United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 13, 2026
Thomas B. Plunkett, III
Clerk

No. 25-10958

INTERSTATE FIRE & CASUALTY COMPANY; CANAL INSURANCE COMPANY,

Defendants—Appellees/Cross-Appellants,

versus

MURCO WALL PRODUCTS, INCORPORATED,

Intervenor—Appellant/Cross-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CV-1137

Before STEWART, HIGGINSON, and HO, *Circuit Judges*.

PER CURIAM:[*]

This is a dispute between the insured, Murco Wall Products, Inc. ("Murco"), and two excess insurers, Canal Insurance Company ("Canal") and Interstate Fire & Casualty Company ("Interstate"). The underlying insurance coverage dispute arose from asbestos personal injury claims filed against Murco. That litigation sought to define the excess insurers' obligations under their respective policies. At the summary judgment stage,

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

the district court concluded that under both the Canal and Interstate insurance policies, coverage was triggered at the time a claimant was exposed to, or inhaled, asbestos. The court further held that Canal's and Interstate's duties to indemnify for defense costs were triggered when a claimant's lawsuit alleged facts related to an exposure covered under the policy. Separately, the district court denied Murco's motion for leave to amend to add declaratory relief claims. Murco timely filed this appeal, and Canal and Interstate timely cross-appealed. For the reasons provided below, we AFFIRM in part and REVERSE in part.

I. Factual Background & Procedural History

A. Factual Background

Murco is a Texas-based corporation that sells wall products. In the 1970s and 1980s, Murco sold wall products that contained asbestos. Canal issued Murco an excess insurance policy for the period of June 15, 1984, to June 15, 1985, No. XS 01 31 65 (the "Canal Policy"). Interstate issued Murco an excess insurance policy for the period of June 15, 1985, to June 15, 1986, No. 55C-1036461 (the "Interstate Policy"). In due course, Murco sought coverage for liabilities related to asbestos claims from its primary insurers.[1] However, when the primary insurers became insolvent or reached their policy limit, Murco sought excess insurance coverage from its other insurers, including Canal and Interstate.

[1] Plaintiffs filed three separate lawsuits, referred to herein as the *Smith*, *Murray*, and *Galier* actions, alleging personal injury from Murco products due to asbestos exposure. *See Smith, et al. v. Ace Hardware Corp. et al.*, No. 2016-60174 (Tex. Dist. Ct. Harris Cnty. 11th) *Schlageter, et al. v. Georgia-Pacific, LLC, et al.*, No. 2014-287, (Okla. Dist. Ct. Canadian Cnty.); *Galier v. Murco Wall Prods., Inc., et al.*, No. 2012-06920 (Okla. Dist. Ct. Okla. Cnty.), *judgment aff'd*, 528 P.3d 293 (Okla. 2022).

B. Canal and Interstate Insurance Policy Language

The Canal Policy provides:

> The company will indemnify the insured for all sums which the insured shall become legally obligated to pay as damages and expenses, all as hereinafter defined as included within the term ultimate net loss, by reason of liability,
>
> (a) imposed upon the insured by law, or
> (b) assumed by the named insured . . .
> because of
> (i) personal injury[2] caused by, or
> (ii) property damage caused by, or
> (iii) advertising liability arising out of
> an occurrence[3] which takes place during the policy period anywhere in the world.

The definition of "Ultimate Net Loss" under the Canal Policy details the covered sums:

> "Ultimate Net Loss" means the total of the following sums arising with respect to each occurrence to which this policy applies:

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[2] The policy defines "Personal Injury" as "bodily injury, sickness, disease, disability or shock, including death arising therefrom, or, if arising out of the foregoing, mental anguish and mental injury. . . ."

[3] The policy defines "Occurrence" as:

> an accident which takes place during the policy period, or that portion within the policy period of a continuous or repeated exposure to conditions, which causes personal injury, property damage or advertising liability neither expected nor intended by the insured. With respect to personal injury and property damage, all such exposure to substantially the same general conditions existing at or emanating from one location or source shall be deemed one occurrence.

> (a) all sums which the insured, or any organization as his insurer, or both, become legally obligated to pay as damages, whether by reason of adjudication or settlement, because of personal injury, property damage or advertising liability; and
> (b) all expenses incurred by the insured in the investigation, negotiation, settlement and defense of any claim or suit seeking such damages, excluding only the salaries of the insured's regular employees.

The language of the Interstate Policy, is similar, though not identical, to the language of the Canal Policy:

> The company agrees to pay on behalf of the insured for all sums which the insured shall become obligated to pay as damages, direct or consequential, and expenses, all as hereinafter defined as included within the term ultimate net loss, by reason of liability
> (a) imposed upon the insured[] by law, or
> (b) assumed by the named insured . . .
> because of personal injury,[4] property damage, or advertising liability caused by or arising out of an occurrence[5] which takes place during the policy period anywhere in the world.

The definition of "Ultimate Net Loss" under the Interstate Policy details the covered sums:

> "Ultimate Net Loss" means the total of the following sums arising out of any one occurrence to which this policy applies:

[4] The policy defines "Personal Injury" as "(a) bodily injury, shock, disability, sickness or disease (including death, and care and loss of services, mental anguish and mental injury resulting therefrom)[] . . . ."

[5] The policy defines "Occurrence" as "injurious exposure to conditions, which results in personal injury, property damage or advertising injury or damage neither expected nor intended from the standpoint of the insured[] . . . ."

> (a) all sums which the insured or any organization as his insurer, or both, become legally obligated to pay as damages, whether by reason of adjudication or settlement, because of personal injury, property damage or advertising liability; and
> (b) all expenses incurred by the insured or any organization as his insurer, or both, in the investigation, negotiation, settlement and defense of any claim or suit seeking such damages, excluding only (1) the salaries of the insured's or insurer's regular employees, (2) office expenses of the insured or any insurer, and (3) all expense included in other valid and collectible insurance.

C. Procedural History

In 2022, ACE American Insurance Company and ACE Property and Casualty Insurance Company (collectively, "ACE"), Murco's sole remaining non-insolvent primary insurer, brought this action against Canal, Interstate, Murco, Berkshire Hathaway Specialty Insurance Company ("Berkshire"), and several other insurers. According to the complaint, ACE defended and indemnified Murco for asbestos-related personal injury claims but later learned that Murco was requesting further indemnification from its excess insurers for the same claims. ACE pleaded claims for breach of contract, declaratory relief, equitable contribution, and subrogation relief. Berkshire filed a counterclaim against ACE and crossclaims against Murco, Canal, Interstate, and the other insurers, seeking declaratory judgment, equitable contribution or subrogation, and monetary relief.

On January 3, 2024, Murco moved for leave to file a cross-complaint against Canal and Interstate ("Motion for Leave to Amend").[6] First, it

[6] Around the same time, ACE and Murco notified the court that they settled their claims.

requested declaratory relief identifying what conditions must be satisfied to require Canal and Interstate to pay on their excess layers given the primary insurers' insolvency. Second, it requested a declaration identifying the trigger point for an "occurrence" for which coverage exists under the Policies.

On January 12, 2024, the district court denied Murco's Motion for Leave to Amend, reasoning that Murco waited six months after the deadline to amend pleadings to attempt to file its crossclaim, and it misinterpreted the court's modified scheduling order. The district court also noted that other parties in the case, who would be impacted by the motion, opposed it. After the settlement of various claims, the only remaining parties were Canal, Interstate, Berkshire, and Murco. The district court realigned the parties with Berkshire as the plaintiff, Interstate and Canal as the defendants, and Murco as an intervenor with respect to Berkshire's claims against Canal and Interstate. The parties requested that the district court permit summary judgment briefing on the trigger issue only. The court granted the request and permitted Murco to file a response to Canal and Interstate's motions for summary judgment.

On March 31, 2025, at the summary judgment stage, the district court held that under both the Canal and Interstate Policies, coverage was triggered at the time a claimant was exposed to, or inhaled, asbestos. The court rejected the injury-in-fact theory, which "would consider the word 'occurrence' as used in the Policies to include the damage that takes place in the body after a person has stopped inhaling asbestos." The court further held that Canal's and Interstate's duties to indemnify Murco, or its insurer, for defense costs were triggered when a claimant's lawsuit alleged that the claimant was exposed to asbestos during the relevant Policy period and rejected their argument that those duties triggered only when actual facts were established. Based on these determinations, the district court concluded that Canal and

Interstate were entitled to summary judgment on the *Smith* and *Murray* lawsuits because there were no allegations or proven facts regarding exposure to Murco's asbestos-containing products during the Policy periods. However, the allegations in the *Galier* petition alleged exposure into the late 1980s. The district court determined that the petition sufficiently raised a genuine dispute of material fact as to whether the suit sought damages covered by the Policies, which triggered Canal and Interstate's duty to indemnify Murco, or its insurer, for defense costs.

On April 25, 2025, Interstate filed a motion to reconsider, challenging the court's holding that its duty to indemnify was triggered based on allegations in a complaint. On May 6, 2025, on reconsideration, the district court clarified that Canal and Interstate had a duty to indemnify Murco for the *costs of defending* a suit based on allegations in a complaint but had a duty to indemnify Murco for its *ultimate liability* based on the facts actually established. Canal and Interstate remained responsible for the defense costs in the *Galier* action.

On July 16, 2025, after the district court ruled on the summary judgment motions and the motion to reconsider, the parties entered a Rule 41 stipulation of dismissal. Pursuant to the Rule 41 stipulation, all claims not decided by the district court's summary judgment orders were dismissed without prejudice. Murco timely appealed the district court's decisions. Canal and Interstate timely cross-appealed.

II. Standard of Review

We conduct a de novo review of a district court's grant of summary judgment. *Sanders v. Christwood*, 970 F.3d 558, 561 (5th Cir. 2020). "Summary judgment is proper 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)). A dispute regarding a

material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A plaintiff's subjective beliefs, conclusory allegations, speculation, or unsubstantiated assertions are insufficient to survive summary judgment. *See Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011); *Clark v. Am.'s Favorite Chicken Co.*, 110 F.3d 295, 297 (5th Cir. 1997); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his or her claim." *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998). "A panel may affirm summary judgment on any ground supported by the record, even if it is different from that relied on by the district court." *Reed v. Neopost USA, Inc.*, 701 F.3d 434, 438 (5th Cir. 2012) (internal quotation marks and citation omitted).

We review district court decisions denying motions for leave to amend pleadings, and decisions refusing to modify scheduling orders, for abuse of discretion. *S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 536 (5th Cir. 2003) (establishing the standard for scheduling orders); *Ford v. Anderson Cnty.*, 102 F.4th 292, 318 (5th Cir. 2024) (establishing the standard for leave to amend) (citing *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863 (5th Cir. 2003)).

III. Discussion

There are three issues on appeal: (A) whether the district court erred in finding that under the Policies, coverage was triggered at the time of asbestos exposure or inhalation; (B) whether the district court erred in denying Murco's Motion for Leave to Amend; and (C) whether the district court erred in concluding that Canal and Interstate's duties to indemnify Murco, or its insurer, for defense costs were triggered based on the facts

alleged in the *Galier* petition. We address each issue in turn.

A. Coverage Trigger

Murco primarily argues that under the Canal and Interstate Policies, an occurrence requires a personal injury, and thus the Policies are not triggered until after there is an exposure to conditions and a resulting personal injury.[7] The district court concluded that personal injury is not part of the occurrence; it is something that the occurrence causes. Thus, an occurrence is triggered under the Policies upon exposure to, or inhalation of, asbestos. We agree with the district court.

Because this action concerns Texas insurance contracts, Texas state law governs the dispute. *RealPage, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 21 F.4th 294, 297 (5th Cir. 2021). Under Texas law, the court's task "is to ascertain and give effect to the parties' intent as expressed in the instrument." *U.S. Polyco, Inc. v. Tex. Cent. Bus. Lines Corp.*, 681 S.W.3d 383, 387 (Tex. 2023) (quoting *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 763 (Tex. 2018)). To do so, courts "begin[] with the text, and require[] that undefined words be given their plain, ordinary, and generally accepted meanings absent some indication of a different intent." *RealPage, Inc.*, 21 F.4th at 297 (quoting *U.S. Metals, Inc. v. Liberty Mut. Grp., Inc.*, 490 S.W.3d 20, 23 (Tex. 2015)); *see also URI, Inc.*, 543 S.W.3d at 764 ("We . . . interpret contract language according to its 'plain, ordinary, and generally accepted

[7] Alternatively, Murco argues that because asbestos fibers can remain lodged in a person's lungs after being inhaled, personal injury claimants suffer a continuing injury that continues well after the initial inhalation that essentially extends an occurrence. Given our holding that an occurrence is triggered under the Policies upon exposure to, or inhalation of, asbestos, we need not address this alternative argument. Nevertheless, the court has already rejected a similar argument in *Guar. Nat'l Ins. Co. v. Azrock Indus., Inc.*, 211 F.3d 239, 248–49 (5th Cir. 2000), and Murco has not adequately explained why the court should break from its precedent here.

meaning' unless the instrument directs otherwise." (citation omitted)).

When analyzing the plain language of the contract, courts begin by determining whether an ambiguity exists. A contract is unambiguous if "only one party's construction is reasonable." *RSUI Indem. Co. v. The Lynd Co.*, 466 S.W.3d 113, 118 (Tex. 2015). "[A]n unambiguous contract will be enforced as written." *Amigo Broad., LP v. Spanish Broad. Sys., Inc.*, 521 F.3d 472, 480 (5th Cir. 2008) (quoting *Interstate Contracting Corp. v. City of Dall.*, 407 F.3d 708, 712 (5th Cir. 2005)). "But if both constructions present reasonable interpretations of the policy's language, [the court] must conclude that the policy is ambiguous." *RSUI Indem. Co.*, 466 S.W.3d at 118.[8]

Here, the Canal Policy defines an occurrence as an "accident which takes place during the policy period, or that portion within the policy period of a continuous or repeated exposure to conditions, which causes personal injury[] . . . neither expected nor intended by the insured." Similarly, under the Interstate Policy, an "occurrence" is defined as "injurious exposure to conditions, which results in personal injury[] . . . neither expected nor intended from the standpoint of the insured." Further, the Interstate Policy provides coverage for "personal injury[] . . . caused by or arising out of an occurrence which takes place during the policy period." Thus, at a minimum, the plain language of the Canal and Interstate Policies requires an exposure to asbestos to take place during the Policy period.

[8] Although the parties spend significant time in their briefs discussing the relevance of *Azrock* and *Don's Building*, those cases involved distinguishable policy language and do not resolve the issue here. Nevertheless, those cases are helpful in drawing on Texas contract principles and determining the correct method for interpreting Texas insurance law. *Guar. Nat'l Ins. Co.*, 211 F.3d at 239; *Don's Bldg. Supply, Inc. v. OneBeacon Ins. Co.*, 267 S.W.3d 20, 30 (Tex. 2008) (concluding that determining when an insurer's duty to defend a claim is triggered under an insurance policy "should be driven by the contract language—language that obviously may vary from policy to policy").

Because Canal and Interstate offer the only reasonable interpretations of the Policies, we conclude that the Policies are unambiguous and must be enforced as written. *Amigo Broad., LP*, 521 F.3d at 480 (quoting *Interstate Contracting Corp.*, 407 F.3d at 712). Accordingly, we affirm the district court's conclusion that exposures to asbestos that occurred outside the Policy periods were not covered by the Canal and Interstate Policies.

B. Murco's Request for Leave to Assert Crossclaims

In its Motion for Leave to Amend, Murco sought to add two claims for declaratory relief: First, it requested declaratory relief as to "what conditions must be satisfied to require Canal and Interstate to pay on their excess layers" in light of the primary insurers' insolvency. Second, it requested a declaration as to the trigger point for an "occurrence" under the Policies. Murco argues that the district court erred in denying its request to add declaratory relief claims. According to Murco, the district court abused its discretion by failing to properly evaluate the good-cause factors and providing a limited explanation for its denial. We are not persuaded.

Under these circumstances, Murco's request to add its second declaratory relief claim is moot. Berkshire, Canal, and Interstate agreed to allow Murco to file a brief on the trigger issue at summary judgment. The district court entered an order granting the same. That issue was briefed, submitted to the district court, and is ultimately the basis of issue one in the instant appeal. Thus, Murco was heard on this issue and was not aggrieved by the denial of leave to amend.

Regarding the first claim, Murco sought declaratory relief as to Berkshire's contribution claims against Canal and Interstate, given the primary insurers' insolvency. However, after the district court issued its summary judgment orders, the remaining parties—Berkshire, Canal, Interstate, and Murco—entered a Rule 41 stipulation of dismissal without

prejudice for all claims *not* decided by the summary judgment orders. *See* FED. R. CIV. P. 41. The dismissal effectively dismissed Berkshire's claims against Canal and Interstate, and Murco was an intervenor in these claims. Berkshire has not participated in the appeal or the cross-appeal. Thus, there are no remaining claims upon which Murco could be heard.

Here, notwithstanding the Rule 41 dismissal without prejudice, the district court did not abuse its discretion. In denying Murco's Motion for Leave to Amend, the district court considered Murco's six-month delay in requesting leave to amend, its misinterpretation of the scheduling order, and the opposition from the other parties. We have held that the "district court has 'broad discretion to preserve the integrity and purpose of the pretrial order.'" *See Fahim v. Marriott Hotel Servs., Inc.*, 551 F.3d 344, 348 (5th Cir. 2008) (quoting *Sw. Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 547 (5th Cir. 2003)). The district court here was permitted the same broad discretion.

In sum, the district court did not abuse its discretion in finding no good cause for the amendment. S*&W Enters., L.L.C.*, 315 F.3d at 536; *Ford*, 102 F.4th at 318. Thus, we affirm the district court's denial of Murco's Motion for Leave to Amend.

C. *Duty to Indemnify*

Canal and Interstate challenge the district court's conclusion that they are obligated to indemnify Murco, or its insurer, for defense costs based on the facts alleged, rather than facts established. In reaching its conclusion, the district court relied on the Policy language, which states that Murco will be reimbursed for its "ultimate net loss," which covers defense costs against claims "seeking such damages" for covered personal injuries. The district court acknowledged that the duty to indemnify is generally based on actual facts established by a fact finder. However, the court found that, based on the language used in the Policies, the parties contracted around that general rule,

effectively replacing it with the eight-corners rule.

"Under Texas law, an insurer may have two responsibilities relating to coverage—the duty to defend and the duty to indemnify." *Liberty Mut. Fire Ins. Co. v. Copart of Conn., Inc.*, 75 F.4th 522, 528 (5th Cir. 2023) (quoting *Siplast, Inc. v. Emps. Mut. Cas. Co.*, 23 F.4th 486,492 (5th Cir. 2022)). "The duty to defend means the insurer will defend the insured in any lawsuit that 'alleges and seeks damages for an event potentially covered by the policy.'" *Colony Ins. Co. v. Peachtree Constr., Ltd.*, 647 F.3d 248, 252–53 (5th Cir. 2011) (quoting *D.R. Horton–Tex., Ltd. v. Markel Int'l Ins. Co., Ltd.*, 300 S.W.3d 740, 743 (Tex. 2009)); *Graper v. Mid-Continent Cas. Co.*, 756 F.3d 388, 391–92 (5th Cir. 2014). "[T]he duty to indemnify means the insurer will 'pay all covered claims and judgments against an insured.'" *Colony Ins. Co.*, 647 F.3d at 253 (quoting *D.R. Horton–Tex., Ltd*, 300 S.W.3d at 743). To determine whether the duty to defend is triggered, Texas courts use the eight-corners rule. *Liberty Mut. Fire Ins. Co.*, 75 F.4th at 528 (quotations omitted). Under that rule, "an insurer's duty to defend is determined by the claims alleged in the petition and the coverage provided in the policy." *Id.* (quoting *Richards v. State Farm Lloyds*, 597 S.W.3d 492, 494 (Tex. 2020)).

Here, the district court determined that under the Policies, the duty to indemnify for *liability* was based on actual facts proven; however, the duty to indemnify for *defense costs* was based on facts alleged. The district court reached this conclusion by relying on the "seeking such damages" language in the Canal and Interstate Policies. However, that language must be read in the full context of the Policies' coverage and definitions of ultimate net loss. *See Tekelec, Inc. v. Verint Sys., Inc.*, 708 F.3d 658, 665 (5th Cir. 2013) ("Under Texas law, the words of a contract must be read in context[] . . . .") (quoting *U.S. Fid. and Guar. Co. v. Goudeau*, 272 S.W.3d 603, 606 (Tex. 2008)); *URI, Inc.*, 543 S.W.3d at 764. When considering the "seeking such damages" language in the full context of the Policies, the language does not suggest that

the parties contracted around the traditional rule that the duty to indemnify is based on actual facts established.

Both Policies provide that they will indemnify Murco for amounts it would become obligated to pay as damages and expenses, "as hereinafter defined as included within the term ultimate net loss" for liability imposed because of an occurrence. Thus, for ultimate net loss to become relevant, there would have to be liability imposed for an occurrence—meaning there would need to be actual facts proving an occurrence for the purposes of liability. Further textual support is found in the Policies' definition of ultimate net loss. Both Policies provide that they will indemnify Murco for its "ultimate net loss," which includes sums "arising with respect to each" (Canal) or "arising out of any one" (Interstate) occurrence to which the Policy applies. The plain text of the Policies imposes a threshold requirement: for the duty to indemnify to trigger, there must first be an occurrence covered by the Policy. Once that threshold is met, expenses incurred defending suits "seeking such damages" can be covered.

In sum, our de novo review of the Policies' language indicates that the duties to indemnify for defense costs are based on established facts, rather than alleged facts. Because the proven facts in the *Galier* lawsuit did not establish an occurrence covered by the Policies, Canal and Interstate are not obligated to indemnify Murco, or its insurer, for defense costs. Accordingly, we reverse the district court's holding that under the Policies, Canal and Interstate's obligation to indemnify for defense costs is based on facts alleged.

IV. Conclusion

For the foregoing reasons, we AFFIRM the district court's judgment as to the trigger point for an occurrence under the Canal and Interstate Policies and its denial of Murco's Motion for Leave to Amend. We REVERSE the district court's judgment as to Canal and Interstate's

obligation to indemnify Murco, or its insurer, for defense costs based on facts alleged.