

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 22 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: UNITED SPECIALTY INSURANCE
COMPANY SKI PASS INSURANCE
LITIGATION,

No. 21-16986

D.C. No. 4:20-md-02975-YGR

ANN C. HOAK; et al.,

MEMORANDUM*

Plaintiffs-Appellants,

v.

UNITED SPECIALTY INSURANCE
COMPANY,

Defendant-Appellee,

and

AMERICAN CLAIMS MANAGEMENT;
BEECHER CARLSON INSURANCE, LLC,

Defendants.

Appeal from the United States District Court
for the Northern District of California
Yvonne Gonzalez Rogers, District Judge, Presiding

Submitted November 18, 2022**

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

San Jose, California

Before: SCHROEDER, GRABER, and FRIEDLAND, Circuit Judges.

Plaintiffs are members of a certified class who purchased ski-pass insurance from Defendant United Specialty Insurance Company (“USIC”) for their 2019-2020 season ski passes to Vail Resorts. Vail Resorts shut down all of its resorts on March 15, 2020, because of the COVID-19 pandemic and did not reopen for the rest of the season. Plaintiffs attempted to recover for their lost ski days, relying on the “quarantine” provision of their insurance policy, but USIC denied their claims. The district court dismissed the complaint without leave to amend under Federal Rule of Civil Procedure 12(b)(6), holding that Plaintiffs’ allegations did not support that they had been “quarantined” within the meaning of the insurance policy. Reviewing de novo, *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 889 (9th Cir. 2021), we affirm on alternative grounds.¹

Pursuant to the “effective date of coverage” provision of the insurance policy, Plaintiffs’ insurance coverage terminated on March 15. The “effective date of coverage” provision makes clear that coverage terminates on “the date upon which ski operations are ceased due to an unforeseen event” if that date is earlier

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

¹ The parties have litigated this case on the assumption that California law applies.

than the scheduled end of the season, April 15, 2020. Ski operations ceased for the 2019-2020 season on March 15 when Vail Resorts closed all of its resorts and never reopened for that season. Operations ceased due to the spread of COVID-19, which was clearly an “unforeseen event” under the “ordinary and popular sense” of the term. *Palmer v. Truck Ins. Exch.*, 988 P.2d 568, 572 (Cal. 1999) (quoting Cal. Civ. Code § 1644). The “effective date of coverage” provision thus makes plain that Plaintiffs cannot recover for any losses on or after March 15.²

Contrary to Plaintiffs’ contentions, the separate “termination” provision, which automatically terminates coverage on the last day of the season, does not suggest that coverage could not end earlier under the “effective date of coverage” provision. And the “natural disaster” provision is not rendered a nullity; it would allow for coverage in instances when all the resorts in a state closed indefinitely for a natural disaster but reopened one month later (thus not ceasing ski operations altogether for the season). Plaintiffs’ other arguments against termination of their coverage under the “effective date of coverage” provision also fail.

AFFIRMED.

² Operations actually “ceased” for the season on March 15. The fact that Vail Resorts initially called the closure a one-week “suspension” (on March 14) before making the closure permanent is irrelevant.