

beyond the complaint to facts alleged solely on a plaintiff's moving papers.”). It would have been inappropriate for Plaintiff to have submitted a proposed modification to Louisiana Endorsement in its opposition to the Motion to Dismiss, and it is even more inappropriate for a proposed amicus to do the same as part of a “motion for leave”— especially since this Court has not even granted United Policyholders an ability to opine on the merits of this action in the first instance.

Finally, the evidence United Policyholders seeks to submit—a proposed modification of a Louisiana Endorsement that no one claims was ever issued to Plaintiff—has no bearing on this dispute. Moreover, how subsequent, proposed policy documents (that may or may not ever be issued to this insured) are worded is not probative to what the words of the Policy at issue mean— when there is no ambiguity in the relevant contract before the Court a subsequent document cannot be used to create ambiguity and is wholly irrelevant. Indeed, courts routinely rule that post-loss changes to insurance-contract language cannot be used to undermine the meaning of the original version of the policy. *See, e.g., Ekco Grp., Inc. v. Travelers Indem. Co. of Illinois*, 273 F.3d 409, 415 (1st Cir. 2001) (rejecting post-loss revision as evidence under the federal rules because “expression can always be made clearer and to change language in a policy is simply a precaution against recurrent misunderstanding”); *accord Pastor v. State Farm Mut. Auto. Ins. Co.*, 487 F.3d 1042, 1045 (7th Cir. 2007). United Policyholders cannot circumvent this principle by relying on *Churchill v. Factory Mut. Ins. Co.*, 234 F.Supp.2d 1182 (W.D. Wash. 2002) because *Churchill* was decided under Washington state law, which, unlike Rhode Island state law, allows for the introduction of extrinsic evidence in contract disputes without a finding of ambiguity. Accordingly, the Court should decline United Policyholders' invitation to consider a proposed modification to a Louisiana Endorsement.

United Policyholders' submission is merely a thinly veiled attempt to put before this Court inadmissible materials that are outside the Complaint; therefore, Zurich respectfully requests this Court strike United Policyholders' Reply.¹

Respectfully submitted,

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¹ As previously noted, if the Court is inclined to allow the amicus brief, Zurich respectfully asks for at least two weeks to file a substantive reply to correct the misleading statements of law and fact contained in the proposed amicus's filing and to provide time for amicus who wish to support Zurich's position to file their own briefs.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via the Court's ECF system upon the following individual on the date set forth below:

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