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United States Court of Appeals
Tenth Circuit

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PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DYNO NOBEL,

Plaintiff - Appellant,

v.

STEADFAST INSURANCE COMPANY,

Defendant - Appellee.

No. 23-4010

Appeal from the United States District Court
for the District of Utah
(D.C. No. 2:22-CV-00016-RJS)

Daniel J. Brown, Dorsey & Whitney LLP, Minneapolis, Minnesota (Milo Steven Marsden and Ashley M. Walker, Dorsey & Whitney LLP, Salt Lake City, Utah, with him on the briefs), for Plaintiff – Appellant.

Lauren S. Kuley, Squire Patton Boggs (US) LLP, Cincinnati, Ohio (Kathryn M. Brown, Squire Patton Boggs (US) LLP, Cincinnati, Ohio; Danica N. Cepernich and Richard A. Vazquez, Snow Christensen & Martineau, Salt Lake City, Utah, with her on the brief), for Defendant – Appellee.

Before **HOLMES**, Chief Judge, **McHUGH**, and **CARSON**, Circuit Judges.

McHUGH, Circuit Judge.

Dyno Nobel, an explosives manufacturer, tendered an action to its commercial general liability insurance policyholder, Steadfast Insurance Company ("Steadfast"), after

being sued in Missouri for damages caused by the release of a nitric oxide plume from one of its Missouri plants. Steadfast denied the claim based on the insurance policy's clauses precluding indemnification and defense of pollution-related bodily injury actions. Dyno Nobel filed this suit in Utah state court seeking a declaratory judgment that Steadfast has a duty to indemnify and defend against this action under an endorsement titled "Vermont Changes – Pollution" ("Vermont Endorsement"). Contrary to Coverages A, B, and C in the insurance policy, the Vermont Endorsement would require Steadfast to defend and indemnify against pollution-related bodily injury claims up to an aggregate amount of $3 million.

Steadfast removed the action to federal court. After reviewing the dispositive motions filed by each party, the district court entered judgment for Steadfast, concluding the Vermont Endorsement applies only to claims with a nexus to Vermont. Dyno Nobel appeals.

Upon de novo review, we affirm the holding of the district court. The reference to Vermont in the heading of the relevant endorsement can be completely harmonized with the language of the endorsement, meaning we may consider the heading when interpreting the contract under Utah law. Furthermore, reading the Vermont Endorsement as limited to claims with a nexus to Vermont properly ensures that all provisions of the contract are given meaning, as required under Utah law. In sum, the plain language of the insurance contract does not cover Dyno Nobel's claim in the underlying action, and we affirm the district court.

I. BACKGROUND

A. Factual Background[1]

Dyno Nobel is an explosives manufacturer incorporated in Delaware with its principal place of business in Utah. Dyno Nobel purchased a commercial general liability insurance policy from Steadfast for the terms October 1, 2014, to October 1, 2015, and October 1, 2015, to October 1, 2016 ("the Policy"). During this period, in September 2016, Teddy Scott and Melanie Scott filed suit against Dyno Nobel in the Eastern District of Missouri, asserting claims of strict liability and negligence against Dyno Nobel for damages allegedly caused by a nitric oxide plume emitted from a Dyno Nobel facility in Missouri ("Scott Action"). Dyno Nobel tendered the Scott Action to Steadfast, but Steadfast denied the claim and refused to defend.[2]

The Commercial General Liability Coverage Form comprises the core of the Policy and contains three coverage sections: Coverage A, concerning bodily injury and

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[1] These facts are drawn from Dyno Nobel's Complaint, the undisputed facts in Steadfast's Motion for Summary Judgment, and the two insurance policies, as well as the transcript of the district court's oral decision. Neither party challenges the district court's statement of the undisputed facts.

[2] The Scott Action, styled *Scott v. Dyno Nobel*, Civil Action No. 4:16-CV-4110 in the Eastern District of Missouri, has been subject to two appeals in the Eighth Circuit: Nos. 18-2897 and 22-3034. The mandate in No. 18-2897 was entered on September 4, 2020, reversing the entry of summary judgment for Dyno Nobel and remanding the matter to the district court for further proceedings. Mandate, *Scott v. Dyno Nobel*, No. 18-2897 (8th Cir. Sept. 4, 2020); *Scott v. Dyno Nobel, Inc.*, 967 F.3d 741 (8th Cir. 2020). On remand, a jury entered a verdict for actual damages for Teddy Scott totaling $13.75 million and for Melanie Scott in the amount of $3 million, as well as $30 million in punitive damages. Originating Ct. Doc. at 56, *Scott v. Dyno Nobel*, No. 22-3034 (8th Cir. Sept. 27, 2022). Appeal No. 22-3034 challenges that verdict and is still pending.

property damage liability; Coverage B, concerning personal and advertising injury; and Coverage C, concerning medical payments. Coverage A generally requires Steadfast to defend and indemnify Dyno Nobel against suits seeking damages due to bodily injury or property damage. However, Coverage A contains several exclusions, including a pollution exclusion. The pollution exclusion precludes payouts for damages resulting from "'[b]odily injury' or 'property damage' arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of 'pollutants.'"[3] App. Vol. 1 at 25, 101. Coverage B separately excludes indemnification claims for damages on account of actual, alleged, or threatened discharge of pollutants. Coverage C cross-references and adopts all of Coverage A's exclusions. The Policy also contains a "Total Pollution Exclusion Endorsement," which expands the pollution exclusion by barring coverage under Coverages A and C for any claim for damages that would not have arisen but for a pollution-related event.[4] *Id.* at 82, 161.

[3] The Policy defines "bodily injury" as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." App. Vol. 1 at 36, 112.

"Property damage" is defined as "[p]hysical injury to tangible property, including all resulting loss of use of that property" or "[l]oss of use of tangible property that is not physically injured." *Id.* at 38, 114.

The Policy defines "pollutants" as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste," while defining "waste" as including "materials to be recycled, reconditioned or reclaimed." *Id.* at 38, 114.

[4] The Policy's "Total Pollution Exclusion with a Hostile Fire Exception" Endorsement also modifies the pollution exclusion under Coverage A, carving out certain losses arising from a "hostile fire," defined as "[a fire] which becomes uncontrollable or breaks out from where it was intended to be." *Id.* at 36, 83, 112, 162. Dyno Nobel does not argue the Hostile Fire Exception applies to its claim.

Three pollution-related endorsements reference specific states in their titles: "Indiana Changes – Pollution Exclusion" ("Indiana Endorsement"), "Missouri Changes – Pollution Exclusion" ("Missouri Endorsement"), and "Vermont Changes—Pollution" ("Vermont Endorsement").[5] *Id.* at 68–70, 146–48. The Indiana Endorsement and the Missouri Endorsement expand the pollution exclusions under Coverages A, B, and C to bar claims for damages caused by irritants and contaminates which have a function in the insured's business, operations, premises, site, or location. The body of the Vermont Endorsement, meanwhile, creates standalone coverage allowing for claims arising from some pollution-related damages: Coverage D.[6]

Coverage D provides a liability aggregate limit of $3 million for indemnification of damages claims concerning bodily injury or property damage caused by a "pollution liability hazard,"[7] and creates "the right and duty to defend the insured against any 'suit'

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[5] The Policy also includes two other state-specific endorsements: the "Utah Changes" and the "Utah Changes – Cancellation and Nonrenewal" endorsements. These endorsements do not amend the pollution exclusions.

[6] Dyno Nobel often refers to this endorsement as "Coverage D" in its briefing, whereas Steadfast often refers to this endorsement as the "Vermont Endorsement." We will use the term "Vermont Endorsement" to refer to the entirety of the endorsement and "Coverage D" when discussing specific terms of the coverage contained in the body of the endorsement.

[7] Coverage D defines "pollution liability hazard" as:

> all "bodily injury" and "property damage" arising out of the discharge, release or escape of "pollutants" at or from:
>
> a. Premises you own, rent or occupy; or
>
> b. Any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations.

App. Vol. 1 at 73, 151.

seeking those damages," but only if Coverage D applies to the underlying pollution-related event. *Id.* at 70, 148. Coverage D extends to bodily injury or property damage caused by a pollution-related "occurrence"[8] within the coverage territory, which is defined elsewhere in the Policy to include the United States, its possessions and territories, Puerto Rico, and Canada.[9] There is no reference to Vermont in the body of Coverage D. At the top of the Vermont Endorsement, before the body of Coverage D, it notes "THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY." *Id.* at 70, 148.

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[8] The Policy defines "occurrence" as "accident, including continuous or repeated exposure to substantially the same general harmful conditions." App. Vol. 1 at 37, 113.

[9] The Policy's definition of "coverage territory" states:

> a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
> b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph **a.** above; or
> c. All other parts of the world if the injury or damage arises out of:
> (1) Goods or products made or sold by you in the territory described in Paragraph **a.** above;
> (2) The activities of a person whose home is in the territory described in Paragraph **a.** above, but is away for a short time on your business; or
> (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication.

App. Vol. 1 at 36, 112.

B. Procedural Background

Dyno Nobel filed this suit in Utah state court in November 2021, seeking a declaratory judgment that Steadfast is obligated to cover and defend the Scott Action.[10] Steadfast timely removed the action to the District of Utah, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. The parties subsequently stipulated to a stay of discovery pending the district court's adjudication of the plain meaning of the contract. Steadfast filed a Motion for Summary Judgment, while Dyno Nobel filed a Motion for Partial Judgment on the Pleadings.

Steadfast argued in its Motion for Summary Judgment that the Policy plainly and unambiguously precludes coverage for Dyno Nobel's claim pursuant to its pollution exclusion. Steadfast asserted that the Vermont Endorsement cannot be understood to extend coverage here when, under Utah law, each provision of the contract must be given effect, and limiting the Vermont Endorsement to Vermont-related claims is the only sensible interpretation of the contract. In contrast, Dyno Nobel argued in its Motion for Partial Judgment on the Pleadings that Coverage D plainly and unambiguously required Steadfast to indemnify Dyno Nobel for its liability in the Scott Action because it creates new coverage for pollution-related liabilities, and Steadfast's failure to do so was a breach of the insurance contract. Dyno Nobel also responded that to read an endorsement as creating a new form of coverage is not an unreasonable interpretation of the contract.

[10] Dyno Nobel also brought a breach of contract claim against Steadfast. That claim is not at issue in this appeal.

The district court, in an oral decision following a motion hearing, granted in part and denied in part Steadfast's Motion for Summary Judgment and denied Dyno Nobel's Motion for Partial Judgment on the Pleadings. The court reasoned it could not "disregard a clear geographic limitation on the scope of Coverage D [in the endorsement title]." App. Vol. 3 at 43. Acknowledging a lack of controlling Utah precedent on state-specific endorsement titles, the court reviewed cases from across the country and concluded that the general trend is to give some effect to a reference to a specific state in the title of an endorsement. Reviewing how intermediate state courts in Utah have weighed contract titles and headings, the court also determined that, in Utah, there is a general trend toward giving contract titles and headings some effect, so long as they are consistent with the body of the contract.

Turning to the text of the Vermont Endorsement, the court interpreted the reference to Vermont in the title as requiring a nexus with Vermont for the endorsement to take effect. It reasoned that the reference to the nationwide coverage territory in Coverage D can be reasonably understood to mean, so long as there is a connection with Vermont and the harm occurs in the defined coverage territory, the Policy will cover claims concerning bodily injury caused by pollution. Thus, the court concluded the reference to Vermont in the title was in harmony with the endorsement's text.

The district court also reasoned, given the other state-specific exclusions, reaching a contrary conclusion here "would defy both the structure of the policies and the plain meaning of state qualifications to regard these titles as arbitrary labels." *Id.* at 54. The court noted too that the Policy's default coverages and the other endorsements show that

it is overwhelmingly structured to preclude coverage of pollution-related losses. It reasoned that Dyno Nobel's reading of the Vermont Endorsement would undermine that plain structure and nullify other provisions of the Policy.

Accordingly, the district court concluded neither Coverage D nor the Vermont Endorsement required Steadfast to indemnify or defend against the Scott Action because that action involves a pollution-related loss[11] and has no connection with Vermont. The district court entered judgment for Steadfast,[12] and Dyno Nobel timely appealed.

II. DISCUSSION

On appeal, Dyno Nobel argues the district court erred by improperly reading the term Vermont into the language of Coverage D, when the only reference to Vermont is in the Vermont Endorsement heading. Specifically, Dyno Nobel contends that, under Utah law, the reference to Vermont in the title "Vermont Changes—Pollution" cannot be read in harmony with the language in the body of Coverage D referring to "coverage territory," and therefore, the title cannot be considered when interpreting the plain language of the contract. For the reasons we now explain, we disagree.

Before considering the proper interpretation of the Vermont Endorsement, we pause to discuss the applicable standard of review. Ultimately, considering the issue de

[11] The parties do not contest that the Scott Action arises out of a pollution-related bodily injury.

[12] The court declined to consider Steadfast's parol evidence concerning the legislative history and purported purpose of the Vermont Endorsement, because it concluded the policies are unambiguous. Steadfast does not challenge this determination on appeal.

novo, we agree with the district court that the Vermont Endorsement plainly and unambiguously has no application to the Scott Action and therefore we affirm the decision of the district court.

A. Standards of Review

"We review summary judgment de novo, applying the same legal standard as the district court." *Gutierrez v. Cobos*, 841 F.3d 895, 900 (10th Cir. 2016). Under Federal Rule of Civil Procedure 56(a), summary judgment should be granted "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." In reviewing the district court's ruling on a motion for summary judgment, we "view[] the facts in the light most favorable to the party opposing the motion, drawing all reasonable inferences in the opposing party's favor." *Cyprus Amax Mins. Co. v. TCI Pac. Commc'ns, LLC*, 28 F.4th 996, 1006–07 (10th Cir. 2022).

We review a district court's ruling on a Federal Rule of Civil Procedure 12(c) motion for judgment on the pleadings de novo, applying the same standard of review used for a Rule 12(b)(6) motion to dismiss. *BV Jordanelle, LLC v. Old Republic Nat'l Title Ins. Co.*, 830 F.3d 1195, 1200 (10th Cir. 2016). To apply this standard, we accept as true all well-pleaded factual allegations in the complaint, "resolve all reasonable inferences in the plaintiff's favor, and ask whether it is plausible that the plaintiff is entitled to relief." *Diversey v. Schmidly*, 738 F.3d 1196, 1199 (10th Cir. 2013) (citation and internal quotation marks omitted); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 570 (2007))). "A claim is facially plausible 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Brokers' Choice of Am., Inc., v. NBC Universal, Inc.*, 861 F.3d 1081, 1104 (10th Cir. 2017) (quoting *Iqbal*, 556 U.S. at 678). "In other words, dismissal under Rule 12(b)(6) is appropriate if the complaint alone is legally insufficient to state a claim." *Id.* at 1104–05.

B. Insurance Contract Interpretation

Our task on appeal is to determine the proper meaning of the insurance contract. To place that discussion in context, we first decide what law controls our analysis. Concluding the contract is governed by Utah law, we next set forth the substance of Utah law regarding insurance contract interpretation. Finally, we apply that law to interpret the terms of the Policy here de novo.

1. Applicable Law

"[W]hen, as here, a federal court is exercising diversity jurisdiction, it must apply the substantive law of the forum state." *Blackhawk-Cent. City Sanitation Dist. v. Am. Guar. & Liab. Ins. Co.*, 214 F.3d 1183, 1188 (10th Cir. 2000). Dyno Nobel brought the lawsuit in Utah and the parties do not dispute the applicability of Utah law. Thus, like the district court, we interpret the insurance contract under Utah law.

"When the federal courts are called upon to interpret state law, the federal court must look to rulings of the highest state court, and, if no such rulings exist, must endeavor to predict how that high court would rule." *Amparan v. Lake Powell Car Rental Cos.*, 882 F.3d 943, 947 (10th Cir. 2018) (quotation marks omitted). When predicting

how a state's high court would rule on an issue, we may look to "appellate decisions in other states with similar legal principles . . . and the general weight and trend of authority in the relevant area of law." *Id.* at 948 (quotation marks omitted). We may not simply disregard the decisions of Utah's intermediate court of appeals though "unless [we are] convinced by other persuasive data that the highest court of the state would decide otherwise." *Id.* at 947–48 (quotation marks omitted).

2. Contract Interpretation Under Utah Law

a. General principles

Under Utah law, insurance contracts are to be interpreted using the same rules applied to interpreting ordinary contracts. *Alf v. State Farm Fire & Cas. Co.*, 850 P.2d 1272, 1274 (Utah 1993). "Courts interpret words in insurance policies according to their usually accepted meanings and in light of the insurance policy as a whole." *Utah Farm Bureau Ins. Co. v. Crook*, 980 P.2d 685, 686 (Utah 1999). "[I]t is axiomatic that a contract should be interpreted so as to harmonize all of its provisions and all of its terms, which terms should be given effect if it is possible to do so." *Brigham Young Univ. v. Lumbermens Mut. Cas. Co.*, 965 F.2d 830, 835 (10th Cir. 1992) (alteration in original) (quoting *LDS Hosp. v. Capitol Life Ins. Co.*, 765 P.2d 857, 858 (Utah 1988)).

Utah courts also "construe insurance contracts by considering their meaning 'to a person of ordinary intelligence and understanding.'" *Doctors' Co. v. Drezga*, 218 P.3d 598, 603 (Utah 2009) (quoting *LDS Hosp.*, 765 P.2d at 858); *see, e.g.*, *Lopez v. United Auto. Ins. Co.*, 274 P.3d 897, 901 (Utah 2012) ("An ordinary person reading the phrase 'reasonable explanation' would understand it to mean the provision of a

proper amount of information to allow one to understand a concept."). "Because insurance policies are intended for sale to the public, the language of an insurance contract must be interpreted and construed as an ordinary purchaser of insurance would understand it." *U.S. Fid. & Guar. Co. v. Sandt*, 854 P.2d 519, 523 (Utah 1993); *see also id.* at 525 (holding that "[t]he ordinary purchaser of insurance would understand that [the insurer] is liable up to the 'maximum limit' shown on the schedule" when the contract indicates that the "limit of liability" is the insurer's "maximum liability").

"If the language within the four corners of the contract is unambiguous, the parties' intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law." *Green River Canal Co. v. Thayn*, 84 P.3d 1134, 1141 (Utah 2003) (quoting *WebBank v. Am. Gen. Annuity Svc. Corp.*, 54 P.3d 1139, 1145 (Utah 2002)). If there is an ambiguity in a contract, the ambiguities are to be "construed against the drafter—the insurance company—and in favor of coverage." *Crook*, 980 P.2d at 687. Under Utah law, a contract is ambiguous if it is unclear, omits terms, or relies on terms that may be understood to have two or more plausible meanings. *Alf*, 850 P.2d at 1274. "[I]f an insurance contract has inconsistent provisions, one which can be construed against coverage and one which can be construed in favor of coverage, the contract should be construed in favor of coverage." *Sandt*, 854 P.2d at 523. "In general, a court may not rewrite an insurance contract for the parties if the language is clear and unambiguous." *Alf*, 850 P.2d at 1275.

b. Interpreting contract headings

The Utah Supreme Court has yet to determine definitively whether and when headings are to be considered as part of the language of a contract. Accordingly, the district court and the parties looked to three cases from the Utah Court of Appeals for guidance: *McEwan v. Mountain Land Support Corp.*, 116 P.3d 955 (Utah Ct. App. 2005); *Vanderwood v. Woodward*, 449 P.3d 983 (Utah Ct. App. 2019); and *Bear v. LifeMap Assurance Co.*, 503 P.3d 507 (Utah Ct. App. 2021). *See Amparan*, 82 F.3d at 947 ("[I]f no [rulings of the highest state court] exist, [the court] must endeavor to predict how that high court would rule."). From these cases, we learn that the Utah Court of Appeals has been willing to consider headings as part of the insurance contract when such headings are in complete harmony with the text below the heading. *See Bear*, 503 P.3d at 515.

For example, in *McEwan*, the Utah Court of Appeals addressed whether tenants were required to obtain property insurance for the property they were leasing when the heading of a section in the lease was titled "Property Insurance," but the text of the provision discussed only a requirement to buy casualty insurance. 116 P.3d at 959–60. The court held that since a contract heading is not a part of the contract itself and the body of the contract did not require the tenant to purchase property insurance, the tenant was under no obligation to purchase property insurance based on the heading. *Id.* at 959–60.

Fourteen years later, in *Vanderwood*, the Utah Court of Appeals reasoned in a footnote that a heading could be given some weight in analyzing the meaning of the underlying provision because it was "completely in harmony" with the provision's text.

449 P.3d at 991 n.7. However, the court emphasized that the heading's text was "well short of a determining factor here, given the clarity of the section's substantive text." *Id.*

Then, in 2021, the Utah Court of Appeals decided *Bear*, a life insurance dispute, relying heavily on the reasoning in *McEwan*. 503 P.3d at 514–15. In *Bear*, the plaintiff asserted that an ambiguity in the life insurance contract was created when a heading of a provision stated "WHEN WE *MAY* REQUIRE EVIDENCE OF INSURABILITY" but the body of the provision stated that the insurer *will* require evidence of insurability. *Id.* at 515. The court held there is no ambiguity when there is a discrepancy between the body of a given contract provision and its heading, because the heading simply may not be considered as part of the contract in that instance. *Id.* The court also limited the interpretive rule outlined in *Vanderwood* to cases where the heading is completely in harmony with the text of the relevant provision. *Id.*

3. Interpreting the Vermont Endorsement

The Vermont Endorsement states, in relevant part:

POLICY NUMBER: GLO 3793060-07 COMMERCIAL GENERAL LIABILITY
CG 01 54 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VERMONT CHANGES – POLLUTION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM (OCCURRENCE VERSION)

SCHEDULE

Pollution Liability Aggregate Limit:	$ 3,000,000
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. The following is added to **Section I – Coverages:**

Coverage D Pollution Bodily Injury And Property Damage

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" included within the "pollution liability hazard" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the Pollution Liability Aggregate Limit in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A, B** and **D.**

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) A claim for damages because of the "bodily injury" or "property damage" is first made against any insured, in accordance with Paragraph **c.** below, during the policy period.

c. A claim by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:

(1) When notice of such claim is received and recorded by any insured or by us, whichever comes first; or

(2) When we make a settlement in accordance with Paragraph **1.a.** above.

All claims for damages because of "bodily injury" to the same person, including damages claimed by any person or organization for care, loss of services, or death resulting at any time from the "bodily injury" will be deemed to have been made at the time the first of those claims is made against any insured.

All claims for damages because of "property damage" causing loss to the same person or organization as a result of an "occurrence" will be deemed to have been made at the time the first of those claims is made against any insured.

All claims for injury or damage arising out of a discharge, release or escape of "pollutants", including all injury or damage arising out of all subsequent exposure of persons and property to such "pollutants", shall be deemed to have been made at the time the first of those claims is made against any insured.

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App. Vol. 1 at 70; *see also* App. Vol. 1 at 148 (the Vermont Endorsement language as repeated in the 2015–16 Policy).

We agree with the district court that the heading and the text can be read in complete harmony, and that this reading gives meaning to all of the contract provisions. This interpretation comports with Utah law and with persuasive authority from other jurisdictions.

a. Interpretation under Utah law

Giving meaning to the use of Vermont in the heading of the Vermont Endorsement is in complete harmony with the provisions of Coverage D. It is true that the only reference to Vermont in the endorsement is in the heading, while the only other geographic reference in the body of that endorsement is a reference to "the coverage territory," which includes the entire United States and its possessions and territories, Canada, and Puerto Rico. App. Vol. 1 at 70, 148. But those references are not in conflict. As the district court and Steadfast noted, the policyholder might have a release of a nitric oxide plume from its plant in Vermont that injures someone in New Hampshire. Under those circumstances, Coverage D would apply because although the "occurrence" was in New Hampshire, there is a nexus with Vermont. And under this interpretation, both the reference to Vermont in the heading and the reference to "coverage territory" in the body of the Vermont Endorsement have meaning. In contrast, an occurrence with no nexus to Vermont, whether or not in the coverage territory, would not trigger Coverage D.

Dyno Nobel argues that, where the heading refers to "Vermont" and the body of the provision refers to a nationwide coverage territory, "the heading and the provision apply in contradictory ways, which contradiction is sufficient to render the heading organizational only." Appellant Br. at 26–27. However, Dyno Nobel overlooks a key

aspect of plain language interpretation of insurance contracts: harmonizing terms and elements and *making reasonable inferences* to define the scope of coverage. *See Crook*, 980 P.2d at 687–88 (holding that an exclusion for recovery of damages caused by an insured party engaging in intentional property damage naturally and unambiguously extended to co-insureds who suffered damage due to the intentional property damage, even if the provision did not state so explicitly). Interpreting the use of "Vermont" as requiring a nexus with Vermont to extend coverage to a claim, even if that claim arises outside of Vermont but within the coverage territory, is a reasonable inference which harmonizes the language of the contract.

Dyno Nobel's preferred interpretation of the contract would improperly nullify several provisions in the contract in contravention of Utah law requiring that courts give meaning to every provision of the contract when possible. *See Brigham Young Univ.*, 965 F.2d at 835. Here, the insurance contract is structured against coverage of damages caused by pollutants. Coverages A, B, and C—the three primary coverages in the Policy—each clearly exclude damages resulting from pollution. There are also three endorsements that expand the pollution exclusions contained within the main coverages. Two of those endorsements are state specific: the Indiana Endorsement and the Missouri Endorsement. Aside from the "Total Pollution Exclusion with a Hostile Fire Exception" Endorsement, which makes a small carveout for losses arising from "hostile fire," or an uncontrolled fire, *see* App. Vol. 1 at 36, 83, 112, 162, the Vermont Endorsement is the only aspect of the Policy which extends coverage for pollution-related claims. Adopting Dyno Nobel's reading of this one endorsement would nullify several key provisions of

the insurance contract because it would grant a form of coverage explicitly excluded by other unambiguous provisions in the Policy. Under Utah law, this is an untenable interpretation as the plain language can be interpreted in a way that harmonizes each provision of the contract. *See Brigham Young Univ.*, 965 F.2d at 835.

Dyno Nobel contends the underlying coverage "is expressly additive, extends its own coverage, contains no applicable exclusions, and defines its own geographical scope—unbounded by Vermont in any fashion." Appellant Br. at 23. Furthermore, Dyno Nobel argues the inclusion of the Vermont Endorsement as a comprehensive additional form of coverage applicable to the entire coverage territory would not render other state-specific endorsements inoperable, because the Indiana and Missouri Endorsements explicitly modify Coverages A and B rather than creating new coverages, and the Utah endorsements are merely procedural. But these arguments still overlook how these endorsements and the other Coverages' pollution exclusions would be essentially eliminated from the Policy by broadly reading the Vermont Endorsement into the Policy. *See Brigham Young Univ.*, 965 F.2d at 835.

Dyno Nobel relatedly argues that, if the pollution-related coverages conflict, the provisions extending coverage should be applied under Utah law. This argument not only fails to consider Utah case law requiring that we give meaning to as many provisions of the contract as possible and defer to the plain language when it is indeed plain, s*ee Crook*, 980 P.2d at 687; *Brigham Young Univ.*, 965 F.2d at 835, but also relies on case law concerning the resolution of ambiguities within an insurance contract, *see Mellor v. Wasatch Crest Mut. Ins. Co.*, 201 P.3d 1004, 1008–09 (Utah 2009) (finding there is an

ambiguity in a contract when there are conflicting provisions); *U.S. Fid. & Guar. Co. v. Sandt*, 854 P.2d 519, 523–26 (Utah 1993) (same). Dyno Nobel concedes the contract here is not ambiguous, and we agree. Appellant Br. at 16–17. "[A] court may not rewrite an insurance contract for the parties if the language is clear and unambiguous." *Alf*, 850 P.2d at 1275.

Dyno Nobel claims "[t]here is nothing unreasonable or implausible about an insurance policy that adds coverage via endorsement—even coverage beyond the coverage provided for in the main body of the policy." Appellant Br. at 24. But the mere existence of an endorsement does not eliminate the need for the court to interpret and construe the Vermont Endorsement alongside other provisions of the contract. *See St. Paul Fire & Marine Ins. v. Com. Union Assur.*, 606 P.2d 1206, 1208 (Utah 1980); *cf. Meadow Valley Contractors, Inc. v. Transcon. Ins. Co.*, 27 P.3d 594, 596 n.2 (Utah Ct. App. 2001) ("[W]e collectively refer to the insurance policy and the additional insured endorsement as 'the policy.'"). Nor does Dyno Nobel point us to any statements of Utah law requiring us to give weight to an endorsement such that it eliminates key provisions of the main body of an insurance contract. While the Utah Supreme Court has not spoken on the issue, Utah's intermediate appeals court has suggested we may consider the title of the Vermont Endorsement where it is in harmony with the body of the Endorsement. And doing so here also comports with general principles of Utah law favoring harmony among as many contract provisions as possible.

Having concluded that the title to the Vermont Endorsement is properly considered under Utah law, we now address the meaning of the Vermont Endorsement.

We conclude that an ordinary purchaser of insurance would understand the Vermont Endorsement as applying only to claims with a nexus to Vermont. The bold text in the heading states "Vermont Changes – Pollution." An ordinary insurance purchaser would have no difficulty ascertaining from the title that the following terms make "changes" relevant to "Vermont" related to "Pollution." It is highly implausible that any ordinary insurance purchaser would ignore the plain text's announcement that the endorsement requires a nexus to Vermont. Just as an ordinary purchaser of insurance would understand "reasonable explanation" as meaning "the provision of a proper amount of information to allow one to understand a concept," *Lopez*, 274 P.3d at 901, or that "maximum liability" means the greatest amount of liability under the contract, *Sandt*, 854 P.2d at 525, here, an ordinary purchaser of insurance would understand that the heading "Vermont Changes – Pollution" would apply only to claims concerning pollution and Vermont, *cf. Lindenwood Female Coll. v. Zurich Am. Ins. Co.*, 61 F.4th 572, 575 (8th Cir. 2023) ("In our view no lay person—no reasonable insured—could look at the policy as a whole and fail to appreciate that the state-specific endorsements are intended to apply in the respective states.").

To be sure, an ordinary purchaser of insurance could be confused as to the extent and nature of the nexus to Vermont required. But here, Dyno Nobel makes no contention that the Scott Action has any nexus with Vermont. Thus, we conclude that an ordinary insurer in Dyno Nobel's position would understand that the plain language of the Vermont Endorsement excludes coverage of the Scott Action because it has no connection with Vermont.

b. Support from outside authority

Persuasive authority from outside of Utah also supports our interpretation of the contract.[13] Steadfast points us to several cases concerning state-specific provisions in commercial property insurance policies in the context of the COVID-19 pandemic. Specifically, this precedent addresses whether, in a commercial property insurance policy containing thirty-one state-specific endorsements, the "Louisiana Endorsement" applies outside Louisiana when its only reference to Louisiana is in the heading. Most courts addressing this issue outside of Louisiana have held that the Louisiana Endorsement applies only to property in Louisiana.[14] In reaching that conclusion, these courts rely on

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[13] Dyno Nobel counters that this case law is irrelevant considering what it perceives as clear case law from the Utah Court of Appeals concerning the interpretive role of heading language outlined above. As discussed, however, we view the trend in Utah intermediate appellate court as consistent with this precedent. *See supra* Section II.B.2.b.

[14] *See Lindenwood Female Coll. v. Zurich Am. Ins. Co*., 61 F.4th 572, 575 (8th Cir. 2023) (Missouri law); *In-N-Out Burgers v. Zurich Am. Ins. Co.*, No. 22-55266, 2023 WL 2445681, at *1 (9th Cir. Mar. 10, 2023) (California law); *Qdoba Rest. Corp. v. Zurich Am. Ins. Co.*, No. 1:20-CV-03575, 2023 WL 2725875, at *2–4 (D. Colo. Mar. 30, 2023) (Colorado law, but decision relies on general principles of contract law with minimal citation to case law); *Detroit Ent., LLC v. Am. Guar. & Liab. Ins. Co.*, ---F. Supp. 3d---, No. 21-CV-10661, 2023 WL 2392031, at *7–11 (E.D. Mich. Mar. 7, 2023) (Michigan law); *Firebirds Int'l, LLC v. Zurich Am. Ins. Co.*, 208 N.E.3d 1187, 1193–94 (Ill. App. Ct. 2022) (Illinois law); *Carilion Clinic v. Am. Guar. & Liab. Ins. Co.*, 583 F. Supp. 3d 715, 735–36 (W.D. Va. 2022) (Virginia law, but decision relies on general principles of contract law), *opinion supplemented on denial of reconsideration*, No. 7:21-CV-00168, 2022 WL 16973256 (W.D. Va. Nov. 16, 2022); *AC Ocean Walk, LLC v. Am. Guar. & Liab. Ins. Co.*, No. A-1824-21, 2022 WL 2254864, at *15–16 (N.J. Super. Ct. App. Div. June 23, 2022) (New Jersey law); *Boscov's Dep't Store, Inc. v. Am. Guar. & Liab. Ins. Co.*, 546 F. Supp. 3d 354, 369 (E.D. Pa. 2021) (Pennsylvania law); *AECOM v. Zurich Am. Ins. Co.*, No. LA CV-21-00237, 2021 WL 6425546, at *10–11 (C.D. Cal. Dec. 1, 2021) (California law), *aff'd*, No. 22-55092, 2023 WL 1281675 (9th Cir. Jan. 31, 2023).

principles similar to Utah's direction that contracts be interpreted in their entirety, with a preference for interpretations giving effect to all elements of the contract when they can be harmonized and comporting with how an ordinary purchaser of insurance would understand the contract.[15]

Several of the Louisiana Endorsement cases are particularly persuasive given the depth of their analysis and use of principles also applicable in Utah. *See Amparan*, 882 F.3d at 948. For instance, the Eighth Circuit recently held that the Louisiana Endorsement is geographically limited, reasoning that "no lay person—no reasonable insured—could look at the policy as a whole and fail to appreciate that the state-specific endorsements are intended to apply in the respective states." *Lindenwood Female Coll.*, 61 F.4th at 575 ("The references to Louisiana and other states are not mere titles; they serve to establish the structure of the policy as a whole."). The Ninth Circuit similarly reasoned, in holding that the Louisiana Endorsement does not apply outside of Louisiana, "[n]o reasonable reader of the policy could fail to recognize

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[15] At least one court has come to a contrary conclusion when reviewing the Louisiana Endorsement. *Novant Health Inc. v. Am. Guar. & Liab. Ins. Co.*, 563 F. Supp. 3d 455 (M.D.N.C. 2021). This case is distinguishable. *Novant Health* was decided at the motion to dismiss stage and was based solely on the contents of the complaint, distinct from the motion for summary judgment ruling here. 563 F. Supp. 3d at 457, 462. Notably, the court in *Novant Health* stated that "[it] is not ruling that the virus exclusion does not apply, but in view of the contradictory language in the Policy, [the insurer] has not met its burden *at this stage of the proceedings*." *Id.* at 462 (emphasis added).

In any event, since we look to both the "general weight and trend of authority in the relevant area of law" when predicting how a state supreme court would determine an issue, this contrary decision does not undermine our conclusion. *See Amparan v. Lake Powell Car Rental Cos.*, 882 F.3d 943, 948 (10th Cir. 2018) (quotation marks omitted).

that the 31 state-specific endorsements are intended to modify the policy's terms solely with respect to the particular state at issue." *AECOM v. Zurich Am. Ins. Co.*, No. 22-55092, 2023 WL 1281675, at *2 (9th Cir. Jan. 31, 2023); *see also In-N-Out Burgers v. Zurich Am. Ins. Co.*, No. 22-55266, 2023 WL 2445681, at *1 (9th Cir. Mar. 10, 2023) ("Considering the Louisiana Endorsement in the context of the whole document, including its placement in a list of thirty-one state-specific endorsements, no reasonable reader of the policy would expect the Louisiana Endorsement or any other state-specific endorsement to apply outside of the particular state at issue."). We believe the Utah Supreme Court would reach a similar conclusion on this issue. *See Sandt*, 854 P.2d at 523 ("Because insurance policies are intended for sale to the public, the language of an insurance contract must be interpreted and construed as an ordinary purchaser of insurance would understand it.").

The Appellate Division of the New Jersey Superior Court concluded that the Louisiana Endorsement did not apply to the New Jersey property at issue after reviewing the contract as a whole. *AC Ocean Walk, LLC v. Am. Guar. & Liab. Ins. Co.*, No. A-1824-21, 2022 WL 2254864, at *15–16 (N.J. Super. Ct. App. Div. June 23, 2022). The court noted that, as here, the endorsements would untenably create conflicting amendments to various sections of the insurance contract if each endorsement were broadly applicable. *Id.* at 16. Meanwhile, in *Carilion Clinic v. American Guarantee and Liability Insurance Co.*, the Western District of Virginia held the only way to make sense of the entirety of the contract is to read the Louisiana Endorsement as applying only to property in Louisiana. 583 F. Supp. 3d 715, 735–36 (W.D. Va. 2022) (also noting that the

weight of authority favors limiting the applicability of the Louisiana Endorsement to Louisiana), *opinion supplemented on denial of reconsideration*, No. 7:21-CV-00168, 2022 WL 16973256 (W.D. Va. Nov. 16, 2022). And, holding that the Louisiana Endorsement does not apply to property in Illinois, the Illinois Appellate Court reasoned that "[t]o simply ignore the state name in the title runs counter to the requirement that we interpret an insurance policy in such a way that none of its terms are rendered meaningless or superfluous." *Firebirds Int'l, LLC v. Zurich Am. Ins. Co.*, 208 N.E.3d 1187, 1193–94 (Ill. App. Ct. 2022). To do otherwise would result in an array of conflicting terms, which the Illinois court rejected as an unreasonable interpretation. *Id.* at 1193. These cases accord with principles of contract interpretation in Utah. *See Brigham Young Univ.*, 965 F.2d at 835 ("[I]t is axiomatic that a contract should be interpreted so as to harmonize all of its provisions and all of its terms, which terms should be given effect if it is possible to do so." (alteration in original) (quoting *LDS Hosp.*, 765 P.2d at 858)).

Dyno Nobel argues that Steadfast's reliance on rulings from across the country concerning the applicability of property policies to COVID-19-related business closures (and, by extension, our reliance) is inapposite here. First, Dyno Nobel notes that several of these cases discussed the inapplicability of state-specific endorsements only in dicta. *Manhattan Partners, LLC v. Am. Guar. & Liab. Ins. Co.*, No. 20-14342, 2021 WL 1016113 (D.N.J. March 17, 2021); *Boscov's Dep't Store, Inc. v. Am. Guar. & Liab. Ins. Co.*, 546 F. Supp. 3d 354 (E.D. Pa. 2021); *Lindenwood Female Coll. v. Zurich Am. Ins.*

Co., 569 F. Supp. 3d 970 (E.D. Mo. 2021).[16] Although Dyno Nobel is correct that the holdings there were based on the plain language of the insurance contract irrespective of the applicability of the Louisiana Endorsement, *Manhattan Partners*, 2021 WL 1016113, at *2; *Boscov's Dep't Store*, 546 F. Supp. 3d at 362–68; *Lindenwood Female Coll.*, 569 F. Supp. 3d at 975–76, they provide some support for "the general weight and trend of authority in the relevant area of law." *Amparan*, 882 F.3d at 948 (quotation marks omitted).

Second, Dyno Nobel contends that because the insurance contracts at issue in the COVID-19 cases are property-specific contracts, the same reasoning cannot be applied to this contract which covers losses irrespective of whether they occurred on a specific property. Dyno Nobel does not explain why this distinction would result in distinct interpretations of the state-specific endorsements, and we cannot determine any distinguishing element.

Considering the Policy as a whole, including the title to the Vermont Endorsement, it plainly and unambiguously excludes indemnification and defense of the Scott Action.

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[16] The Eighth Circuit recently affirmed the district court in *Lindenwood Female Coll. v. Zurich Am. Ins. Co.*, 569 F. Supp. 3d 970 (E.D. Mo. 2021), and, as discussed previously in this section, explicitly held that the state-specific exemption at issue was geographically limited because the reference to Louisiana only in the title of the endorsement did not create an ambiguity, and thus the exemption applied only in Louisiana. *Lindenwood Female Coll.*, 61 F.4th at 575 ("In our view no lay person—no reasonable insured—could look at the policy as a whole and fail to appreciate that the state-specific endorsements are intended to apply in the respective states. The references to Louisiana and other states are not mere titles; they serve to establish the structure of the policy as a whole.").

III. CONCLUSION

We AFFIRM the district court's grant of summary judgment in favor of Steadfast and the denial of Dyno Nobel's Rule 12(c) Motion for Partial Judgment on the Pleadings.