No. 19-10940

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MAGGIE J. ROBINSON, *ET AL.*,
***Appellants*,**

v.

LIBERTY MUTUAL INSURANCE COMPANY, *ET AL.*,
***Appellees*.**

On appeal from the United States District Court for the Northern District of Alabama, No. 4:18-cv-01509-ACA

BRIEF FOR APPELLEES

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CERTIFICATE OF INTERESTED PERSONS

The following is a list of all **additional** known judges, attorneys, persons, associations of persons, firms, partnerships, corporations, and other legal entities that have an interest in the outcome of this case, including subsidiaries, conglomerates, affiliates and parent corporations, any publicly held company that owns 10 percent or more of a party's stock, and other identifiable legal entities related to a party:

Neiman, John C. Jr. (attorney for Appellees)

STATEMENT REGARDING ORAL ARGUMENT

Appellees—to whom this brief collectively refers as Liberty Mutual—agree that this appeal should not require oral argument. The District Court rightly held that the Robinsons' insurance policy did not cover their home's infestation by these brown-recluse spiders because it excludes loss caused by "[b]irds, vermin, rodents, and insects." Doc. 1-1 at p.14, ¶ 2e(7). The appellants' brief misinterprets Alabama precedents when it asserts that the complaint's allegations precluded the District Court from concluding that these kinds of spiders fall within this language, and the appellant's brief misinterprets the procedural rules when it claims that they required an evidentiary hearing to determine what these words mean. Dismissal also was appropriate for an additional reason the District Court did not consider: the complaint pleads that the spider infestation arose in 2013, before the Robinsons bought their policy from Liberty Mutual in 2014. This Court can affirm on these straightforward grounds, and oral argument should not be necessary.

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STATEMENT OF THE ISSUES

I. Vermin loss. The ordinary definition of "vermin" is "small common harmful or objectionable animals (such as lice or fleas) that are difficult to control." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1390 (11th ed. 2005) (hereinafter MERRIAM-WEBSTER). The Robinsons allege that brown-recluse spiders cause "severe human tissue deterioration" and "death" and are "a dangerous and irreparable condition that has rendered the HOME unsafe for occupancy." Doc. 1 at p. 5, ¶¶ 22, 23, & 27. Did the District Court correctly hold that the Robinsons are seeking compensation for loss caused by "vermin" and thus excluded from coverage?

II. Insect loss. Alabama law gives insurance-policy terms the meaning a "person of ordinary intelligence would reasonably give" them, not their "technical" meanings. *Safeway Ins. v. Herrera*, 912 So. 2d 1140, 1143 (Ala. 2005). While the technical meaning of "insect" encompasses six-legged animals, dictionaries agree that the word when "not used technically" means "any of numerous small invertebrate animals (such as spiders or centipedes) that are more or less obviously segmented." MERRIAM-WEBSTER, *supra*, at 646. Did the District Court correctly hold that the

Robinsons also are seeking compensation for loss excluded from coverage because it was caused by "insects"?

III. Loss outside policy period. The policy the Robinsons purchased from Liberty Mutual "applies" in pertinent part "only to loss . . . which occurs during the policy period," which the Robinsons allege to have begun on "March 1, 2014." Doc. 1-1 at p. 23, ¶ 1; Doc. 1 at p. 6, ¶ 31. The Robinsons allege that their "[e]fforts" to "eradicate" the spiders began "[i]n March 2013" but were "unsuccessful," such that the "infestation remained" when they first bought insurance from Liberty Mutual. Doc. 1 at p. 4, ¶¶ 15–18. Should this Court affirm on the alternative ground that the Robinsons' complaint alleges that the loss they are seeking coverage for occurred outside the policy period?

IV. Bad-faith claim. "[I]ssues that clearly are not designated in the appellant's brief normally are deemed abandoned." *Fed. Sav. & Loan Ins. v. Haralson*, 813 F.2d 370, 373 n.3 (11th Cir. 1987). The appellants' brief states that "[t]he Robinsons do not challenge the dismissal of their claim for bad faith." Robinson Br. 8. Should this Court affirm the District Court's dismissal of the claim?

STATEMENT OF THE CASE

Liberty Mutual takes issue with the statement of the case, as set out in the appellant's brief, in three respects.

First, the question whether the terms "insects" and "vermin" in this insurance policy unambiguously apply to brown-recluse spiders is a "question of law." *Safeway*, 912 So. 2d at 1143; *accord Royal Ins. v. Whitaker Contracting*, 242 F.3d 1035, 1040 (11th Cir. 2001). It is not, as the appellants' brief suggests, a factual issue to be settled for the purposes of a motion to dismiss by the allegations in the complaint. *See* Robinson Br. 4 (citing Doc. 1).

Second, the appellants' brief mistakenly asserts that the District Court "took judicial notice" of the meaning of the policy's terms. *See* Robinson Br. 2, 7-8. The District Court did not purport to do so. Its opinion stated that Liberty Mutual had "not asked the court to take judicial notice of what is mean by insect—or vermin" and instead had asked the court to find, "under the relevant rules of contract interpretation" that "the ordinary meaning of 'insect' and 'vermin' includes spiders, and therefore, the plain language of the Policy excludes coverage for the Robinsons' loss." Doc. 20 at p. 9 n.2.

Third, the statement of the standard of review in the appellant's brief bears qualification. The appellant's brief is right to say that this Court should review the District Court's interpretation of the insurance policy "*de novo*." Robinson Br. 8. But the appellants' brief also seeks review of the District Court's decision to determine the meaning of certain policy terms without conducting an evidentiary hearing under Rule 201 of the Federal Rules of Evidence. *See* Robinson Br. 13-17. That decision is reviewable only for "abuse of discretion." *United States v. Saylor*, 626 F. App'x 802, 803 (11th Cir. 2015) (citing *United States v. Marizal*, 421 F.2d 836, 837 (5th Cir. 1970)).

SUMMARY OF THE ARGUMENT

I. The District Court correctly dismissed this case because reasonably prudent purchasers of insurance would understand these spiders to be "vermin," such that the loss they caused is excluded from coverage.

A. The ordinary meaning of "vermin" is "small animals (as lice, bedbugs, mice) that tend to occur in great numbers, are difficult to control, and are offensive as well as injurious." WEBSTER'S THIRD NEW INT'L DICTIONARY 2544 (1993) (hereinafter WEBSTER'S THIRD). Case law recognizes that spiders are vermin. These brown-recluse spiders are obviously so, as the complaint alleges that they have occurred in great numbers, have been difficult to control, and threaten serious injuries.

B. It makes no difference that the complaint alleges that Liberty Mutual employees did not mention the word "vermin" when they first explained why the Robinsons' claim would be denied. The formal claim-denial letter quoted the "vermin" language. Even if it had not, Alabama law holds that insurers cannot waive exclusions in that way.

II. The District Court also correctly dismissed this case on the alternative ground that these spiders are also "insects," such that loss caused by them is excluded under the policy.

A. Alabama courts look not to "technical" meanings of insurance-policy terms but the meaning a "person of ordinary intelligence would reasonably give" them. *Safeway*, 912 So. 2d at 1143. Dictionaries routinely specify that "spiders" are within the non-technical meaning of "insect[s]" because they have a "superficial resemblance to members of Insecta." *E.g.*, WEBSTER'S THIRD, *supra*, at 1168.

B. The District Court did not abuse its discretion when it declined to hold an evidentiary hearing on this issue. Federal Rule of Evidence 201 does not govern the process of interpreting the unambiguous terms of insurance policies. Even when the Rule governs, it merely creates a right to be heard, which can be achieved via the sort of briefing that occurred below rather than a full-blown evidentiary hearing.

III. This Court also can affirm on the alternative ground that the complaint seeks compensation for loss outside the policy period. The complaint alleges that the spiders infested the home in March 2013. The policy period did not begin until March 2014.

IV. The appellants' brief abandons the bad-faith claim, so this Court should affirm that count's dismissal for that independent reason.

ARGUMENT

The Robinsons deserve sympathy for what has happened to their home, but that is not the issue in this case. The issue is whether they bought insurance from Liberty Mutual for their claimed loss. The answer, evident from the Robinsons' complaint, is no. Their complaint alleges that the brown-recluse spiders are numerous, dangerous, and difficult to control—so difficult, in fact, that these spiders have been in their home since at least 2013, and they have been unable to get the spiders out in the time since. All those considerations establish that the policy the Robinsons bought from Liberty Mutual—which, like many other homeowners' policies, does not cover loss caused by "[b]irds, vermin, rodents, and insects," and applies only to loss that arose after they purchased it—does not extend to the problem the Robinsons are now trying to address.

The parties agree that Alabama law governs this insurance policy, and several overarching principles control the task at hand. *See Colonial Life & Acc. Ins. v. Hartford Fire Ins.*, 358 F.3d 1306, 1308 (11th Cir. 2004) (holding that in diversity cases involving insurance policies in Alabama, the policy will be "'governed by the laws of the state where it is made'" unless the policy provides otherwise (quoting *Cherry, Bekaert & Holland*

v. Brown, 582 So. 2d 502, 506 (Ala. 1991)). Alabama courts enforce policies "as written if the terms are unambiguous." *Safeway*, 912 So. 2d at 1143. "The test to be applied . . . is not what the insurer intended its words to mean, but what a reasonably prudent person applying for insurance would have understood them to mean." *State Farm Fire & Cas. v. Slade*, 747 So. 2d 293, 308 (Ala. 1999) (quoting COUCH ON INS. § 21:14 (3d ed. 1997)). When construing words the policy does not define, Alabama courts reference "dictionary definition[s]," which the Alabama Supreme Court has said are "assertion[s] of that very meaning that an ordinary person would give a particular word." *Carpet Installation & Supplies v. Alfa Mut. Ins.*, 628 So. 2d 560, 562 (Ala. 1993).

As explained below, these principles' application required dismissal of both counts in the complaint—the first for breach of contract, and the second for bad faith—for three independent and alternative reasons. The first two were offered by the District Court, based on the policy's exclusion of coverage for loss caused by "[b]irds, vermin, rodents, and insects." *E.g.*, Doc. 1-1 at p. 14, ¶ 2e(7). The third, an alternative and equally valid ground for affirmance, arises from the policy's statement that it applies only to loss "during the policy period" and the Robinsons' allegation that

the spider colony infested their home before they bought the insurance. *Id.* at p. 23, ¶ 1; *accord* Doc. 1 at p. 4, ¶¶ 15–18; *id.* at p. 6, ¶ 31. Moreover, the appellants' brief specifically abandons any appeal of the District Court's dismissal of the bad-faith claim, so this Court should affirm that dismissal for that separate reason as well.

I. The District Court rightly held that the Robinsons' claim is not within their insurance coverage because the spiders that caused their loss are "vermin"

As an initial matter, this Court can resolve this case in its entirety by affirming the District Court's conclusion that "[t]he Policy's 'vermin' exclusion" applied to the Robinsons' claim. Doc. 20 at p. 11. The complaint's allegations show that these spiders fall unambiguously within what a reasonably prudent purchaser of insurance would understand "vermin" to mean. Alabama law makes it equally clear that the primary consideration the Robinsons raise in response—the complaint's allegation that a Liberty Mutual representative initially did not mention the word "vermin" to them on the phone—makes no difference.

A. Brown-recluse spiders are within the ordinary meaning of "vermin"

The District Court correctly held that a reasonably prudent person, when taking out a homeowners' policy that excluded loss caused by "vermin," would understand this term to unambiguously encompass spider infestations of the sort the Robinsons allege in their complaint. Dictionaries and case law alike make the ordinary meaning of the term "vermin," as applied to the animals at issue here, unambiguously clear.

As the Ninth Circuit explained in a recent unpublished decision addressing the "vermin" language found in another company's policy, the ordinary meaning of this term as it would appear in one of these policies, per *Webster's Third*, is "'small animals (as lice, bedbugs, mice) that tend to occur in great numbers, are difficult to control, and are offensive as well as injurious.'" *Gregory v. Nationwide Mut. Ins.*, 611 F. App'x 410, 411 (9th Cir. 2015) (quoting WEBSTER'S THIRD, *supra*, at 2544). The court noted that other dictionaries define the term in the same way. *Merriam-Webster* calls vermin "small common harmful or objectionable animals (as lice or fleas) that are difficult to control," while the *Oxford English Dictionary* defines them for American-usage purposes as "creeping or wingless insects (and other minute animals) of a loathsome or offensive

appearance or character, esp. those which infest or are parasitic on living beings and plants." *See id.* (quoting MERRIAM-WEBSTER, *supra*, at 1390; 19 THE OXFORD ENGLISH DICTIONARY 547 (2d ed. 1989) (hereinafter O.E.D.)). For the Court's convenience, the addendum to this brief sets out these three dictionaries' definitions of "vermin" and—because the definitions are relevant to the next section—"insect" as well.

The Ninth Circuit described mites as "the paradigmatic example of 'vermin,'" but spiders are even more so. *Id.* In the mite case, the district court had reasoned that mites are "vermin" precisely because they are similar to spiders, and precisely because it is obvious that spiders are "vermin." That court noted that "an objectively reasonable insured would understand the policy to exclude coverage for loss caused by," among other kinds of animals, "spiders." *Gregory v. Nationwide Mut. Ins.*, No. CIV S-10-1872 KJM EFB, 2012 WL 6651342, at *5 (E.D. Cal. Dec. 19, 2012). That court acknowledged that mites "may be less notorious as a source of discomfort and property destruction" than spiders are, but concluded that in light of the breadth of the word "vermin," loss caused by either animal would not be "covered." *Id.* In an unpublished decision issued just last month, the Michigan Court of Appeals employed similar

reasoning, holding, for the purposes of applying a statute requiring hotels to keep free of "vermin," that "[s]piders fit within the common meaning of vermin" and reasoning that a "spider is an arachnid belonging to the same class as mites." *Heuschneider v. Wolverine Superior Hosp.*, No. 341053, 2019 WL 2360266, at *3 (Mich. Ct. App. June 4, 2019) (citing *Arachnid*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/animal/arachnid (last accessed by that court May 5, 2019)).

Decisional law is likewise replete with references to spiders as "vermin," especially in litigation addressing whether spider-infested areas are habitable. *See, e.g.*, *Quintanilla v. Bryson*, 730 F. App'x 738, 741 (11th Cir. 2018) (court notes that prisoner alleged that his "cell has an 'excessive vermin and insect infestation,' including rats, mosquitoes, and spiders"); *Wishon v. Gammon*, 978 F.2d 446, 447 (8th Cir. 1992) (court observes that "[i]n his civil rights complaint, Wishon claimed that his 7′ x 9′ cell was infested with spiders and other vermin"); *Laube v. Campbell*, 333 F. Supp. 2d 1234, 1249 (M.D. Ala. 2004) (Thompson, J.) (court orders prison to "ensure that each living area receives monthly pest control services for spiders, roaches, and other vermin"); *Jimenez v. Tsai*, No. 5:16-cv-04434-EJD, 2017 WL 4877442, at *2 (N.D. Cal. Oct. 30, 2017) (court

states that "[t]enants also allegedly complained of vermin in their units, including roaches, spiders, and bedbugs"); *Hart v. BHH, LLC*, No. 15cv4804, 2016 WL 2642228, at *1 (S.D.N.Y. May 5, 2016) (court notes that defendants in consumer-protection case represented that their devices "repel vermin," specifically "'mice, rats, roaches, spiders and ants'").

All these sources say that spiders in general are vermin, and the specific spiders in this case are even more obviously so. The complaint's allegations highlight the point. These spiders, to use the language in *Webster's Third*, "occur in great numbers": the Robinsons allege that they are part of a "large colony" and "have been found in every area and room of [the Robinsons'] HOME." Doc. 1 at p. 4, ¶ 14; *id.* at p. 5, ¶ 25; WEBSTER'S THIRD, *supra*, at 2544. These spiders also are, as *Webster's Third* puts it, "difficult to control": the Robinsons allege that they hired "Knox Pest Control" to remove the colony beginning in 2013 but have been "unsuccessful," and allege that "none of the [Robinsons'] furniture or other personal property would be able to be taken to their new home because any undiscovered spider or egg sac in any transported item, clothing, or piece of furniture would likely lead to another brown recluse spider infestation at the new home." Doc. 1 at p. 4, ¶¶ 16–20; *id.* at p. 6, ¶ 30;

WEBSTER'S THIRD, *supra*, at 2544. Most critically, these spiders are especially, in *Webster's Third*'s words, "offensive" and "injurious": the Robinsons allege that the venom "can cause severe human tissue deterioration and loss" and that bites "can result in the death of a child." *Id.* at p. 5, ¶¶ 22–23; WEBSTER'S THIRD, *supra*, at 2544. In every way, brown-recluse spiders—even more than mites, and even more than other kinds of spiders—fall within the ordinary meaning of "vermin." To paraphrase what the Ninth Circuit said in the mite case, "considering the context of the 'vermin' exclusion—a broad exclusion of loss" caused by "several types of animals including 'insects'—plaintiffs could not have reasonably construed the policy to insure against" these poisonous spiders. *Gregory*, 611 F. App'x at 411.

The appellants' brief offers no effective response. The brief points to an article discussing decisions that have found the term "vermin" to be ambiguous as to certain animals—squirrels, beetles, and raccoons. *See* Bill Wilson, *What is a Vermin?*, THE BIG I: VIRTUAL UNIVERSITY (Sept. 15, 2010) (discussing *Sincoff v. Liberty Mut. Fire Ins.*, 183 N.E.2d 899, 901–02 (N.Y. 1962); *N. British & Mercantile Ins. v. Mercer*, 84 S.E.2d 570, 571 (Ga. 1954); *Marks v. Trinity Universal Ins.*, 531 So. 2d 516, 517 (La. Ct.

App. 1988)). The Ninth Circuit reasoned that those precedents did not control the mite case because "even if the 'vermin' exclusion may be ambiguous as to whether it applies to certain animals, it isn't ambiguous in the context of *this* policy and the circumstances of *this* case." *Gregory*, 611 F. App'x at 411 (quotation marks omitted); *cf. Christ Episcopal Church v. Church Ins.*, 731 So. 2d 1071, 1075 (La. Ct. App. 1999) (reaching same conclusion about mice and rats). The same is true here. A purchaser of insurance might reasonably question whether squirrels, beetles, and raccoons, to quote *Webster*'s *Third*, appear "in great numbers" and are "offensive" and "injurious." WEBSTER'S THIRD, *supra*, at 2544. No reasonable purchaser would raise the same questions about animals that, by the complaint's allegations, can cause severe tissue damage and death, and appear in every room of a home despite repeated eradication attempts.

The appellants' brief also is wrong to assert that the term "vermin" refers only to "parasitic animals." *See* Robinson Br. 23. The brief cites no dictionary limiting the term in this way, and even though mice and rats

are not parasites, one court rightly has noted that vermin "clearly includes" those animals.* *Christ Episcopal Church*, 731 So. 2d at 1075. The defining characteristic of "vermin" from the dictionary definitions is not being "parasitic," but being "offensive" and "injurious." *See Vermin*, WEBSTER'S THIRD, *supra*, at 2544. Some dictionaries, to be sure, include animals that happen to be parasitic—lice and fleas—as *examples* of vermin. *See Vermin*, MERRIAM-WEBSTER, *supra*, at 1390. The article cited in the appellant's brief quotes an English statute saying the term "includes" bedbugs, fleas, lice, and mites. Robinson Br. 22. And the *O.E.D.* says vermin "esp[ecially]" applies to parasites. *See Vermin*, 19 O.E.D., *supra*, at 547. But no reasonable purchaser of insurance would conclude that because the term "includes" and "especially" applies to parasites, an animal cannot be "vermin" unless it is parasitic. Alabama law does not insert

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* The dictionaries make clear that mice and rats are not the only kind of vermin. So, too, does the policy language, which separately excludes loss from "rodents" more generally. If mice and rats were the only kinds of vermin, then there would be no need for the policy to include terms excluding loss from both "rodents" and "vermin." Alabama law requires courts "to construe contracts so as to give meaning to all provisions whenever possible." *Bd. of Water & Sewer Comm'rs of City of Mobile v. Bill Harbert Const. Co.*, 870 So. 2d 699, 710 (Ala. 2003). So "vermin" must include some animals that are not also "rodents"—and, for that matter, some animals that are not also "insects" or "birds."

ambiguities into a policy "by strained or twisted reasoning" of that sort. *Twin City Fire Ins. v. Alfa Mut. Ins.*, 817 So. 2d 687, 692 (Ala. 2001).

The appellants' brief is similarly wrong when it asserts that the District Court's reasoning would include humans in the definition of "vermin" because dictionaries contain as a "secondary or informal definition for vermin 'an offensive person.'" Robinson Br. 23–24 (emphasis omitted) (citing WEBSTER'S NEW COLLEGIATE DICTIONARY (8th ed. 1974)). That assertion misapprehends the Alabama-law inquiry the District Court conducted, which focuses on how a "'reasonably prudent person applying for insurance'" would understand the term. *State Farm*, 747 So. 2d at 308 (quoting COUCH ON INSURANCE § 21:14 (3d ed. 1997)). No such person would read the "vermin" exclusion, situated in a clause with references to animals—"[b]irds, vermin, rodents, and insects," Doc. 1-1 at p. 14, ¶ 2e(7)—and conclude that it extends to a secondary definition encompassing a slur some people use to describe fellow human beings. Nor would any reasonable purchaser presume that the term applies other secondary definitions—"birds and mammals that prey on game" and "animals that at a particular time and place compete (as for food) with hu-

mans and other animals"—that encompass classifications having no relevance to risks associated with homeowners' insurance. *Vermin*, MERRIAM-WEBSTER, *supra*, at 1390. The only meaning a reasonably prudent purchaser would attribute to "vermin" is the one the District Court referenced in finding that the word applies to the spiders at issue here.

B. The Robinsons cannot obtain coverage they did not purchase by alleging that a Liberty Mutual representative did not mention the word "vermin" on the phone

The appellants' brief also mistakenly challenges the District Court's application of the "vermin" language on technical grounds. The appellants' brief contends that the Robinsons' complaint alleges that "at the time of decision to deny the Robinson[s'] claim, the only justification given by Liberty was the 'insect exclusion.'" Robinson Br. 19. The appellants' brief then suggests that this allegation should have precluded the District Court from considering whether the vermin language excluded the claimed loss from coverage.

As a threshold matter, the appellants' brief is mistaken about what the complaint alleges. It does not allege, as the appellants' brief now claims, that Liberty Mutual cited "only" the insect exclusion "at the time

of decision to deny the Robinson[s'] claim." *Id.* The complaint instead alleges that *before* Liberty Mutual sent its formal letter denying coverage, its employees told the Robinsons "via telephone" that their claim "*would be* denied under the insect exclusion." Doc. 1 at p. 10, ¶ 57 (emphasis added); *accord id.* at p. 11, ¶ 61. The complaint does not allege that those employees specified that the "insect exclusion" would be the "only" ground, and does not indicate whether they were using the phrase "insect exclusion" to include the entire policy provision, which also uses the term "vermin." Regardless, the complaint also attached Liberty Mutual's letter denying the claim. *See* Doc. 1-4 at p.2. That letter, in turn, quoted the entire provision containing both the "vermin" and "insect" language. Doc. 1-4 at p.2. As the District Court noted, a "'court can generally consider exhibits attached to a complaint in ruling on a motion to dismiss, and if the allegations of the complaint about a particular exhibit conflict with the contents of the exhibit itself, the exhibit controls.'" Doc. 20 at p. 8 n.1 (quoting *Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016)).

But even if Liberty Mutual's letter had not used the word "vermin," Alabama law holds that the company still can rely on that language now. In one insurance case, a policyholder argued that the defendant

"'waived'" one of its coverage arguments because its letter denying coverage "refer[red]" only to a different policy provision. *Home Indem. v. Reed Equip.*, 381 So. 2d 45, 50 (Ala. 1980). The Alabama Supreme Court rejected that argument, reasoning that waiver doctrine cannot "bring within the coverage of a policy risks not covered by its terms or risks expressly excluded therefrom." *Id.* at 50–51 (citing 43 AM. JUR. 2D, INS., § 1058, p. 983; *id.* § 1184, pp. 983, 1102–03). The Court explained that an insurer can waive *procedural* "forfeiture" grounds—such as an insured's failure to provide timely notice or to offer proof of loss—by not mentioning them in the letter. *Id.* at 50 (citing *Am. Auto-Owners Ins. v. English*, 94 So. 2d 397 (Ala. 1957); *St. Paul Fire & Marine Ins. v. Smith*, 194 So. 2d 830 (Ala. 1967)). But as to the substance of the policy, "coverage under an insurance policy cannot be created or enlarged by waiver." *Id.* at 51. So even if Liberty Mutual's letter had not referred to "vermin," this language from the policy still would be "due to be given effect." *Id.*

The appellants' brief cites no Alabama precedents suggesting otherwise. It instead cites two inapposite cases simply holding that, in assessing whether an insurer denied a claim in bad faith, the court should consider only the facts the insurer had in front of it at the time of the

denial. Robinson Br. 19–20 n.2 (citing *Nat'l Sav. Life Ins. v. Dutton*, 419 So. 2d 1357, 1362 (Ala. 1982); *Federated Guar. Life Ins. v. Wilkins*, 435 So. 2d 10 (Ala. 1983)). Those decisions do not hold that an insurer who cites certain policy language in its letter denying coverage cannot later, in a breach-of-contract action, argue that there was no coverage because of other policy language. And those precedents do not even remotely imply that such a waiver can occur due to mere phone calls, discussing the basis on which a claim "would be denied," that occur before the insurer sends a formal denial letter specifically quoting the language in question. Doc. 1 at p. 10, ¶ 57. This Court thus can affirm based on the vermin language, and the conclusion that it excluded claimed loss from these spiders, alone.

II. The District Court also rightly held that the Robinsons' claim is not within their insurance coverage because Alabama law would regard the spiders as "insects" that caused their loss

This Court also can affirm on the District Court's alternative conclusion that "the Robinsons' loss due to a spider infestation is not covered" due to "the policy's 'insect' exclusion." Doc. 20 at p.10. The Robinsons'

principal response—that they were entitled to an evidentiary hearing on this issue—misapprehends how insurance-policy interpretation works.

A. Brown-recluse spiders are within the ordinary meaning of "insects"

While the term "insect" has one meaning that does not apply to spiders, the District Court rightly held that its ordinary meaning is more expansive. Spiders are not "insect[s]" in the scientific sense because, among other things, they are not part of the "Insecta" class and have four pairs of legs rather than "only three." *Insect*, MERRIAM-WEBSTER, *supra*, at p.646. But as the District Court noted, when the term is "not used technically," it includes both "members of the class Insecta and others" having "superficial resemblance to members of Insecta." Doc. 20 at p.9 (quoting WEBSTER'S THIRD, *supra*, at 1168). Those "other[]" animals within this non-technical definition specifically include "spiders." *Id.* (quoting WEBSTER'S THIRD, *supra*, at 1168).

Multiple dictionaries say as much. Like *Webster's Third*, *Merriam-Webster*'s first definition of "insect" includes "spiders" and specifies that this meaning applies when the term is "not used technically." MERRIAM-WEBSTER, *supra*, at 646. The *O.E.D.* includes spiders within the "usage"

of "insect" it calls the "popular" one. 7 O.E.D., *supra*, at 1017. *Random House* and *American Heritage* are of similar effect. *See* RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 986 (2d ed. 2001) ("any small arthropod, such as a spider . . . having a superficial, general similarity to the insects; Cf. **arachnid**"); AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2019), https://www.ahdictionary.com ("[a]ny of various other small, chiefly arthropod animals, such as spiders"). Even the dictionaries cited in the appellants' brief confirm that "insect," when used "informal[ly]" or "popularly," includes spiders. *See* Robinson Br. 18 (citing *Insect*, LEXICO, https://en.oxforddictionaries.com/definition/insect; *Insect*, COLLINS DICTIONARY, https://www.collinsdictionary.com/us/dictionary/english/insect; *Insect*, YOUR DICTIONARY, http://www.yourdictionary.com/insect (each last visited June 28, 2019)).

These definitions do not mark some recent aberration or modern slippage from a more scientific understanding of the word. This ordinary, non-technical understanding of "insect" has deep roots. *Webster's Second*, the predecessor to *Webster's Third*, specifies that the word's more technical meaning, "[a]ny member of the class Insecta," is its "[z]ool[ogical]" one. WEBSTER'S NEW INT'L DICTIONARY 1284 (2d ed. 1956) (hereinafter

WEBSTER'S SECOND). *Webster's Second* lists that zoological definition as only the third definition of the term, after a secondary one defining "insect" as "[a]ny small, trivial, or contemptible person." *Id.* *Webster's Second* lists the "popular usage" first, states that it includes "any of numerous small invertebrate animals generally having the body more or less obviously segmented," and explains that those animals include not only six-legged members of "the class Insecta" but also "other allied classes of arthropods whose members are wingless and usually have more than six legs, as spiders, mites, ticks, centipedes, wood lice, etc." *Id.* That definition is set out in full in the addendum to this brief.

These realities are important because Alabama law holds that to determine the ordinary meaning of an undefined term in an insurance policy, courts look not to "technical" definitions but the meaning a "person of ordinary intelligence would reasonably give" the term. *Safeway*, 912 So. 2d at 1143. The Alabama Supreme Court thus held that, in construing the term "forcible entry" under an insurance policy, it would not reference technical legal definitions from *Black's Law Dictionary* and the Alabama Code but, instead, a non-technical definition from *Merriam-Webster*. *See id.* at 1143–44. Alabama law thus would look to popular, non-technical

definitions of the term "insects" as well. Because those definitions specifically include spiders, the "insects" language in the Robinsons' policy also excludes their claimed loss.

B. The Rules of Evidence did not require the District Court to hold an evidentiary hearing on what these policy terms mean

The appellants' brief spends less space on the substance of the District Court's interpretation of "insects" than it does on the process by which the District Court reached that interpretation. The principal contention in that brief is that before the District Court interpreted the term, Rule 201 of the Federal Rules of Evidence, which governs the process by which courts take judicial notice of certain facts, entitled the Robinsons to an "evidentiary hearing." Robinson Br. 13. A district court's decision not to conduct a hearing under Rule 201 is reviewable only for "abuse of discretion." *Saylor*, 626 F. App'x at 803 (citing *Marizal*, 421 F.2d at 837). The District Court did not abuse its discretion here for three independent reasons.

First, the District Court correctly observed that what it was doing did not involve judicial notice at all. "Judicial notice" refers not to the process of interpretation, but to the process, as *Black's Law Dictionary*

defines it, of accepting "a well-known and indisputable fact" such as "that water freezes at 32 degrees Fahrenheit." BLACK'S LAW DICTIONARY (11th ed. 2019). As the District Court reasoned, what it was doing was not taking judicial notice, but simply following "the relevant rules of contract interpretation" to determine "the ordinary meaning of 'insect' and 'vermin.'" Doc. 20 at p. 9 n.2. This Court routinely uses dictionaries to interpret insurance policies—and, for that matter, statutes—without referring to that process as taking judicial notice, and certainly without conducing evidentiary hearings to determine what the words in those documents mean. *See, e.g.*, *S.-Owners Ins. v. Easdon Rhodes & Assocs.*, 872 F.3d 1161, 1165 (11th Cir. 2017); *Hegel v. First Liberty Ins.*, 778 F.3d 1214, 1221 (11th Cir. 2015); *Mega Life & Health Ins. v. Pieniozek*, 516 F.3d 985, 991–92 (11th Cir. 2008); *Cont'l Cas. v. Wendt*, 205 F.3d 1258, 1262 (11th Cir. 2000).

Second, even if the process of referencing dictionary definitions could be characterized as taking judicial notice of them, Federal Rule of Evidence 201's requirement of an opportunity to be heard would not apply to the endeavor. Rule 201 by its terms "governs judicial notice of an adjudicative fact only, not a legislative fact." FED. R. EVID. 201(a). The

Advisory Committee Notes explain that whereas "[a]djudicative facts are simply the facts of the particular case," "[l]egislative facts, . . . are those which have relevance to legal reasoning and the lawmaking process," including "in the formulation of a legal principle or ruling by a judge." FED. R. EVID. 201(a) advisory committee's note to 1972 proposed rules. To the extent that dictionary definitions could be described as "facts" at all, they can only be described as "legislative" in nature. They do not, as the former Fifth Circuit described adjudicative facts, "answer the questions of who did what, where, when, how, why, with what motive or intent" in a given case. *Nolan v. Ramsey*, 597 F.2d 577, 580 n.2 (5th Cir. 1979) (quotation marks omitted). They are instead "established truths, facts or pronouncements that do not change from case to case but apply universally." *United States v. Bowers*, 660 F.2d 527, 531 (5th Cir. 1981) (quoting *United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976)). That reality, under binding former Fifth Circuit precedent, would make those dictionary definitions "legislative" facts to which Rule 201 does not apply. *Id.*

Third, even if dictionary definitions amounted to "adjudicative facts" whose judicial notice was governed by Rule 201, that rule still would not have required the "evidentiary hearing" the appellants' brief

demands. Robinson Br. 8, 10, 13, 29. Rule 201 does not say that a party is entitled to an evidentiary hearing on the matter of which the court takes judicial notice. It simply says that the party is entitled to "be heard." FED. R. EVID. 201(e). Although this Court does not appear to have addressed the question, other Circuits agree that this provision "does not require a formal hearing but an opportunity to be heard," which can be achieved through briefing. *Jonas v. Gold*, 627 F. App'x 134, 137 n.4 (3d Cir. 2015); *accord Ctr. for Biological Diversity v. BP Am. Prod.*, 704 F.3d 413, 423–24 (5th Cir. 2013); *Amadasu v. Christ Hosp.*, 514 F.3d 504, 507–08 (6th Cir. 2008); *Am. Stores v. C.I.R.*, 170 F.3d 1267, 1271 (10th Cir. 1999). The Robinsons had that opportunity when they filed their opposition to the motion to dismiss, which offered its own definitions of the terms "insects" and "vermin." *See* Doc. 16 at pp. 16–18. Rule 201 did not give them a right to have a full-blown evidentiary hearing, complete with expert testimony, about what the ordinary meaning of those words is.

The District Court resolved those issues using the same procedure courts have employed for as long as they have been interpreting legal texts. It construed relevant language, employed interpretative canons,

and considered what publicly available dictionaries had to say. That process did not require a hearing. The District Court's decision to move forward in this way was no abuse of discretion, and its conclusion that the policy excluded the claimed loss in light of both the "vermin" and "insects" language was correct.

III. This Court should affirm because the Robinsons allege that the spider infestation occurred outside of the period for which they purchased this insurance

Because the District Court concluded that the Robinsons had not purchased insurance from Liberty Mutual covering this spider infestation, it did not consider Liberty Mutual's alternative argument that the Robinsons were claiming loss that did not arise within the period the policy covered. *See* Doc. 6 at pp. 8–11; Doc. 19 at pp. 1–6. But "this Court may affirm the judgment of the district court on any ground supported by the record, regardless of whether that ground was relied upon or even considered by the district court." *Kernel Records Oy v. Mosley*, 694 F.3d 1294, 1309 (11th Cir. 2012). This Court can and should affirm on this alternative ground as well.

The Robinsons' complaint, on its face, asserts a claim for loss outside the time period their policy covered. The policy provides that it "applies only to loss in Section I," the homeowners' section of the policy, "which occurs during the policy period." Doc. 1-1, at p. 23, ¶ 1. The Robinsons' complaint alleges that the earliest coverage they purchased from Liberty Mutual had "a policy period of March 1, 2014 through March 1, 2015." Doc. 1 at p. 6, ¶ 31.

Yet the Robinsons' complaint also alleges that the spider infestation happened before that period began. The complaint alleges that "[i]n March 2013, the [Robinsons] hired Knox Pest Control to eradicate the brown recluse spider infestation at the HOME." Doc. 1 at p. 4, ¶ 16. The complaint alleges that "[o]n March 25, 2013, Knox Pest Control treated the HOME with both liquid chemical pesticide and powder pesticide in an effort to eradicate the brown recluse spider infestation." *Id.* ¶ 17. The complaint alleges that despite those efforts, "the brown recluse spider infestation remained at the HOME." *Id.* ¶ 18.

Those allegations required the dismissal of this case in their own right. As this Court has explained, "'proof that a loss occurred within the

policy period is a predicate to the application of the policy,'" and the "burden of proving that the loss occurred during the policy period is properly on the insured." *Banco Nacional De Nicaragua v. Argonaut Ins.*, 681 F.2d 1337, 1340 (11th Cir. 1982)). When a policyholder fails to make that showing, courts have held, the insurer has no obligation to cover the loss. *See KB Home v. Travelers Ins.*, 339 F. App'x 910, 911 (11th Cir. 2009); *Nationwide Mut. Ins. v. Gibson*, No. 2:08-cv-453-JHH, 2009 WL 10687856, at *7–*8 (N.D. Ala. Sept. 1, 2009); *Schvartzman v. Am. Sec. Ins.*, No. 08-23494-CIV-MOORE/SIMONTON, 2009 WL 10668630, at *3 (S.D. Fla. Aug. 6, 2009).

The Robinsons' only meaningful response below was to concede that the loss "began before the effective date of the Policy" but claim that the loss "continued to occur 'at some time within the policy period.'" Doc. 16 at p. 11 (emphases omitted). But no Alabama precedent suggests that, if a homeowners' policy states that it "applies" only to loss "during the policy period," a policyholder may pursue a claim based on an animal infestation the policyholder tried to treat before the policy period began. In their briefs below, the Robinsons tried to argue that they could recover

for an infestation that occurred before they contracted with Liberty Mutual by pointing a policy provision defining "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period in (a) 'Bodily injury'; or (b) 'Property damage.'" Doc. 16 at p. 9 (emphasis omitted) (quoting Doc. 1-1 at p.9). But that provision with the word "occurrence" appears only in Section II of the policy affording *liability* coverage, not in the operative Section I governing *property* coverage. So the "occurrence" language does not apply to the claim at issue here. *See Miller v. Safeco Ins.*, No. 06-C-1021, 2007 WL 2822011, at *4 (E.D. Wis. Sept. 27, 2007) (rejecting an attempt to use the "occurrence" definition in a similar policy to obtain homeowners' coverage for conditions that predated the policy period), *aff'd in non-pertinent part*, 683 F.3d 805 (7th Cir. 2012).

Meanwhile, no Alabama decision appears to hold that a property owner can obtain homeowners' insurance for conditions that already exist on his property, and any such decision would conflict with fundamental principles governing insurance contracts. Insurance, as the Alabama Supreme Court has noted, covers losses that are "'fortuitous'" in the sense that they happen by accident or chance. *St. Paul Fire & Marine Ins. v.*

Britt, 203 So. 3d 804, 809 (Ala. 2016) (quoting *Dow Chem. v. Royal Indem.*, 635 F.2d 379, 386 (5th Cir. Unit A 1981)). The insurance title of the Alabama Code defines "insurance" as a contract whereby an insurer agrees to pay benefits based upon "contingencies." ALA. CODE § 27-1-2(1). A "contingency," in turn, is by definition an "event (such as an emergency) that *may* but *is not certain* to occur," *Contingency*, MERRIAM-WEBSTER, *supra*, at 270 (emphasis added). As the treatises describe the black-letter principle in operation here, "the loss" a policy covers "must occur as a result of a fortuitous event, not one planned, intended, or anticipated." 7 COUCH ON INSURANCE § 101:2 (3d ed. 2019). This lawsuit thus could not seek payment from Liberty Mutual, based on a policy the Robinsons first purchased in 2014, for loss from a spider infestation they knew about and hired a pest-control company to eliminate in 2013.

IV. This Court also should affirm the dismissal of the bad-faith claim because the Robinsons have abandoned their appeal of that issue

While all the foregoing considerations required dismissal of the entire two-count complaint, this Court also should affirm the dismissal of

the Robinsons' bad-faith count in particular because they have abandoned that claim on appeal. The District Court held that the Robinsons' "bad faith claim fails as a matter of law." Doc. 20 at p. 13. The appellants' brief concedes that there was "an arguable basis for Liberty's denial of the [Robinsons'] claim that would defeat a claim for bad faith." Robinson Br. 12. It also says "the Robinsons do not seek to reverse the court's order as it relates to their claim of bad faith." *Id.* at 11. As this Court has explained, "the law is by now well settled in this Circuit that a legal claim or argument that has not been briefed before the court is deemed abandoned and its merits will not be addressed." *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1330 (11th Cir. 2004). The appellants' brief's abandonment of this claim is an additional reason for affirming its dismissal by the District Court.

***

No one wishes anything but the best for the Robinsons as they address the infestation that led them to file this lawsuit. But at the end of the day, the question in this appeal is what risks the Robinsons paid Liberty Mutual to cover. The policy makes clear that those risks did not in-

clude this spider infestation. The references to "vermin" and "insects" appear in a clause, present in many homeowners' policies, reflecting a judgment that homeowners are better equipped than insurers to be aware of, and to react to, risks associated with animal infestations—whether by taking preventative measures when they purchase and maintain their homes, or by seeking help from animal-control authorities and pest-control companies when problems arise. The policy-period provision likewise reflects a judgment that policyholders are better equipped than insurers to be aware of, and to react to, the problems at a home that preexist the parties' execution of any insurance contract. The fact that the policy contains these provisions does not mean that these problems cannot be solved in some way. But it does mean that the solution must come from some source besides the policy.

CONCLUSION

For each of these reasons, this Court should affirm the District Court's judgment dismissing this case.

Respectfully submitted,

s/ John C. Neiman, Jr.

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CERTIFICATE OF COMPLIANCE

This brief complies with the applicable type-volume limitation under Rule 32(a)(7) of the Federal Rules of Appellate Procedure and 11th Circuit Rule 32-4. According to the word count in Microsoft Word 2016, the relevant parts of this brief contain 8,670 words. That count includes the addendum listing pertinent dictionary definitions. This brief complies with the applicable type-style requirements limitation under Rule 32 of the Federal Rules of Appellate Procedure. I prepared this brief in a proportionally spaced Century Schoolbook font sized 14 point or, for headings, with a larger point size.

s/ John C. Neiman, Jr.
OF COUNSEL

CERTIFICATE OF SERVICE

On July 1, 2019, I efiled this brief with the Court via CM-ECF, which will serve the following attorneys for the Robinsons:

John R. Bowers, Jr.
Thomas F. Campbell

On the same day, I sent seven copies to the Court via Federal Express, overnight delivery, postage prepaid.

s/ John C. Neiman, Jr.
OF COUNSEL

ADDENDUM

I. Dictionary definitions of vermin

A. Merriam-Webster

> **ver-min** \'vər-mən\ *n, pl* **vermin [**ME, fr. AF *vermin*, *vermine*, fr. *verm* worm, fr. L *vermis***]** (14c) **1 a:** small common harmful or objectionable animals (as lice or fleas) that are difficult to control **b:** birds and mammals that prey on game **c:** animals that at a particular time and place compete (as for food) with humans or domestic animals **2:** an offensive person

Vermin, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1390 (11th ed. 2005).

B. Webster's Second

> **ver´min** (vûr´mĭn), *n. sing. & pl.;* chiefly as *pl.* [OF. *vermin, vermine* (F. *vermine*), fr. L. *vermis* worm; cf. ML. *vermen* worm, L. *verminosus* full of worms. See WORM.] **1.** Any noxious, mischievous, or disgusting, animal. Cf. sense 4, below. *Obs.*
> **2.** Specif.: Such an animal, or esp. such animals collectively, when of small size, of common occurrence, and difficult to control. Various insects, as flies, lice, bedbugs, fleas, etc., various mammals, as rats, mice, weasels, etc., and sometimes such birds as hawks and owls, are classed as *vermin*.
>
> Cruel hounds or some foul *vermin*. *Chaucer*.
>
> **3.** Hence, in contempt, a noxious or offensive human being, or such persons collectively. "Base *vermin*."
>
> *Hudibras*.
>
> **4.** *Hunting*. Birds and animals, collectively, which prey upon game; predacious birds and animals. *Eng.*

COMBINATIONS (all adjectives) are:

vermin-covered	**vermin-footed**	**vermin-ridden**
vermin-destroying	**vermin-haunted**	**vermin-spoiled**
vermin-eaten	**vermin-infested**	**vermin-tenanted**

Vermin, WEBSTER'S NEW INT'L DICTIONARY 2833 (2d ed. 1956).

C. Webster's Third

ver•min \'vərmən, 'vəm-, 'vəim-\ *n, pl* **vermin** *usu pl in constr* [ME, fr. MF *vermin*, *vermine*, fr. L *vermis* worm] **1:** animals obnoxious to man: as **a:** small animals (as lice, bedbugs, mice) that tend to occur in great numbers, are difficult to control, and are offensive as well as injurious **b:** birds and mammals (as owls and weasels) that prey upon game **c:** animals that at a particular time and place compete with man or his domestic animals (as for foot) <deer are considered ~ in New Zealand> **2:** a noxious or offensive person or persons

Vermin, WEBSTER'S THIRD NEW INT'L DICTIONARY 2544 (1993).

D. O.E.D.

vermin ('vɜ:mīn), *sb.* (and *a.*) Forms: *α.* 4–6 vermyn, 4–7 vermyne, 6 vermynne, *Sc.* verming, 6–8 vermine, 6– vermin; 7, 9 *dial.*, varmin, 7, 9 *U.S.*, virmin. *β.* 5–7 vermen, 6 varmen. *γ.* 5 vermayn, 6 vermayne. See also VARMENT[1]. [a. AF. and OF. *vermin* masc., *vermine* fem. (mod.F. *vermine*, Pg. *vermena*, It. *vermine*): –pop.L. **vermīnum*, *-īna*, f. *vermi-s* worm. The rare *y*-form is prob. directly from the OF. variant *vermain* (cf. mod.Burg. *vermaigne*, Picard. *Vermeinn*).]

1. *collect.* Animals of a noxious or objectionable kind: **a.** Orig. applied to reptiles, stealthy or slinking animals, and various wild

beasts; now, except in *U.S.* and *Austr.* (see sense b), almost entirely restricted to those animals or birds which prey upon preserved game, crops, etc. †Also in phr. ***beast of vermin.***

b. Applied to creeping or wingless insects (and other minute animals) or a loathsome or offensive appearance or character, esp. those which infest or are parasitic on living beings and plants; also occas. applied to winged insects of a troublesome nature.

2. With *a*, *that*, *this*, etc. **a.** In generic or collective sense: A kind or class of obnoxious animals.

†b. A single animal or insect of this kind.

†c. In *pl.* in preceding senses. *Obs.*

3. *fig.* Applied to persons of a noxious, vile, objectionable, or offensive character or type.

Freq. used as a term of abuse or opprobrium; in mod. dial. sometimes without serious implication of bad qualities.

a. In collective use.

b. A single person or individual of this type.

4. ***to stand true vermin***, to show pluck and persistency. *rare*$^{-1}$.

5. *attrib.* and *Comb.* **a.** Simple attrib., as ***vermin head, -trap,*** etc. **b.** Objective and obj. genitive, as ***vermin-catcher, -destroyer, -killer*; *vermin-destroying, -killing*; *vermin-proof*** adj. **c.** Instrumental or similative, as ***vermin-covered, -eaten, -footed, -haunted, -ridden, -tenanted*** adjs.; ***vermin-like*** adj.; also **vermin puddle** (see quot.)

It is not clear whether *wermine brome*, glossing L. *murica* in Wr.-Wülcker 644, is an attrib. use of this word.

†6. As *adj.* Verminous. *Obs.*$^{-1}$

Vermin, 19 THE OXFORD ENGLISH DICTIONARY 547–48 (2d ed. 1989) (quotations omitted).

II. Dictionary definitions of insect

A. Merriam-Webster

in-sect \'in-ˌsekt\ *n* **[**L *insectum*, fr. neut. of *insectus*, pp. of *insecare* to cut into, fr. *in-* + *secare* to cut — more at SAW**]** (1601) **1 a:** any of numerous small invertebrate animals (as spiders or centipedes) that are more or less obviously segmented — not used technically **b:** any of a class (Insecta) of arthropods (as bugs or bees) with well-defined head, thorax, and abdomen, only three pairs of legs, and typically one or two pairs of wings **2:** a trivial or contemptible person — **insect** *adj*

[illustration of 1b definition from original omitted; caption below]

Insect 1b: *1* labial palpus, *2* maxillary palpus, *3* simple eye, *4* antenna, *5* compound eye, *6* prothorax, *7* tympanum, *8* wing, *9* ovipositor, *10* spiracles, *11* abdomen, *12* metathorax, *13* mesothorax.

Insect, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 646 (11th ed. 2005).

B. Webster's Second

> **in´sect** (ĭn´sĕkt), *n.* [L. *insectum*, fr. *insectus*, past part. of *insecare* to cut in. See SECTION. So called because their bodies appear *cut in*, or almost divided. Cf. ENTOMOLOGY.] **1. a** In popular usage, any of numerous small invertebrate animals generally having the body more or less obviously segmented. They belong to the class Insecta, comprising six-legged, usually winged forms, as beetles, bugs, bees, flies, etc., and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as spiders, mites, ticks, centipedes, wood lice, etc. **b** In ignorant and careless usage (esp. formerly), any small animal, as an earthworm, coral polyp, etc.
> **2.** Any small, trivial, or contemptible person.
> **3.** *Zool.* Any member of the class Insecta (syn. *Hexapoda*).
>
> [illustration of Insect (Grasshopper from original omitted; caption below]
>
> Parts of an Insect (Grasshopper). *a* Antennae; *b* Eyes; *c* Head; *d* Anterior Legs; *e* Prothorax; *f* Mesothorax; *g* Metathorax; *h* Middle Legs; *i* Base of Posterior Wing; *j* Posterior Legs; *k* Abdomen; *o* Base of Anterior Wing.

Insect, WEBSTER'S NEW INT'L DICTIONARY 1284 (2d ed. 1956).

C. Webster's Third

> **[1]in•sect** \'in¸sekt\ *n* -s [L *insectum*, fr. neut. of *insectus*, past part. of *insecare* to cut into, fr. *in-* [2]in- + *secare* to cut; trans. of Gk *entomon* — more at SAW, ENTOMOLOGY] **1 a:** any of numerous small invertebrate animals that are more or less obviously segmented and that include members of the class Insecta and others (as spiders, mites, ticks, centipedes, sowbugs) having superficial resemblance to members of Insecta — not used technically **b** [NL *Insecta*] **:** a member of the class Insecta (as an ant, bee, fly) **2** *now chiefly substand* **:** any of various small animals (as an earthworm, coral polyp, turtle) **3:** a small trivial, or contemptible person
>
> [illustration from original omitted; caption below]
>
> external parts of an insect: *1* labial palpus, *2* maxillary palpus, *3* simple eye, *4* antenna, *5* compound eye, *6* prothorax, *7* tympanum, *8* wing, *9* ovipositor, *10* spiracles, *11* abdomen, *12* metathorax, *13* mesothorax
> **[2]insect** \ "\ *adj* **1:** of, relating to, or being insects <~ bites> <~ pests> **2:** used on, for, or against insects <~ pins> <~ powder> <an ~ cabinet> **3:** using or depending on insects <~ feeders> <~ fertilization>

Insect, WEBSTER'S THIRD NEW INT'L DICTIONARY 1168 (1993).

D. O.E.D.

insect ('insɛkt), *sb.* [ad. L. *insectum*, ellipt. for *animal insectum* animal notched or cut into (Pliny), from *insect-us*, pa. pple. of *in-secāre* to cut into; a rendering of Gr. *ἔντομον* insect (Aristotle): cf. ENTOMO-. Cf. F. *insecte* (Du Pinet, 16th c. in Hatz.-Darm.).]

1. A small invertebrate animal, usually having a body divided into segments, and several pairs of legs, and often winged; in popular use comprising, besides the animals scientifically so called (see 2), many other arthropods, as spiders, mites, centipedes, wood-lice, etc., and other invertebrates, as the 'coral-insect'; formerly (and still by the uneducated) applied still more widely, *e.g.* to earthworms, snails, and even some small vertebrates, as frogs and tortoises.

2. *Zool.* An animal belonging to the class *Insecta* of *Arthropoda*: see INSECTA 2.

Only gradually restricted from the wider popular use. The earlier quots. here refer to true insects, but their authors would undoubtedly have included other animals under the name.

3. *fig.* Applied contemptuously to a person, as insignificant or despicable (sometimes also as annoying, like an insect persistently buzzing around or settling upon one).

4. *attrib.* and *Comb.* **a.** *attrib.* That is an insect, as ***insect breeze, -drone, lamp, locus, pest, vermin***; consisting of insects, as ***insect kind, myriads, quire, race, society, tribe, youth***; resembling or likened to an insect, as ***insect follower, understanding, vexation***; of or belonging to insects, as ***insect egg, fungus, head, larva, life, maggot, origin, parasite, queen, wax, wing***; for insects, as ***insect-box, -cabinet, -repellent, -trap.*** **b.** objective, instrumental, etc., as ***insect-collector, control, -destroyer, -eater, -eating*** adj., ***-hunter***; ***insect-borne*** adj., ***-feeding*** adj., ***-fertilizable*** adj., ***-fertilization, -fertilized*** adj., ***-haunted*** adj., ***-pollinated*** adj., ***-proof*** adj.; ***insect-like*** adj. or adv. **c.** Special Combs.: **insect-bed** (see quot.): **insect-feeder**, a creature that feeds on insects; † **insect-flower** (*poet.*), applied to a sea-anemone; **insect-gun**, a small bellows for blowing insect-powder into crevices or sprinkling it upon plants; **insect-net**, a light head-net for catching insects; a butterfly-net; **insect-powder**, a

> powder (usually prepared from the dried flowers of species of *Pyrethrum*) used to kill or drive away insects.

Insect, 7 THE OXFORD ENGLISH DICTIONARY 1017 (2d ed. 1989) (quotations after each sub-definition are omitted).