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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

KATHLEEN E. KOTTOM,  
Plaintiff,  
v.  
ALBERT D. WALKER,  
Defendant.

Case No. 14-cv-04492-LB

**AMENDED ORDER ON MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

[ECF Nos. 82, 85]

**INTRODUCTION**

Defendant Albert Dan Walker moves for a partial summary judgment “declaring that he is the lawful and sole beneficiary” under a life-insurance policy, “and is entitled to immediate receipt” of the policy’s death benefit “free of any and all claims and encumbrances alleged by Plaintiff Kathleen Kottom.” (ECF No. 82 at 2.)<sup>1</sup> The disputed funds are on deposit with the court, the insurer having interpleaded them. The court grants Mr. Walker’s motion insofar as it declares him the policy’s sole beneficiary. Because this case involves no actual claim for the policy proceeds, however — the policy being subsidiary to claims and defenses under a different instrument — and because partial summary-judgment orders are interlocutory, the court declines to release the funds. The court permits further briefing on the disbursement of the funds.

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<sup>1</sup> Record citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the tops of documents.  
ORDER 14-cv-04492-LB

1 **STATEMENT**

2 The facts of this case are simple and mostly uncontested. This dispute revolves around a “key  
3 man” insurance policy that defendant Albert Dan Walker took out on the life of his now deceased  
4 business partner, Paul Kottom. Mr. Walker claims that he is the policy’s only beneficiary and is  
5 entitled to its death benefit. (ECF No. 82 at 2.) Plaintiff Kathleen Kottom (the deceased Mr.  
6 Kottom’s widow) claims, in sum, that a separate instrument obligates Mr. Walker to pay her the  
7 policy proceeds. (E.g., ECF No. 84 at 8.)

8 Messrs. Walker and Kottom co-owned a snack-food company, Nature’s World, LLC. An  
9 Operating Agreement (ECF No. 82-2) governed their ownership and management of Nature’s  
10 World. Though that agreement looms large in this case, for purposes of this discussion, it looms  
11 mostly in the background; as the Analysis below will show, it is not necessary here to recite the  
12 details of the Operating Agreement. Before his death in 2014, Mr. Walker transferred his  
13 ownership and management interest in Nature’s World to the Paul and Kathleen Kottom Living  
14 Trust, for which Mrs. Kottom is the trustee. (ECF No. 83-6 at 2; ECF No. 84-1 at 2 (¶¶3, 6).)

15 Returning to the disputed policy: Mr. Walker and Mr. Kottom each took out an insurance  
16 policy on the other’s life. (See ECF No. 72 at 3 (¶ 9); ECF No. 83 at 2 (¶ 3); ECF No. 84-3.) Their  
17 exact purpose in doing so is disputed. The evidence suggests both that the gentlemen may have  
18 intended the policy benefits to help pay the costs of running Nature’s World after one partner’s  
19 death, and, rather differently, that they may have intended to use the policy proceeds to buy out the  
20 decedent’s share of the business. For present purposes, though, what Messrs. Walker and Kottom  
21 intended to do with the policy’s death benefit is immaterial. What matters are the terms of the  
22 policy that Mr. Walker took out on Mr. Kottom’s life. That policy (#8363342) was issued by  
23 Farmers New World Life Insurance Company. Its contents are not in dispute. The named insured  
24 on the policy is Paul Kottom. The policy’s sole owner and named beneficiary is Mr. Walker. Mr.  
25 Walker paid all the policy premiums and, by the instrument’s express terms, is to receive “100%”  
26 of the death benefit. (See generally ECF No. 83-2 (policy).)

27 After Mr. Kottom died, Mrs. Kottom and Mr. Walker both filed claims with Farmers for the  
28 policy’s death benefit. Mrs. Kottom then brought this suit against Mr. Walker and Farmers,

1 seeking a declaration that she is the “lawful and intended beneficiary of the subject life[-]insurance  
2 policy.” (ECF No. 1.) Claiming no interest in the dispute, other than a desire to pay the proceeds  
3 to the correct beneficiary, Farmers interpleaded the death benefit in this court. (ECF No. 11.) The  
4 individual parties voluntarily dismissed Farmers from this suit (ECF No. 37) and Mrs. Kottom  
5 then amended her complaint (ECF No. 72). Her operative First Amended Complaint (FAC) brings  
6 various contract and tort claims against Mr. Walker. (Id.) Her essential claim is that the Nature’s  
7 World Operating Agreement obligates Mr. Walker to use the policy’s proceeds to buy out the  
8 Trust’s ownership share in Nature’s World. (E.g., ECF No. 72 at 5-6 (¶¶ 22-26).)

9 (In her summary-judgment opposition, Mrs. Kottom writes: “This case arises from Ms.  
10 Kottom’s claims that she is the rightful third-party beneficiary of [the subject] life[-]insurance  
11 policy . . . .” (ECF No. 84 at 5 (emphasis added).) That is inaccurate. Recovery under a third-  
12 party-beneficiary theory invokes a distinct doctrine under both Washington and California contract  
13 law, the particular rules of which have been elaborated in statutes and case precedent. See  
14 generally, e.g., *Donald B. Murphy Contractors, Inc. v. King Cty.*, 49 P.3d 912, 914 (Wash. App.  
15 2002); *Cline v. Homuth*, 235 Cal. App. 4th 699, 705 (2015). The FAC in this case does not  
16 advance, or hint at, a third-party-beneficiary theory. (ECF No. 72, *passim*.) Nor does Mrs.  
17 Kottom’s summary-judgment briefing. (ECF No. 84, *passim*.)

18 Mr. Walker now moves for partial summary judgment, asking the court to hold that he is the  
19 policy’s sole and rightful beneficiary and is entitled to an immediate disbursement of the  
20 interpleaded death benefit. (ECF No. 82.)

21 \* \* \*

22 **GOVERNING LAW**

23 **1. Summary Judgment — Rule 56**

24 The rudiments of summary judgment are familiar. The court must grant a motion for summary  
25 judgment if the movant shows that there is no genuine dispute as to any material fact and the  
26 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty*  
27 *Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Material facts are those that may affect the outcome of  
28 the case. *Id.* at 248. A dispute about a material fact is genuine if there is sufficient evidence for a

1 reasonable jury to return a verdict for the non-moving party. *Id.* at 248-49.

2 The party moving for summary judgment bears the initial burden of informing the court of the  
3 basis for the motion, and identifying portions of the pleadings, depositions, answers to  
4 interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material  
5 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To meet its burden, “the moving party  
6 must either produce evidence negating an essential element of the nonmoving party’s claim or  
7 defense or show that the nonmoving party does not have enough evidence of an essential element  
8 to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*,  
9 210 F.3d 1099, 1102 (9th Cir. 2000); see *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir.  
10 2001) (“When the nonmoving party has the burden of proof at trial, the moving party need only  
11 point out ‘that there is an absence of evidence to support the nonmoving party’s case.’”) (quoting  
12 *Celotex*, 477 U.S. at 325).

13 If the moving party meets its initial burden, then the burden shifts to the non-moving party to  
14 produce evidence supporting its claims or defenses. *Nissan Fire & Marine*, 210 F.3d at 1103. The  
15 non-moving party may not rest upon mere allegations or denials of the adverse party’s evidence,  
16 but instead must produce admissible evidence that shows there is a genuine issue of material fact  
17 for trial. See *Devereaux*, 263 F.3d at 1076. If the non-moving party does not produce evidence to  
18 show a genuine issue of material fact, the moving party is entitled to summary judgment. See  
19 *Celotex*, 477 U.S. at 323.

20 In ruling on a motion for summary judgment, inferences drawn from the underlying facts are  
21 viewed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith*  
22 *Radio Corp.*, 475 U.S. 574, 587 (1986).

23 \* \* \*

24 **2. Choice of Law**

25 The court holds that Washington law controls interpretation of the insurance policy. Federal  
26 courts sitting in diversity generally apply the substantive law of the forum state. E.g., *Nelson v.*  
27 *Int’l Paint Co.*, 716 F.2d 640, 643 (9th Cir. 1983). This includes the forum’s choice-of-law rules.  
28 *Id.* California law generally enforces contractual choice-of-law terms. E.g., *Smith, Valentino &*

1 Smith, Inc. v. Superior Court, 17 Cal.3d 491, 494-96 (1976); Aral v. EarthLink, Inc., 134 Cal.  
2 App. 4th 544, 557-59 (2005). The policy in this case provides: “This policy is subject to the laws  
3 of the state in which it is delivered.” (ECF No. 83-2 at 5.) It seems undisputed that the policy was  
4 “delivered” in Washington. Mr. Walker, Mr. Kottom, and Farmers executed the policy in  
5 Washington. (ECF No. 83-2 at 2, 13 (policy); ECF No. 83-3 at 7 (application).) Mr. Walker and  
6 Farmers were both residents of Washington when they entered into the policy. (See ECF Nos. 83-  
7 2, 83-3.) (The policy shows the insurer’s “Home Office” as being in Washington. (ECF No. 83-2  
8 at 2.)) And Mr. Walker paid all premiums for the policy in Washington. (ECF No. 83 at 2 (¶ 4).)  
9 The defendant argues that in these circumstances Washington law controls; the plaintiff does not  
10 dispute that; and the court reaches the same conclusion.<sup>2</sup>

11 \* \* \*

## 12 ANALYSIS

### 13 1. Preliminary: What Is Before the Court?

14 The court must first determine what, if anything, is properly before it. Can it address the issue  
15 on which the defendant seeks partial summary judgment? Mrs. Kottom argues that it cannot. She  
16 writes that Mr. Walker “fails to identify what claim(s) or defense(s) he is attempting to dispose of  
17 by way of summary judgment.” (ECF No. 84 at 7.) She argues that Mr. Walker has thus failed to  
18 meet Rule 56(a)’s “most rudimentary” demand; that she has thus been “denied an opportunity” to  
19 “cogent[ly]” oppose his motion; and that, for this reason alone, the motion should be denied. (Id.  
20 at 7-8.)

21 The court disagrees. Throughout this case, the defendant has expressed his intent to move on  
22 the question of the policy itself. His present motion is plainly directed to that question. And his  
23 motion is appropriate under Rule 56. Mrs. Kottom errs here by assuming that a Rule 56 movant  
24 must challenge entire “claims” or “defenses.” That is not so. Rule 56(a) expressly permits partial  
25 summary judgments of the type that Mr. Walker seeks. The salient part of Rule 56(a) provides: “A  
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27 <sup>2</sup> For all these points, see generally Mr. Walker’s declaration (ECF No. 83 at 2 (¶¶ 3-4)) and the  
28 various documents constituting the insurance contract (ECF Nos. 83-2, -3, and -5).

1 party may move for summary judgment, identifying each claim or defense — or the part of each  
 2 claim or defense — on which summary judgment is sought.” Fed. R. Civ. P. 56(a) (emphasis  
 3 added). Even where a court “does not grant all the relief requested by the motion,” moreover, it  
 4 may still “enter an order stating any material fact . . . that is not genuinely in dispute and treating  
 5 the fact as established in the case.” Fed. R. Civ. P. 56(g) (emphasis added). A court may thus grant  
 6 summary judgment on specific issues without granting judgment on an entire cause of action. See,  
 7 e.g., *First Nat’l Ins. Co. v. Fed. Deposit Ins. Corp.*, 977 F. Supp. 1051 (S.D. Cal. 1997) (denying  
 8 summary judgment but granting summary “adjudication” of discrete issue). Furthermore, despite  
 9 Rule 56(a)’s compulsory language — “The court shall grant summary judgment if the movant  
 10 shows . . .” — it has long been accepted that the compulsion is “not absolute.” William W.  
 11 Schwarzer et al., *Federal Civil Procedure Before Trial* ¶ 14:32 (2015). “Even if the standards of  
 12 Rule 56 are met, a court has discretion to deny a motion for summary judgment if it believes that  
 13 the better course would be to proceed to a full trial.” *Id.* (quoting *Firman v. Life Ins. Co. of N. Am.*,  
 14 684 F.3d 533, 538 (5th Cir. 2012) (quoting in turn *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
 15 255 (1986)). Granting or denying a partial summary judgment is, in the end, “largely . . . a  
 16 discretionary matter.” 10A Charles Alan Wright et al., *Federal Practice & Procedure* § 2728 at  
 17 531-32 (3d ed. 1998).

18 The nature of a partial summary judgment nonetheless limits what the court may do; put  
 19 differently, a partial summary judgment has innately limited effects. Despite its name, a partial  
 20 summary judgment “is not a judgment at all but ‘merely a pretrial adjudication that certain issues  
 21 shall be deemed established for the trial of the case.’” *Id.* § 2737 at 323 (quoting Fed. R. Civ. P.  
 22 56(d) (Advisory Committee Notes to 1946 amendment)). It “follows” from this that a partial  
 23 summary judgment “has no preclusive effect, since the trial court retains jurisdiction to modify the  
 24 order at any time prior to the entry of a final judgment.” Wright, *supra*, § 2737 at 323; accord *St.*  
 25 *Paul Fire & Marine Ins. Co. v. F.H.*, 55 F.3d 1420, 1425 and n. 2 (9th Cir. 1995) (citing cases); cf.  
 26 *Solis v. Jasmine Hall Care Homes, Inc.*, 610 F.3d 541, 543-44 (9th Cir. 2010) (dismissing appeal  
 27 (partial summary judgment was non-final and not appealable).

28 These two characteristics of partial summary judgments — that they are permissible but

1 provisional — are significant here because of this case’s unusual posture. This suit hovers between  
2 a straight interpleader action (to declare the rightful beneficiary under an insurance policy) and a  
3 damages suit. Former defendant Farmers interpleaded the policy’s death benefit with the court  
4 because both Mrs. Kottom and Mr. Walker had made direct claims to the insurer for those  
5 benefits. (See ECF No. 11 at 2-3; ECF No. 24 at 4 (¶ 4).) But this lawsuit does not involve direct  
6 claims under the policy. The plaintiff does not allege that she is the policy’s beneficiary who is  
7 thus entitled to its proceeds. (FAC – ECF No. 72, passim.) She instead claims that a separate  
8 instrument, the Nature’s World Operating Agreement, compels Mr. Walker to use the policy’s  
9 proceeds to buy the Trust’s interest in Nature’s World. (E.g., id. at 5 (¶ 23); ECF No. 84 at 8, 12.)  
10 The policy’s role here is thus significant but indirect. This indirection is reflected in how the  
11 parties to some degree speak past each other. Thus, Mr. Walker argues that his motion is all about  
12 the policy and whether he is its rightful beneficiary (see ECF No. 85 at 4-5, 8-9) — and his  
13 analysis tracks that perspective. Mrs. Kottom responds that this case is all about the Operating  
14 Agreement (ECF No. 84 at 12) — and that understanding shapes her competing analysis.

15       These considerations underlie the court’s two-pronged decision. First, the court holds that it  
16 can address Mr. Walker’s motion on the policy itself. It can decide whether, given the policy’s  
17 terms, he is entitled to its proceeds. The policy plays a key role in the plaintiff’s amended  
18 complaint. For example, Mrs. Kottom there claims that she is “entitled to a declaration that these  
19 insurance proceeds are owed to her . . . under the Operating Agreement.” (ECF No. 72 6 (¶ 29).)<sup>3</sup>  
20 The policy is also instrumental to Mr. Walker’s answer. He repeatedly writes: “Defendant  
21 continues to deny Plaintiff’s alleged entitlement to insurance proceeds she does not own, did not  
22 pay for, and [of which] she is not the named beneficiary.” (ECF No. 79 at 4-5 (¶¶ 17-18, 28).) The  
23 policy — and, more precisely, Mr. Walker’s entitlement to the policy’s proceeds — is thus “part  
24 of a claim or defense” in the Rule 56(a) sense. The policy is a proper object of a Rule 56 motion.

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27 <sup>3</sup> See also, e.g., FAC – ECF No. 72 at 4 (¶ 17) (“Walker took the position that the \$1 million life[-  
28 ]insurance policy . . . was not payable to Mr. Kottom’s estate . . . .”); id. at 6 (¶ 24) (“Walker was  
obligated . . . to use the [policy] proceeds to buy out Mr. Kottom’s interest . . . .”); id. at 6 (¶ 31)  
 (“Walker . . . promised that the . . . death benefit would be paid to [Mrs.] Kottom . . . .”).

1 For the reasons given below, the court ultimately holds that Mr. Walker is entitled to the policy’s  
2 death benefit.

3 Second, the fact that no direct claim under the policy has been made in this court, combined  
4 with the innately provisional status of a partial summary judgment, means that the court cannot  
5 obviously grant the further relief that Mr. Walker seeks: ordering that the funds be immediately  
6 disbursed to him. Because a court can revisit and overturn an order on partial summary judgment,  
7 such an order does not carry the effects of a true judgment; so far as is relevant here, it has no  
8 impact beyond the confines of the lawsuit, within which it “narrows the issues” and thus operates  
9 like a pretrial order under Rule 16. See Wright, *supra*, §§ 3736-37. Mr. Walker rightly observes  
10 that defendants are not ordinarily compelled to deposit in court the alleged amount of damages, at  
11 the start of a lawsuit, on the chance that they may later be held liable. But that is not exactly the  
12 present situation. The policy’s benefits are in court, again, not because Mr. Walker was forced to  
13 put them there while Mrs. Kottom’s various claims are tried; but, much less objectionably,  
14 because Farmers interpleaded them in the face of the parties’ competing benefit claims. However  
15 practical it may seem to release the funds to Mr. Walker once he is found to be the policy’s  
16 rightful beneficiary, still the court cannot obviously order that disbursement on the back of a  
17 partial summary judgment that, under governing law, is interlocutory. Releasing the funds would,  
18 on this view, have to await a final judgment. (Had one or both of the parties made a fully blown,  
19 direct claim under the policy, then it is possible that the court could have certified a partial  
20 summary judgment on the policy as “final” under Rule 54(b). Unlike Rule 56, however, Rule  
21 54(b) does not contemplate that discrete subsidiary issues — as opposed to entire claims — can be  
22 deemed final.<sup>4</sup>)

23 That said, a practical approach suggests that the court could reach the opposite decision and  
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25 <sup>4</sup> The relevant terms of Rule 54(b) provide: “When an action presents more than one claim for  
26 relief — whether as a claim, counterclaim, crossclaim, or third-party claim — . . . the court may  
27 direct entry of a final judgment as to one or more, but fewer than all, claims . . . only if the court  
28 expressly determines that there is no just reason for delay. Otherwise, any order or other decision,  
however designated, that adjudicates fewer than all the claims . . . does not end the action as to any  
of the claims . . . and may be revised at any time before the entry of a judgment adjudicating all  
the claims . . . .” Fed. R. Civ. P. 54(b).



1 choose to disburse the interpleaded funds. The parties have not cited any case law on whether a  
2 court can release interpleaded funds in this situation; and the court’s own preliminary research did  
3 not reveal any. Still, disbursement in these circumstances seems an entirely practical, and  
4 discretionary, question. On the one hand, as discussed above, there is something to the  
5 uncontroversial idea that a partial summary judgment is interlocutory and has no preclusive effect.  
6 On the other hand, there is real, practical resonance in what the defendant says about it not being  
7 normal to force a party to deposit funds before it is proven liable. And, after all, the funds are in  
8 court only because of a conflict over the policy’s rightful beneficiary — an issue the court has now  
9 resolved. Mrs. Kottom has no direct claim to the policy res. Whether another contract (namely, the  
10 Operating Agreement) obligates Mr. Walker to use those policy proceeds in a certain way —  
11 which is all the plaintiff claims — is a different question. The defendant has shown that he is  
12 entitled to those proceeds. The plaintiff has not provided any authority that would justify  
13 withholding those proceeds to cover the possibility that Mr. Walker has liabilities under a different  
14 instrument on different legal theories.

15 The court and the parties discussed these conflicting approaches to disbursement at the  
16 November 19, 2015 hearing. Mrs. Kottom there argued that, at a minimum, the court should allow  
17 her an opportunity to oppose a motion for release of the funds following any summary-judgment  
18 order. The court provides for that motion process at the end of this order.

19 \* \* \*

20 **2. The Policy**

21 “Interpretation of an insurance contract is a question of law . . . .” *Quadrant Corp. v. Am.*  
22 *Stakes Ins. Co.*, 110 P.3d 733, 737 (Wash. 2005) (en banc) (citing *Overton v. Consol. Ins. Co.*, 38  
23 P.3d 322 (Wash. 2002)). “The criteria for interpreting insurance contracts in Washington are well  
24 settled. We construe insurance policies as contracts. . . . Most importantly, if the policy language  
25 is clear and unambiguous, we must enforce it as written; we may not modify it or create ambiguity  
26 where none exists.” *Quadrant*, 110 P.3d at 737.

27 The facts concerning the policy itself are uncontested. The named insured on the policy is the  
28 deceased Paul Kottom. (ECF No. 83-2 at 2.) It is undisputed that Mr. Walker is the sole owner of

1 the policy; that he is its sole beneficiary; that he “personally paid all the policy premiums”; and  
2 that the policy expressly entitles him to “100%” of the death benefit. (Walker Decl. – ECF No. 83  
3 at 2 (¶ 3); ECF No. 83-2 at 6 (policy); ECF No. 83-3 at 2, 6 (policy application: owner,  
4 beneficiary, 100% of proceeds).) The policy describes the “entire contract” as comprising: the  
5 policy itself; the application with any amendments or supplements; any attached riders and  
6 endorsements; and “any attached application for reinstatement.” (ECF No. 83-2 at 5.) Finally, the  
7 policy provides: “Any change in the terms of this contract must be in writing and signed by  
8 [Farmer’s] President or Secretary.” (Id.)

9 Mrs. Kottom contests none of this. In fact, she largely concedes these points. It is “true,” she  
10 agrees, that Mr. Walker “paid for the policy”; that he “never changed the beneficiary to the  
11 policy”; and that “the policy itself is an integrated agreement.” (ECF No. 84 at 8.)

12 Rather than challenging the content or effect of the policy itself, the plaintiff argues that such  
13 considerations “do not resolve the larger question as to whether there exists another agreement”  
14 — namely, the Nature’s World Operating Agreement — “that confers other obligations upon  
15 [Mr.] Walker toward his deceased partner — and now [toward] the Kottom Trust.” (ECF No. 84 at  
16 8) (emphasis in original). The plaintiff’s whole argument — in short, that the Operating  
17 Agreement compels Mr. Walker to use the policy benefits to buy out the Trust’s interest in  
18 Nature’s World — assumes that the policy’s proceeds go to him in the first instance. If the  
19 plaintiff has a direct argument under the policy, an argument that she is its proper beneficiary, she  
20 has not advanced it.

21 This is enough to warrant summary judgment on the policy. The court holds that Mr. Walker is  
22 the policy’s sole beneficiary and that he is entitled to the death benefit under that policy.

23 \* \* \*

24 **3. The Parol Evidence Rule — The Dead Man’s Statute — The Terms of the Operating**  
25 **Agreement**

26 The parties contest the effects of Washington’s parol-evidence rule and dead man’s statute  
27 (Wash. Rev. Code § 5.60.030), and they dispute how to properly read the Nature’s World  
28 Operating Agreement, particularly that contract’s Article 9. The court need not go far into these

1 topics; they are largely irrelevant to the present motion.

2 It is on the subjects of the parol-evidence rule and the dead man’s statute that the parties speak  
3 most strikingly past each other. Thus, Mrs. Kottom argues that extrinsic evidence, including  
4 certain statements that her deceased husband allegedly made, can be considered in determining  
5 Mr. Walker’s obligations under the Operating Agreement. (See ECF No. 84 at 9-14.) She  
6 contends, again, that such evidence can help decide whether the Operating Agreement compels  
7 him to use the policy benefits to buy out the Trust’s interest in Nature’s World. By contrast, Mr.  
8 Walker counters that the parol-evidence rule, and the dead man’s statute, bar such evidence from  
9 affecting how the court interprets the insurance policy. (See ECF No. 82 at 12-16.)<sup>5</sup> The parties  
10 thus dispute how these doctrines affect different instruments.

11 The correct approach in the face of this disjunction seems to be as follows: The question that is  
12 now before the court concerns only the insurance policy. Extrinsic material cannot be used to alter  
13 that policy’s terms or objective purpose. The Supreme Court of Washington has explained:

14 The parol evidence rule precludes the use of extrinsic evidence to add to,  
15 subtract from, modify, or contradict the terms of a fully integrated written contract;  
16 that is, a contract intended as a final expression of the terms of the agreement.  
17 *DePhillips v. Zolt Constr. Co.*, 136 Wash.2d 26, 32, 959 P.2d 1104 (1998). But a  
18 party may offer extrinsic evidence in a contract dispute to help the fact finder  
19 interpret a contract term and determine the contracting parties’ intent regardless of  
20 whether the contract’s terms are ambiguous. *Berg v. Hudesman*, 115 Wash.2d 657,  
21 667–69, 801 P.2d 222 (1990). Extrinsic evidence is not admissible, however, to  
22 show intention independent of the contract. *Hollis v. Garwall, Inc.*, 137 Wash.2d  
23 683, 695, 974 P.2d 836 (1999). Washington courts focus on objective  
24 manifestations of the contract rather than the subjective intent of the parties; thus,  
25 the subjective intent of the parties is generally irrelevant if the intent can be  
26 determined from the actual words used. *Hearst Commc’ns, Inc. v. Seattle Times*  
27 *Co.*, 154 Wash.2d 493, 504, 115 P.3d 262 (2005).

28 *Brogan & Anensen LLC v. Lamphiear*, 202 P.3d 960, 961-62 (Wash. 2009) (en banc) (per  
curiam). Under these rules, neither the Operating Agreement nor statements by the decedent can  
modify the policy’s terms. Those terms are unambiguous, they express a clear objective intent (to  
provide certain benefits to a named beneficiary), and extrinsic material cannot be invoked “to

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<sup>5</sup> Mr. Walker’s argument under the dead man’s statute may be broader than that; his discussion suggests that the deceased’s statements are impermissible for any purpose. (See ECF No. 82 at 13-14.) But that is not important for the immediate discussion.

1 show [some other] intention independent of the contract.” See *id.* The court’s decision under the  
2 policy — that Mr. Walker is its sole beneficiary — therefore stands.

3 The Operating Agreement is otherwise beside the present point. Neither party has moved  
4 under the Operating Agreement. If the defendant is obligated in contract or tort, outside the policy,  
5 to buy the Trust’s interest in Nature’s World, that is a question for another day. The court  
6 expresses no view on how the parol-evidence rule, or the dead man’s statute, affects the proof or  
7 analysis of the Operating Agreement. Nor does the court express a view on how to correctly  
8 interpret Article 9, or any other term, of the Operating Agreement. Such questions are irrelevant to  
9 the current motion. Nothing in the plaintiff’s discussion of the Operating Agreement rebuts any  
10 part of the defendant’s analysis under the insurance policy. To the contrary, as discussed earlier,  
11 what the plaintiff admits about the policy is alone enough to justify the partial summary judgment  
12 that the defendant seeks.

13 \* \* \*

14 **CONCLUSION**

15 The court partly grants and partly denies Mr. Walker’s motion for partial summary judgment.  
16 The motion is granted insofar as the court holds that Mr. Walker is the sole beneficiary of the  
17 Farmers life-insurance policy, and that Mrs. Kottom has no claim under that policy. The motion is  
18 denied insofar as the court declines, for now, to order the policy’s proceeds disbursed from the  
19 registry of court to Mr. Walker. The defendant’s motion to strike various evidence (ECF No. 85) is  
20 denied as moot given how this analysis handled the arguments to which the challenged evidence  
21 applied. The court expresses no view on the merits of the defendant’s evidentiary motion. Mr.  
22 Walker may file a motion to release the interpleaded funds, as discussed earlier in the order; Mrs.  
23 Kottom may then oppose that motion, and the defendant reply, according to the usual rules.

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This disposes of ECF Nos. 82 and 85.

**IT IS SO ORDERED.**

Dated: November 25, 2015



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LAUREL BEELER  
United States Magistrate Judge