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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

INDIAN HARBOR INSURANCE COMPANY, as successor in interest to Catlin Specialty Insurance Company, a Delaware corporation,

Plaintiff-Appellee,

v.

GROUP SHS, LLC, DBA Resident, a California limited liability company; TIMOTHY KREHBIEL, an individual,

Defendants-Appellants,

and

428 S. HEWITT ST. PARTNERSHIP, a California partnership; MID-CENTURY INSURANCE COMPANY, a California corporation,

Defendants.

No. 21-56078

D.C. No. 2:20-cv-06992-JFW-KS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

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

Argued and Submitted November 15, 2022
Pasadena, California

Before: WARDLAW and W. FLETCHER, Circuit Judges, and KORMAN,[**] District Judge.

Group SHS, LLC and Timothy Krehbiel (jointly "Appellants") appeal from the district court's decisions granting in part and denying in part Appellee Indian Harbor Insurance Company's ("Indian Harbor") motion for summary judgment. To celebrate his wife's 50th birthday, Krehbiel organized a "forklift parade." Krehbiel hung a swing from the two raised forklift forks and decorated the forklift like a float. His wife sat on the swing as Krehbiel drove the forklift around the streets of Los Angeles at approximately 1.5 miles per hour. As the partygoers walked alongside the forklift, Krehbiel ran over a party guest's foot, resulting in a personal injury lawsuit. Appellant's insurance broker filed a notice of loss with Appellant's insurer, Indian Harbor. Indian Harbor denied coverage, arguing this conduct fell within the policy's mobile equipment exclusion, which excluded coverage for bodily injury arising out of mobile equipment used for "any prearranged racing, speed, demolition, or stunting activity." This lawsuit followed, seeking a declaratory judgment regarding coverage.

[**] The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

We have jurisdiction under 28 U.S.C. § 1291. We review grants of summary judgment de novo. *Maner v. Dignity Health*, 9 F.4th 1114, 1119 (9th Cir. 2021). "Because the interpretation of an insurance policy is a question of law, this Court must make its own independent determination of the meaning of the relevant contract language." *Universal Cable Prods., LLC v. Atl. Specialty Ins. Co.*, 929 F.3d 1143, 1151 (9th Cir. 2019) (internal quotation marks and citation omitted). We reverse.

Under California law, language in insurance policies must be interpreted according to its "clear and explicit" meaning, as understood in the "ordinary and popular sense." *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 890 (9th Cir. 2021) (internal quotation marks omitted) (quoting *AIU Ins. Co. v. Superior Ct.*, 799 P.2d 1253, 1264 (Cal. 1990)). To ascertain this ordinary sense, California courts "regularly turn to general dictionaries." *Scott v. Cont'l Ins. Co.*, 51 Cal. Rptr. 2d 566, 569 (Ct. App. 1996). Under the principle of *ejusdem generis*, "where specific words follow general words in a contract, 'the general words are construed to embrace only things similar in nature to those enumerated by the specific words.'" *Nygard, Inc. v. Usui-Kerttula*, 72 Cal. Rptr. 3d 210, 223 (Ct. App. 2008) (quoting *Cal. Farm Bureau Fed'n v. Cal. Wildlife Conservation Bd.*,

49 Cal. Rptr. 3d 169, 181 (Ct. App. 2006)). Ambiguities in insurance policies are resolved in favor of coverage. *AIU Ins.*, 799 P.2d at 1259.

In the case at hand, "stunting activity" can have different definitions. A stunt can be "something interesting that is done in order to attract attention and get publicity for the person or company responsible for it." *Stunt*, Collins Online English Dictionary, https://www.collinsdictionary.com/us/dictionary/english/stunt (last visited Nov. 21, 2022). Alternatively, a stunt can be "an action displaying spectacular skill and daring." *Stunt*, New Oxford American Dictionary (3d ed. 2010). Krehbiel's actions were clearly done to attract attention to his wife's birthday celebration. Yet, it does not require much skill or daring to ride around on a slow-moving forklift that is dressed as a parade float. Thus, we must evaluate which of these competing definitions is the best reading of the policy exclusion.

Under the principle of *ejusdem generis*, we look to the other, more specific words surrounding stunting activity. The words "racing, speed, [and] demolition" are all activities requiring great skill or daring. *Ejusdem generis* thus instructs us to construe "stunting activity" to also require great skill or daring. We therefore conclude that the forklift parade did not come within the mobile equipment exclusion.

Even if the principle of *ejusdem generis* did not make the plain meaning of "stunting activity" clear, Appellants would still prevail. At the very least, the competing definitions and the words preceding "stunting activity" make it ambiguous whether Krehbiel's activity comes within the exclusion. Ambiguities in policy exclusions are construed in favor of coverage. Therefore, the district court erred in granting summary judgment in favor of Indian Harbor. Since we find that the mobile equipment exclusion does not apply to Appellants' conduct, we need not address their arguments as to waiver and estoppel.

REVERSED and REMANDED.