U.S. at ––––, 115 S.Ct. at 1219; see also Graff v. Billet, 64 N.Y.2d 899, 902, 487 N.Y.S.2d 733, 734–35, 477 N.E.2d 212 (1984). The purpose of this rule is "to protect the party who did not choose the language from an unintended or unfair result." Mastrobuono, 514 U.S. at ––––, 115 S.Ct. at 1219.
Fabozzi v. Lexington Ins. Co. --- F.Supp.2d ----, 2014 WL 2440475 E.D.N.Y.,2014. May 30, 2014	"[I]f the contract is ambiguous, 'particularly the language of an exclusion provision,' the ambiguity is interpreted in favor of the insured." See Goldberger, 165 F.3d at 182 (quoting Travelers Indemnity Co., 55 F.3d at 115). "[I]f the language of the policy is doubtful or uncertain in its meaning, any ambiguity must be resolved in favor of the insured and against the insurer." Pepsico, Inc. v. Winterthur Int'l Am. Ins. Co., 13 A.D.3d 599, 788 N.Y.S.2d 142, 144 (App.Div.2004) (citation and internal quotation marks omitted).

a. Courts are divided as to whether the rule of *contra proferentum* applies prior to or after considering parol evidence

Case	Principle
Henchen v. Renovo Services, LLC Slip Copy, 2013 WL 1152040 W.D.N.Y.,2013. March 19, 2013	*Compare* Chambers, 169 F.R.D. at 8 (principle of construing ambiguity against the drafter is "preferable" to principle of consulting extrinsic evidence to resolve ambiguity because "it forces a defendant to be precise about the terms of his offer ... [so plaintiff] ... is not left to guess how courts will interpret extrinsic evidence of what is, and is not, included in the offer") *with* Hennessy, 270 F.3d at 553–54 ("absent parol evidence as to the meaning of an ambiguous term, ambiguous terms of a[n] [offer of judgment] are construed against the drafter").

i. Some courts apply the rule of *contra proferentum* as one of "last resort," (i.e., only after considering extrinsic evidence)

Case	Principle
Zimmerman v. Crothall, 62 A.3d 676, 2013 WL 1092609 S.D.N.Y.,2012. March 14, 2012	The rule of *contra proferentum* is one of last resort that will not apply if a document can be interpreted by applying more favored rules of construction. *See E.I. du Pont de Nemours & Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1114 (Del. 1985).
MCMC, LLC v. Riccardi Slip Copy, 2012 WL 5507519 E.D.N.Y.,2012. November 13, 2012	Moreover, to the extent that an ambiguity exists, it is construed against the drafter absent extrinsic evidence of the parties' intent. *See* RLS Assocs., LLC v. United Bank of Kuwait PLC, 380 F.3d 704, 712 (2d Cir.2004) ("Ambiguities are generally interpreted against the drafter.") (emphasis added)
Intelligent Digital Systems, LLC v. Beazley Ins. Co., Inc. 906 F.Supp.2d 80 E.D.N.Y.,2012. November 27, 2012	Moreover, under "New York's well-established *contra proferentem* rule ... unresolvable ambiguities in insurance contracts are construed in favor of the insured." Hugo Boss Fashions, Inc. v. Fed. Ins. Co., 252 F.3d 608, 615 (2d Cir.2001). (emphasis added)
Olin Corp. v. American Home Assur. Co. 704 F.3d 89 C.A.2 (N.Y.),2012. December 19, 2012	If the extrinsic evidence fails to establish the parties' intent, courts may apply other rules of contract interpretation, including New York's rule of *contra proferentem*, according to which ambiguity should be resolved in favor of the insured.
Rodman Const. Co., Inc. v. BPG Residential Partners, V, LLC 2013 WL 656176, Del.Super.,2013. January 08, 2013	Finally, if the agreement is ambiguous and extrinsic evidence does not clarify the vague terms, then the ambiguity is to be resolved against the [drafter] per the *contra proferentum* rule.
Atlantic Ca. Ins. Co. v. Value Waterproofing, Inc. 918 F.Supp.2d 243, S.D.N.Y., 2013. January 15, 2013	Ambiguity in the language of the insurance contract that is not resolved by consideration of available extrinsic evidence is construed against the insurer and in favor of the insured. In re Prudential Lines Inc., 158 F.3d at 77; *see also* Haber, 137 F.3d at 697. (emphasis added)
Emerging Eur. Growth Fund, L.P. v. Figlus 2013 WL 1250836, Del.Ch.,2013. March 28, 2013	Where only one party is responsible for drafting an agreement, courts may interpret the agreement against the drafting party under the doctrine of *contra proferentum*. This is because the drafter is "better able to clarify unclear contract terms in advance so as to avoid future disputes and therefore should bear the drafting burden." The *contra proferentum* doctrine should not be used as a short cut for interpreting an ambiguous contractual provision. Nevertheless, it can be used to protect the reasonable expectations of investors but only as a "last resort" when other interpretive approaches fail to resolve an ambiguity.
Novel Commodities S.A. v. QBE Ins. Corp. Slip Copy, 2013 WL 1294618 S.D.N.Y.,2013. March 30, 2013	The Second Circuit has emphasized that "*contra proferentem* is used only as a matter of last resort, after all aids to construction have been employed but have failed to resolve the ambiguities in the written instrument." Schering Corp. v. Home Ins. Co., 712 F.2d 4, 10 n. 2 (2d Cir.1983). "'[W]here the relevant extrinsic evidence offered "raises a question of credibility or presents a choice among reasonable inferences" the construction of the ambiguous terms of the contract is a question of fact which precludes the application of *the contra proferentem* rule [at summary judgment].'" Core–Mark Intern. Corp. v. Commonwealth Ins. Co., No. 05 Civ. 0183(WHP), 2006 WL 2501884, at

	*7 (S.D.N.Y. Aug. 30, 2006) (*quoting* Morgan Stanley Group, Inc. v. New Eng. Ins. Co., 36 F.Supp.2d 605, 609 (S.D.N.Y.1999) (*quoting* Alfin, Inc. v. Pac. Ins. Co., 735 F.Supp. 115, 119 (S.D.N.Y.1990)))
Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co., N.A. 957 F.Supp.2d 316 S.D.N.Y.,2013. May 08, 2013	Finally, if unable to determine the parties' intent based either on the text of an agreement or after evaluating admissible extrinsic evidence, the Court may, in some circumstances, apply the doctrine of *contra proferentem* to construe any ambiguity against the drafter of the contract. *See* M. Fortunoff of Westbury Corp. v. Peerless Ins. Co., 432 F.3d 127, 142 (2d Cir.2005). This, however, is a matter of last resort.
Catlin Speciality Ins. Co. v. QA3 Financial Corp. Slip Copy, 2014 WL 2990520 S.D.N.Y.,2014. July 02, 2014	"On the other hand, if the tendered extrinsic evidence is itself conclusory and will not resolve the equivocality of the language of the contract, the issue remains a question of law for the court." *Id*. (internal citation omitted). "Under those circumstances, the ambiguity must be resolved against the insurer which drafted the contract." *Id*. (internal citations omitted). Resolving the ambiguity against the insurer who drafted the contract is the doctrine of *contra proferentem*. *See* Morgan Stanley Grp. v. New England Ins. Co., 225 F.3d 270, 276 (2d Cir.2000). Because the existence of extrinsic evidence may enable the fact finder to resolve the ambiguity in the contract, "courts should not resort to *contra proferentem* until after consideration of extrinsic evidence to determine the parties' intent." M. Fortunoff Corp. v. Peerless Ins. Co., *432 F.3d 127, 142 (2d Cir.2005*) (internal quotation marks and citation omitted); *see also* Int'l Multifoods Corp. v. Commercial Union Ins. Co., 309 F.3d 76, 88 n. 7 (2d Cir.2002) ("courts should not resort to contra proferentem until after consideration of extrinsic evidence"); Schering Corp. v. Home Ins. Co., 712 F.2d 4, 10 n. 2 (2d Cir.1983) ("The trial court erroneously invoked this doctrine because *contra proferentem* is used only as a matter of last resort, after all aids to construction have been employed but have failed to resolve the ambiguities in the written instrument" (italics in original)); *cf.* Kenavan v. Empire Blue Cross & Blue Shield, 248 A.D.2d 42, 677 N.Y.S.2d 560, 563 (App.Div.1998) ("Since evidence introduced by the parties extrinsic to the policies was not dispositive of the issue, the IAS court also properly relied on the doctrine of *contra proferentem* [.]" (italics in original)).

ii. Ambiguities in adhesion contracts (e.g. certificates of incorporation, insurance contracts) should be construed against the drafter without considering extrinsic evidence

Case	Principle
Bank of N.Y. v. Commerzbank, 65 A.3d 539, 2013 WL 1136821 (Del. Super. 2012). March 13, 2012	Where, as here, a contract term is ambiguous, a court normally will consider extrinsic evidence of the parties' contractual intent, which is "not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant." Kaiser Aluminum Corp. v. Matheson, 681 A.2d 392, 397 (Del. 1996). Occasions arise, however—and this is one of them—where it is unhelpful to rely upon extrinsic evidence to determine the parties' intent in drafting the contract. Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co., 616 A.2d 1192, 1195-96 (Del. 1992). Here, an inquiry into what the parties intended would serve no useful purpose, because it would yield information about the views and positions of only one side of the dispute—the Bank, the Company, and Trust II. This case does not fit the conventional model of contracts "negotiated" by and among all the interested parties. *See id*. Here, important parties in interest—the holders of the securities—were neither consulted about, nor involved in the drafting of, the LLC Agreement, the

	Trust II Agreement, or the Support Undertaking. Therefore, a different interpretive approach is needed—one that will take into account the public security holders' legitimate contractual interests. *See id*. at 395. That approach implicates the rule of construction, employed in some contract cases, that ambiguities in a contract will be construed against the drafter. Bermel v. Liberty Mut. Fire Ins. Co., 56 A.3d 1062, 1070 (Del. 2012).
Zimmerman v. Crothall 62 A.3d 676 Del.Ch.,2013. January 31, 2013	Nevertheless, resort to the rule is appropriate "in cases of standardized contracts and in cases where the drafting party has the stronger bargaining position, but it is not limited to such cases." It is less likely to be appropriate where knowledgeable and experienced parties to a contract engaged in a series of negotiations.
Morris James LLP v. Continental Cas. Co. --- F.Supp.2d ----, 2013 WL 943459 D.Del.,2013. March 12, 2013	Where the language of an insurance policy is ambiguous, as it is in the context of the Forgery and Alteration Endorsement and the False Pretense Exclusion being read in tandem, the contract should be interpreted in favor of the insured because the insurer is in control of the process of articulating the terms. *See* Oglesby, 695 A.2d at 1149–50; Axis Reinsurance, 993 A.2d at 1062.
Shiftan v. Commerzbank, 65 A.3d 539, 2013 WL 1136821 (Del. Super. 2012). March 13, 2012	Rather, in [certificates of incorporation], another method of resolving ambiguity comes into play, which involves interpreting ambiguities against the drafter. Our Supreme Court has frequently invoked this doctrine of *contra proferentem* to resolve ambiguities about the rights of investors in the governing instruments of business entities.
DeAngelis v. DeAngelis 104 A.D.3d 901, 2013 WL 1223312 N.Y. App. Div. 2d Dep't,2013. March 27, 2013	Here, the separation agreement was ambiguous as to whether the decedent's obligation to maintain a life insurance policy naming the defendants as beneficiaries extended beyond the date of the defendants' emancipation. However, it is undisputed that the decedent's attorney drafted the separation agreement. Pursuant to the doctrine of *contra proferentem*, the Supreme Court should have construed the ambiguity against the decedent's estate.
Silverman Neu, LLP v. Admiral Ins. Co. --- F.Supp.2d ----, 2013 WL 1248629 E.D.N.Y.,2013. March 28, 2013	Where there are ambiguous terms in a policy, these "must be construed in favor of the insured and against the insurer." White v. Cont'l. Cas. Co., 9 N.Y.3d 264, 267, 848 N.Y.S.2d 603, 878 N.E.2d 1019 (2007).
Schwan's Home Service, Inc. v. Microwave Science, JV, LLC Not Reported in A.3d, 2013 WL 3350881 Del.Super., 2013 June 24, 2013	If the Court finds it may reasonably ascribe more than one meaning to a provision or term, it will deem the contract ambiguous and apply the doctrine of contra proferentem against the non-drafting party. Osborn ex rel. Osborn v. Kemp, 991 A.2d 1153, 1160 (Del.2010).
O'Donnell v. State Farm Mutual Automobile Insurance Company Not Reported in A.3d, 2013 WL 3352895 Del.Super., 2013 June 28, 2013	If ambiguity exists, the court will typically construe the language against the drafter and "in accordance with the reasonable expectations of the insured." Bermel v. Liberty Mut. Fire Ins. Co., 56 A.3d 1062, 1070 (Del.2012).

b. Parties can contract around the *contra proferentum* rule

Case	Principle
Senior Housing Capital, LLC v. SHP Senior Housing Fund, LLC Not Reported in A.3d, 2013 WL 1955012 Del.Ch.,2013. May 13, 2013	The doctrine of the construction of a contract against the drafter would typically preclude the interpretation that CalPERS now adopts. *See* Kuhn Constr., Inc. v. Diamond State Port Corp., 990 A.2d 393, 397 (Del.2010); Restatement (Second) of Contracts § 206 (1981). But, CalPERS' form drafters were canny, and the LLC Agreement contains a provision waiving "any rule of law ... that would require interpretation of any ambiguities in this Agreement against the party that has drafted it."

5. A "whereas" clause cannot create any rights arising from beyond the contract's operative terms

Case	*Principle*
Choquette v. City of New York 839 F.Supp.2d 692 S.D.N.Y.,2012. March 19, 2012	The "whereas" clause did not have the effect of dismissing these claims and did not foreclose the plaintiffs from pursuing these claims. *See* Abraham Zion Corp. v. Lebow, 761 F.2d 93, 103–04 (2d Cir.1985) ("Although a statement in a 'whereas' clause may be useful in interpreting an ambiguous contract, it cannot create any right beyond those arising from the operative terms of the document." (internal quotation marks and citation omitted)).

F. Specific substantive and miscellaneous areas of contract interpretation[7]

1. Arbitration

a. There is a strong public policy in favor of arbitration, in light of which courts should seek an interpretation that honors the parties' decision to resolve disputes by arbitration, permits an arbitration clause to remain in effect, and resolves ambiguities regarding the scope of applicability of such clause in favor of arbitration.

Case	Principle
Glencore Ltd. v. Degussa Engineered Carbons L.P. Slip Copy, 2012 WL 223240 S.D.N.Y., January 24, 2012	The presumption of arbitrability under the Federal Arbitration Act supplies a background principle of interpretation once it has been established that the parties have entered into an agreement to arbitrate. In that context, the issue presented is one of scope—whether an agreement to arbitrate applies to the dispute at hand—and the presumption favoring arbitrability serves as a thumb on the scale favoring arbitral coverage. However, the FAA's presumption of arbitrability does not apply where (as here) the issue is the threshold one of whether the parties entered into a binding agreement to arbitrate at all. Accordingly, the statutory presumption favoring arbitration applies "*only* where it reflects, and derives its legitimacy from, a judicial conclusion that arbitration of a particular dispute is what the parties intended because their express agreement to arbitrate was validly formed."

[7] This section of the outline addresses principles of contract interpretation and supporting case law that are specific to certain substantive areas of contracts. These principles are based solely upon the limited case law that was reviewed in connection with compiling this guide and this guide does not purport to include a complete set of all such types of contract-interpretation principles.

Severstal U.S. Holdings, LLC v. RG Steel, LLC 865 F.Supp.2d 430, 2012 WL 1901195 S.D.N.Y.,2012. May 25, 2012	The rule in the Second Circuit is that "if there is a reading of the various agreements that permits the Arbitration Clause to remain in effect, we must choose it." *Bank Julius Baer & Co. v. Waxfield Ltd.*, 424 F.3d 278, 284 (2d Cir.2005). The existence of competing interpretations of an agreement containing an arbitration provision is not a sufficient basis to overcome the presumption of arbitrability. *See, e.g.*, *John Hancock Life Ins. Co. v. Wilson*, 254 F.3d 48, 59 (2d Cir.2001) ("Even if we were to accept [appellants'] interpretation ... at best it would raise an ambiguity ... In the face of such an ambiguity, we would be compelled to construe the provision in favor of arbitration"); *Coca–Cola Bottling Co. of N.Y., Inc. v. Soft Drink & Brewery Workers Union Local 812*, 242 F.3d 52, 56–57 (2d Cir.2001) (affirming order compelling arbitration notwithstanding "plausible" reading of arbitration clause that would render dispute not arbitrable). Thus, if an arbitration provision can be interpreted to cover these disputes, then arbitration is appropriate.
CompuCom Systems, Inc. v. Getronics Finance Holdings B.V. --- F.Supp.2d ---, 2012 WL 4963314 D.Del.,2012. October 16, 2012	"When parties to an agreement decide that they will submit their claims to arbitration, Delaware courts strive to honor the reasonable expectations of the parties.... [However, t]he policy that favors alternate dispute resolution mechanisms ... does not trump basic principles of contract interpretation." *Parfi Holding AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 155–56 (Del.2002).
National Union Fire Ins. Co. of Pittsburgh, Pa. v. Diaz Const. Co., Inc. Slip Copy, 2013 WL 1234840 S.D.N.Y.,2013. March 25, 2013	Disputes over the scope of arbitration agreements are resolved using ordinary principles of contract interpretation, *id*., and in light of the strong public policy in favor of enforcing agreements to arbitrate, any ambiguities regarding the scope of arbitration should be resolved in favor of arbitration. *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995) (citations omitted).

b. An arbitrator exceeds his or her powers only if the court can find no rational construction of the contract that can support the award

Case	***Principle***
Westminster Securities Corp. v. Petrocom Energy Ltd. 2012 WL 147917 C.A.2 (N.Y.), January 19, 2012	"As long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, a court's conviction that the arbitrator has committed serious error in resolving the disputed issue does not suffice to overturn his decision." *ReliaStar Life Ins. Co. of N.Y. v. EMC Nat'l Life Co.*, 564 F.3d 81, 86 (2d Cir. 2009)
Pryor v. IAC/InterActiveCorp Not Reported in A.3d, 2012 WL 2046827 Del.Ch.,2012. June 07, 2012	[A] court may refuse to enforce an arbitration award on the grounds that the arbitrator exceeded his powers only if the court can "fin[d] no rational construction of the contract that can support [the award]." *RBC Capital Markets Corp.*, 2010 WL 681669, at *8. As long as the arbitrator had the power to interpret the ambiguous provision, a court will not disturb the arbitrator's finding because the court would have decided the matter differently. *See Jock, 646 F.3d at 115; Barnes v. Logan*, 1996 WL 310115, at *4 (N.D.Cal. May 29, 1996), aff'd, 122 F.3d 820 (9th Cir.1997); *TD Ameritrade*, 953 A.2d at 733 (Del.Ch.2008) ("[T]he Court is not to pass an independent judgment on the evidence or applicable law, and [i]f any grounds for the award can be inferred from the facts on the record, the Court must presume that the arbitrator did not exceed his authority and the award must be upheld.") (internal quotation marks and citation omitted); *see also*

	Stolt–Nielsen S.A. v. AnimalFeeds Int'l Corp., ––– U.S. ––––, 130 S.Ct. 1758, 1767, 176 L.Ed.2d 605 (2010) (explaining that "in order to obtain ... relief" under § 10(a)(4) of the FAA, a movant "must clear a high hurdle," because "[i]t is not enough for petitioners to show that the panel committed an error—or even a serious error," and it is " 'only when [an] arbitrator strays from interpretation and application of the agreement and effectively 'dispense [s] his own brand of industrial justice' that his decision may be unenforceable' " under § 10(a)(4) of the FAA) (citations omitted).

c. Arbitration will not always be used to resolve an ambiguity with respect to the scope of an arbitration provision.

Case	***Principle***
Aetrex Worldwide, Inc. v. Sourcing for You Ltd. 555 Fed.Appx. 153 3d Cir. 2014	"Indeed, even were we to conclude that there is some ambiguity in the provision, it does not necessarily follow that the ambiguity must be resolved through arbitration." *See* *Local 827, Int'l Bhd. of Elec. Workers v. Verizon N.J., Inc.*, 458 F.3d 305, 312 (3d Cir.2006) ("Insofar as the existence of contrary interpretations of the arbitration clause suggests that there may be a modicum of ambiguity in the language of the arbitration clause, we note that a compelling case for nonarbitrability should not be trumped by a flicker of interpretive doubt." (quoting *PaineWebber Inc. v. Hofmann*, 984 F.2d 1372, 1377 (3d Cir.1993)) (internal quotation marks omitted)).

2. Certificate of Incorporation

a. In the interpretation of certificates of incorporation, the same rules of construction apply as are applicable to contracts generally.

Case	***Principle***
Activision Blizzard, Inc. v. Hayes --- A.3d ---, 2013 WL 6053804 Del.Supr.,2013. November 15, 2013	"Under settled Delaware law, the terms of a charter provision, like any other contract, are given their plain meaning. A provision is ambiguous only if it is 'reasonably susceptible to more than one meaning,' and the fact that the parties offer two different interpretations does not create an ambiguity. Moreover, a provision 'may be ambiguous when applied to one set of facts but not another.' Finally, the provision must be read in context. For example, if a charter and bylaws are amended as part of the same transaction, that indicates that they are intended to be complementary."

b. When a certificate of incorporation is ambiguous, the court looks at extrinsic evidence to determine the common understanding of the language in controversy

Case	**Principle**
Shiftan v. Morgan Joseph Holdings, Inc. 2012 WL 120196 Del.Ch., January 13, 2012	In the case of documents like certificates of incorporation or designation, the kinds of parol evidence frequently available in the case of warmly negotiated bilateral agreements are rarely available. Investors usually do not have access to any of the drafting history of such documents, and must rely on what is publicly available to them to understand their rights as investors. Thus, the subjective, unexpressed views of entity managers and the drafters who work for them about

	what a certificate means has traditionally been of no legal consequence, as it is not proper parol evidence as understood in our contract law. *Compare* Eagle Indus., Inc. v. DeVilbiss Health Care, Inc., 702 A.2d 1228,1232–33 (Del.1997) (holding that, if there is an ambiguous provision in a negotiated bilateral agreement, parol evidence should be considered if it would tend to help the court interpret that provision), *with* Kaiser, 681 A.2d at 397 (consideration of parol evidence for common understanding of a certificate of designation was inappropriate because it would reveal information "about the thoughts and positions of, at most, the issuer and the underwriter," not the investors in the preferred stock issued under the certificate). Furthermore, "unless extrinsic evidence can speak to the intent of *all* parties to a contract, it provides an incomplete guide with which to interpret contractual language," because there must be "some connection between the expectations of contracting parties revealed by extrinsic evidence and the way contract terms were articulated by those parties." Wininger, 707 A.2d at 43. *But see* Airgas, Inc. v. Air Prods. & Chemicals, Inc., 8 A.3d 1182, 1191 (Del.2010) (the subjective belief of corporate managers that a charter prevented stockholders from moving the annual meeting date for the corporation forward if that would shorten their terms by months was accepted as evidence to resolve an ambiguity). Kaiser, 681 A.2d at 397–98 (refusing to consider parol evidence to interpret ambiguous certificate of designation because the evidence would not speak to the reasonable expectations of the investors) Wininger, 707 A.2d at 43–44 (finding that consideration of parol evidence was inappropriate where a general partner solicited and signed on 1,850 investors to a "take it or leave it" partnership agreement that those investors had no involvement in drafting).
Alta Berkeley VI C.V. v. Omneon, Inc. 41 A.3d 381 Del.Supr.,2012. March 05, 2012	Certificates of incorporation are regarded as contracts between the shareholders and the corporation, and are judicially interpreted as such. A judicial interpretation of a contract presents a question of law that this Court reviews *de novo.* Unless there is ambiguity, Delaware courts interpret contract terms according to their plain, ordinary meaning. Contract language is not ambiguous merely because the parties dispute what it means. To be ambiguous, a disputed contract term must be fairly or reasonably susceptible to more than one meaning. Further, "[i]t is well established that a court interpreting any contractual provision, including preferred stock provisions, must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, reconcile all the provisions of the instrument."
Greenmont Capital Partners I, LP v. Mary's Gone Crackers, Inc. --- A.3d ---, 2012 WL 4479999 Del.Ch.,2012. September 28, 2012	In interpreting a corporate charter, the Court applies general principles of contract construction. A certificate should be construed in its entirety and the court "must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, must reconcile all provisions in the instrument." The existence and extent of special stock rights are contractual in nature and are determined by the issuer's certificate of incorporation. The certificate must expressly and clearly state any rights, preferences, and limitations of the preferred stock that distinguish preferred stock from common stock. This principle equally applies to construing the relative rights of holders of different series of preferred stock. In interpreting an unambiguous certificate of incorporation, the court should determine the document's meaning solely in reference to its language without resorting to extrinsic evidence.

c. Unless the extrinsic evidence resolves the ambiguity with clarity in favor of the Preferred Stockholders, the contract should be interpreted in the manner that is least restrictive of electoral rights

Case	Principle
Shiftan v. Morgan Joseph Holdings, Inc. 2012 WL 120196 Del.Ch., January 13, 2012	In these contexts, another method of resolving ambiguity comes into play, which involves interpreting ambiguities against the drafter. Our Supreme Court has frequently invoked this doctrine of *contra proferentem* to resolve ambiguities about the rights of investors in the governing instruments of business entities. This is even true in the case of investors in preferred stock. For example, our Supreme Court held in the *Kaiser* case that when a certificate of designation of a corporation governing the rights of preferred stockholders is ambiguous, the doctrine of interpretation against the drafter should be invoked in favor of the preferred stockholders. Thus, in that context, if a certificate of designation can be reasonably read in the manner the investor in preferred stock advances, the ambiguity should be resolved in her favor. The policy reason for this was put clearly by the Supreme Court: "When faced with an ambiguous provision in a document such as a certificate of designation, the court must construe the document to adhere to the reasonable expectations of the investors who purchased the security and thereby subjected themselves to the terms of the contract." RESTATEMENT OF CONTRACTS § 206 (1981) "In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds." *Wininger*, 707 A.2d at 43 (holding that ambiguous terms in a partnership agreement that was drafted only by the general partner should be construed against the general partner under the principle of *contra proferentem*) *Penn Mut. Life Ins. Co. v. Oglesby*, 695 A.2d 1146, 1149–50 (Del.1997) ("It is the obligation of ... the issuer of securities to make the terms of the operative document understandable to a reasonable investor whose rights are affected by the document. Thus, if the contract in such a setting is ambiguous, the principle of *contra proferentem* dictates that the contract must be construed against the drafter.") *Stockman v. Heartland Indus. Partners, L.P.*, 2009 WL 2096213, at *5 (Del. Ch. July 14, 2009) (when an entity's organizing document is ambiguous and "makes promises to parties who did not participate in negotiating the agreement," Del. courts apply the principle of *contra proferentem*).

3. Subordination

a. Where the terms of one provision are expressly stated to be "subject to" the terms of a second provision, the terms of the second provision will control, even if the terms of the second provision conflict with or nullify the first

Case	Principle
United Rentals, Inc. v. RAM Holdings, Inc., 937 A.2d 810 Del. Ch., Dec. 21, 2007	Relying on *Penn Mutual Life Insurance, Co. v. Oglesby*, 695 A.2d 1146, 1150 (Del. 1997) (finding that the phrase "subject to all provisions" operated to subliminate or trump other provisions) and *Supermex Trading Co., Ltd. v. Strategic Solutions Group, Inc.*, 1998 WL 229530 (Del. Ch. May 1, 1998) defendants contend that Delaware law specifically permits the parties to establish supremacy and subservience between provisions such that, where the terms of one provision are expressly stated to be provisions that, where the terms of one provision are expressly stated to be "subject to" the terms of a second provision, the terms of the second provision will control, even if the terms of the second provision conflict with or nullify the first provision. An interpretation of the agreement that relies on the parties' addition of hierarchical phrases, instead of the deletion of particular language altogether, is not unreasonable as a matter of law.

4. Contract Formation

a. General principles of contract formation are used to determine whether the parties intended to form a binding agreement

Case	Principle
Burke v. Eaton Associates, Inc. 2012 WL 267982 W.D.N.Y., January 30, 2012	"New York relies on settled common law contract principles to determine when parties to a litigation intended to form a binding agreement." *Ciaramella v. Reader's Digest Ass'n, Inc.*, 131 F.3d 320, 322 (2d. Cir.1997); *see also Jim Bouton Corp. v. William Wrigley Jr. Co.*, 902 F.2d 1074, 1081 (2d Cir.1990) (describing the New York rule of contract formation as "generally accepted"). Typically, unless otherwise specified, a party can accept an offer by beginning performance, as Eaton did here by drafting the check. Restatement (Second) of Contracts § 30(2) ("Unless otherwise indicated by the language or the circumstances, an offer invites acceptance in any manner and by any medium reasonable in the circumstances"); *In re Newport Plaza Assocs., L.P.*, 985 F.2d 640, 645 (1st Cir.1993). Indeed, even if the party does not subjectively intend to be bound, if its actions support the conclusion that it has accepted the offer, it is bound to honor the contract. *See Dodge Street, LLC. v. Livecchi*, 32 Fed. Appx. 607, 611 (2d Cir.2002) (summary order).

5. Captions and Section Headings

a. Absent language in a contract to the contrary, section headings in that contract are to be given effect in interpreting and construing that contract

Case	Principle
Ward v. Theladders.com. --- F.Supp.2d ---, 2014 WL 945011 S.D.N.Y., 2014 March 12, 2014	The June 2010 Terms of Use contained no language suggesting that the captions or section headings should be disregarded in interpreting the contract. Therefore, the heading must be considered and given effect in contractual construction. *See* *Int'l Multifoods Corp. v. Commercial Union Ins. Co.*, 309 F.3d 76,85 (2d Cir.2002) (holding, under New York law, that "[c]aptions are relevant to contract interpretation"); *see also* *Coley v. Cohen*, 289 N.Y. 365, 45 N.E.2d 913, 917 (1942) (construing contractual language in light of the heading).

6. ERISA

a. ERISA plan documents are construed using traditional rules of contract interpretation, as long as they are consistent with federal labor policies

Case	Principle
Burke v. Eaton Associates, Inc. Slip Copy, 2012 WL 267982 W.D.N.Y., January 30, 2012	In adjudicating agreements like these, the Second Circuit has instructed courts to apply "traditional rules of contract interpretation as long as they are consistent with federal labor policies." *Aeronautical Indus. Dist. Lodge 91 of Int'l Ass'n of Machinists & Aerospace Workers, AFL–CIO v. United Techs. Corp., Pratt & Whitney*, 230 F.3d 569, 576 (2d Cir.2000). The contract should be interpreted in light of the underlying goals of ERISA as amended by the Multi-employer Pension Plan Amendment Act of 1990 ("MPPAA"). Because the MPPAA was meant to protect the interests of participants in financially distressed ERISA plans, they argue, the contract should be construed against Eaton, not the Fund. Any other reading would render the phrase entirely superfluous, which is of course contrary to standard contract interpretation policies. *See* *United Techs. Corp., Pratt & Whitney*, 230 F.3d at 576 ("In addition, as with all contracts, courts should attempt to read [federal labor contracts] in such a way that no language is rendered superfluous.").
Sciascia v. Rochdale Village, Inc. 851 F.Supp.2d 460 E.D.N.Y.,2012. March 30, 2012	When a court interprets a CBA, the traditional rules of contract interpretation apply, provided they are consistent with fair labor policies. *See* *Aeronautical Indus. Dist. Lodge 91 v. United Techs. Corp.*, 230 F.3d 569, 576 (2d Cir.2000); *Demolition Workers Union v. Mackroyce Contracting Corp.*, No. 97–CV–4094, 2000 WL 297244, at *34 (S.D.N.Y. March 22, 2000) (applying general contract law principles to evaluate the employer's obligations to the Funds under the terms and conditions of CBA)
Fleisher v. Standard Ins. Co. 679 F.3d 116 C.A.3 (N.J.),2012. May 17, 2012	The dissenting opinion reads as if we were interpreting an ambiguous term in an insurance policy under a *de novo* standard of review. It alludes to notions of contracts of adhesion and reasonable expectations of the insured that populate cases interpreting insurance policies in the first instance. Those concepts are simply not applicable where, as here, the ERISA plan document makes the plan administrator the competent authority to interpret ambiguous plan provisions in the first instance. *See* *Kimber*, 196 F.3d at 1101 ("[T]he reasonable expectation doctrine is inapplicable to the

	review of an ERISA disability benefits plan under the arbitrary and capricious standard."). As Judge Cudahy explained in *Morton v. Smith*, 91 F.3d 867, 871 n. 1 (7th Cir.1996): Courts invoke [the *contra proferentem*] rule when they have the authority to construe the terms of a plan, but this authority arises only when the administrators of the plan lack the discretion to construe it themselves.... When the administrators of a plan have discretionary authority to construe the plan, they have the discretion to determine the intended meaning of the plan's terms. In making a deferential review of such determinations, courts have no occasion to employ the rule of *contra proferentem.* Deferential review does not involve a construction of the terms of the plan; it involves a more abstract inquiry—the construction of someone else's construction. Ultimately, we think Judge Garth is mistaken inasmuch as he implies that Fleisher has somehow been the victim of a contract of adhesion, or that he was otherwise misled by Standard. Although the Standard Policy did not define the terms "group insurance" or "individual insurance" or reference the term "franchise insurance," it reposed in the administrator the authority to interpret ambiguous terms. Thus, we are not concerned that plan participants like Fleisher—or, as Judge Garth suggests, sophisticated plan participants like the judges on this panel—are misled by insurance policies such as Standard's. Since the Standard Policy vested the administrator with discretion to interpret the Policy, under our well-established case law we have no option but to uphold this interpretation unless it is arbitrary or capricious. As our dissenting colleague observed in another ERISA case, "a court must *actually apply* the correct standard [of review]; *mere lipservice and mere citation* to a standard of review will not suffice." *Lasser v. Reliance Standard Life Ins. Co.*, 344 F.3d 381, 399 (3d Cir.2003) (Garth, J., dissenting). In this case, application of the deferential standard of review precludes reliance upon the general principles of contract law on which the dissent rests. Whether we would reach a different interpretation under *de novo* review is therefore irrelevant.

7. Holding Agents in Escrow

a. Placing a signed contract in escrow is simply a way of creating a condition precedent to the contract's validity

Case	Principle
Edelman Arts, Inc. v. Art Intern. Ltd. 841 F.Supp.2d 810, 2012 WL 183641 S.D.N.Y., January 24, 2012	Here, parties intended to have the bill of sale be inoperative until such time as Art International received funds from its undisclosed buyer, Galerie G. That intent is evinced by several pieces of evidence adduced at trial. First, Edelman stated that he would hold the bill of sale "in escrow" until funds from the buyer had been received. "Placing a signed contract in escrow is simply a way of creating a condition precedent to the contract's validity." Edelman's use of the term—one with which he is familiar, —is probative of an intent to condition the effectiveness of the bill of sale on the conditions of the "escrow" arrangement.

8. Indemnification Provisions

a. The court will interpret a contract to avoid reading into it a duty to indemnify that the parties did not intend to be assumed

Case	Principle
Corral v. Outer Marker LLC Slip Copy, 2012 WL 243318 E.D.N.Y., January 24, 2012	"When a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed." *Tonking v. Port Auth. of N.Y. & N.J.*, 3 N.Y.3d 486, 490, 787 N.Y.S.2d 708, 821 N.E.2d 133 (2004) (quoting *Hooper Assocs. v. AGS Computers, Inc.*, 74 N.Y.2d 487, 491, 549 N.Y.S.2d 365, 548 N.E.2d 903 (1989)).

9. Motion to Dismiss

a. When ruling on a motion to dismiss, the court must resolve all ambiguities in the contract in favor of the plaintiff

Case	Principle
Hamilton Partners, L.P. v. Highland Capital Mgmt., L.P. 2012 WL 2053329 Del.Ch., 2012, May 25, 2012	At this stage, the Court cannot determine whether the correct time to review the actions of Highland and Furlong with regard to the Merger is in April 2010 or September 2010 because the Restructuring Agreement is ambiguous. Therefore, the Court will defer ruling on the motions to dismiss.
Malmsteen v. Universal Music Grp, Inc. 2012 WL 2159281 S.D.N.Y., 2012. June 14, 2012	At the motion to dismiss stage, a court may "resolve issues of contract interpretation when the contract is properly before the Court, but must resolve all ambiguities in the contract in [p]laintiffs' favor." *Serdarevic*, 760 F.Supp.2d at 328–29 (citing *Banks v. Corr. Servs. Corp.*, 475 F.Supp.2d 189, 195 (E .D.N.Y.2007)) ("If the interpretation of a contract is at issue, a court is 'not constrained to accept the allegations of the complaint in respect of the construction of the [a]greement,' although all contractual ambiguities must be resolved in the plaintiffs' favor.") (*Int'l Audiotext*)
Metropolitan Life Ins. Co. v. Tremont Group Holdings, Inc. --- in A.3d ---, 2012 WL 6632681 Del.Ch.,2012. December 20, 2012	On a motion to dismiss, a trial court cannot choose between two different reasonable interpretations of an ambiguous document.FN112 Where ambiguity exists, "[d]ismissal is proper only if the defendants' interpretation is the only reasonable construction as a matter of law." *Appriva S'holder Litig. Co. v. EV3, Inc.*, 937 A.2d 1275, 1289 (Del.2007) (quoting *Vanderbilt Income & Growth Assoc. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del.1996)) (internal quotation marks omitted). "Because any ambiguity must be resolved in favor of the nonmoving party, [Defendants here] are not entitled to dismissal under Rule 12(b)(6) unless the interpretation of the contract on which their theory of the case rests is the ' only reasonable construction as a matter of law.'" *Kahn v. Portnoy, 2008 WL 5197164*, at *3 (Del.Ch. Dec.11, 2008).
T.M. Real Estate Holding, LLC v. Stop & Shop Supermarket Co. LLC Slip Copy, 2013 WL 603325 S.D.N.Y.,2013. February 14, 2013	On a motion to dismiss, the Court may interpret a contract properly before it, but it must resolve all ambiguities in the contract in Plaintiff's favor. *Serdarevic v. Centex Homes, LLC*, 760 F.Supp.2d 322, 328–29 (S.D.N.Y.2010). However, the Court "is not constrained to accept the allegations of the complaint in respect of the construction of the [a]greement." *Int'l Audiotext Network, Inc. v. Am. Tel. & Tel. Co.*, 62 F.3d 69, 72 (2d Cir.1995).

Alston v. 1749-1753 First Ave. Garage Corp. Slip Copy, 2013 WL 3340484 E.D.N.Y.,2013. July 02, 2013	While contract ambiguities can be resolved either at trial or on summary judgment since extrinsic evidence can be offered to resolve the ambiguity, *see, e.g.*, *Compagnie Financiere de CIC et de L'Union Europeenne v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 232 F.3d 153, 158 (2d Cir.2000), it is not proper to do so on a motion to dismiss, *see* *Bank of New York Trust, N.A. v. Franklin Advisors, Inc.*, 522 F.Supp.2d 632, 637 (S.D.N.Y.2007) ("The Court's role on a 12(b)(6) motion to dismiss is not to resolve contract ambiguities."); *see also* *Subaru Distribs. Corp. v. Subaru of Am., Inc.*, 425 F.3d 119, 122 (2d Cir.2005) (holding that at the Rule 12(b)(6) procedural stage, "we should resolve any contractual ambiguities in favor of the plaintiff"); *Aleo v. Keyspan Corp.*, 2006 WL 2265306, at *6 (E.D.N.Y. Aug. 7, 2006) ("Although extrinsic evidence may later shed light on the meaning of the language, the ambiguity is sufficient for the court to conclude that plaintiffs have validly stated a claim.").

b. A contractual statute of limitations is generally respected in NY courts

Case	Principle
Malmsteen v. Universal Music Grp., Inc. 2012 WL 2159281 S.D.N.Y., 2012. June 14, 2012	Contractual statutes of limitations and objection provisions are generally respected by New York courts. *See, e.g.*, *Allman v. UMG Recordings*, 530 F.Supp.2d 602, 605 (S.D.N.Y.2008) (enforcing both a limitation and an objection provision against a plaintiff). Under the C.P.L.R., "[a]n action ... must be commenced within the time specified in this article unless ... a shorter time is prescribed by written agreement." C.P.L.R. § 201. Failure to conform to a contractual limitations period "will subject the action to dismissal, absent proof that the limitations provision was obtained through fraud, duress, or other wrongdoing." *Id.; Van Loan v. Hartford Accident & Indem. Co.*, No. 05–cv–1326, 2006 WL 3782709, at *4 (holding an insurance agreement's two-year limitation period was valid enforceable)

10. Proprietary Lease

a. In the interpretation of leases, the same rules of construction apply as are applicable to contracts generally

Case	Principle
Himmelberger v 40-50 Brighton First Rd. Apts. Corp. 94 A.D.3d 817, 943 N.Y.S.2d 118 N.Y.A.D. 2 Dept.,2012. April 10, 2012	This action is based on a proprietary lease, which is a valid contract that must be enforced according to its terms (*see* *Brickman v. Brickman Estate at the Point.*, 6 A.D.3d 474, 476, 775 N.Y.S.2d 67). As a general rule, "'[a] lease is to be interpreted as a whole and construed to carry out the parties' intent, gathered, if possible, from the language of the lease' " (*Cobalt Blue Corp. v. 184 W. 10th St. Corp.*, 227 A.D.2d 50, 53, 650 N.Y.S.2d 720) Thus, in the interpretation of leases, the same rules of construction apply as are applicable to contracts generally (*see* *George Backer Mgt. Corp. v. Acme Quilting Co.*, 46 N.Y.2d 211, 217, 413 N.Y.S.2d 135, 385 N.E.2d 1062).

11. Sovereign Power

a. An ambiguous term of a grant or contract will not be construed as a conveyance or surrender of sovereign power

Case	Principle
Himmelberger v 40-50 Brighton First Rd. Apts. Corp. 94 A.D.3d 817, 943 N.Y.S.2d 118 N.Y.A.D. 2 Dept.,2012. April 10, 2012	[The unmistakability] doctrine is a rule of contract construction that provides that in a contract with a sovereign government, "an ambiguous term of a grant or contract [will not] be construed as a conveyance or surrender of sovereign power." *Winstar*, 518 U.S. at 878, 116 S.Ct. 2432. The unmistakability doctrine prevents governments from being bound to contracts notwithstanding subsequent changes in the law, unless the government consented to be bound in clear and unmistakable terms in the contract. *Id*. at 872, 116 S.Ct. 2432.

12. Removal and Forum Selection Clauses

a. A provision waiving the right to remove must be clear and unambiguous

Case	Principle
Motiva Enterprises LLC v. SR International Business Insurance Company PLC Not Reported in F.Supp.2d, 2013 WL 3571538 D.Del., 2013 July 12, 2013	It is also well established that parties may contractually waive their right to remove. *See New Jersey v. Merrill Lynch & Co., Inc.*, 640 F.3d 545, 547 (3d Cir.2011); *Foster v. Chesapeake Ins. Co., Ltd.*, 933 F.2d 1207, 1216–17 (3d Cir.1991). However, the Court applies a strict standard, as "there can be no waiver of a right to remove ... in the absence of clear and unambiguous language requiring such a waiver." *Ario v. Underwriting Members of Syndicate 53*, 618 F.3d 277, 289 (3d Cir.2010).

b. A court will not interpret a forum selection clause to indicate the parties intended to make jurisdiction exclusive unless the contractual language is crystalline

Case	Principle
Duff v. Innovative Discovery LLC --- A.3d ---, 2012 WL 6096586 Del.Ch.,2012. December 07, 2012	Moreover, "[i]f the contractual language is not crystalline, 'a court will not interpret a forum selection clause to indicate the parties intended to make jurisdiction exclusive.' " … In any event, this Court has held that where a contract contains two conflicting provisions, the document is rendered ambiguous. To that end, Delaware courts only will declare a forum selection clause "strictly binding" when the parties use "express language clearly indicating that the forum selection clause excludes all other courts before which those parties could otherwise properly bring an action." *Prestancia Mgmt. Gp., Inc. v. Va. Heritage Found. II, LLC*, 2005 WL 1364616, at *7 (Del.Ch. May 27, 2005).

13. Adhesion Contracts

a. An insurance policy is an adhesion contract governed by different rules of contract construction.

Case	Principle
Maryland Casualty Company v. Grigoli Enterprises Inc.. No. 12-1290, 2014 WL 1022356 D.Del., 2014 March 13, 2014	"Because an insurance policy is an adhesion contract and is not generally the result of arms-length negotiation, courts have developed rules of construction which differ from those applied to most other contracts." *Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 926 (Del. 1982).