SJC-13109

MASONIC TEMPLE ASSOCIATION OF QUINCY, INC. vs. JAY PATEL & another;[1] LEO MARTIN & others,[2] third-party defendants (and two companion cases[3]).

Norfolk. October 6, 2021. - April 27, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Fire. Insurance, Coverage, Construction of policy, General liability insurance, Fire, Insurer's obligation to defend, Agent's negligence, Broker, Misrepresentation, Certificate of insurance. Negligence, Insurance agent, Misrepresentation. Broker, Insurance. Words, "Doing business as."

Civil action commenced in the Superior Court Department on September 29, 2016.

[1] Dipika, Inc.

[2] Seymour H. Marcus, also known as Sy Marcus; Roblin Insurance Agency, Inc.; Treace, Ltd.; Quincy Adams Building Corporation; Shea Street Realty Trust; Ellen Rea Marcus, as trustee of the Grossman Monroe Trust; and Union Insurance Company.

[3] Masonic Temple Association of Quincy, Inc. vs. Acadia Insurance Company; Dipika, Inc. vs. Acadia Insurance Company.

The case was heard by Thomas A. Connors, J., on motions for summary judgment, and entry of separate and final judgment was ordered by him.

Civil action commenced in the Superior Court Department on September 17, 2019.

A motion to dismiss was heard by Thomas A. Connors, J.

Civil action commenced in the Superior Court Department on September 23, 2019.

A motion to dismiss was heard by Thomas A. Connors, J.

The Supreme Judicial Court on its own initiative transferred the cases from the Appeals Court.

Nina L. Pickering-Cook (Steven L. Schreckinger also present) for Masonic Temple Association of Quincy, Inc.
David V. Lawler for Jay Patel & another.
Robert J. Maselek, Jr., for Union Insurance Company & another.
William D. Chapman for Roblin Insurance Agency, Inc.
The following submitted briefs for amici curiae:
Harry P. Cohen, of New York, & Laura A. Foggan, of the District of Columbia, for Complex Insurance Claims Litigation Association.
Peter A. Halprin, of New York, & Jacquelyn M. Mohr, of California, for United Policyholders.

LOWY, J. While renovating a historic Masonic Temple in Quincy, workers sparked a fire that nearly burned the structure to the ground. At the time of the fire, Jay Patel, the president and sole owner of Dipika, Inc. (Dipika), was holder of a purchase and sale agreement to buy the Temple. We are called upon to decide, among other things, whether Dipika's putative liabilities arising from the fire are covered by its general

liability insurance policy.[4] Interpreting the language of the policy in its entirety, including, but not limited to, the designation of "Dipika Inc. dba Super 8" as the named insured and the description of its business as "Motel," we conclude that the policy does not afford such coverage. We further hold that, viewing the summary judgment record in the light most favorable to the nonmoving parties, Dipika's insurance broker did not commit a breach of its duty of care. We therefore affirm.[5]

Background. We recite the events underlying these cases, drawing from the undisputed facts in the summary judgment record.

Faced with financial pressure, the members of the Quincy Rural Masonic Lodge decided to sell their Temple building (Masonic Temple or Temple), a 1926 neoclassical edifice located on Hancock Street in Quincy. Title to the property was held by an affiliated charitable corporation, Masonic Temple Association of Quincy, Inc. (Masons).[6] The Masons entered into a purchase

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[4] Should we determine that there is coverage under Dipika's primary policy, the fire losses could also implicate Dipika's umbrella policy, which was issued by Acadia Insurance Company (Acadia).

[5] We acknowledge the amicus briefs submitted by the Complex Insurance Claims Litigation Association and United Policyholders.

[6] For ease of reference, we refer to the corporation as the Masons.

and sale agreement with the Grossman Munroe Trust (Grossman Trust), under which the Grossman Trust would develop the building into two condominium units. The basement unit would be retained by the Masons to use as their lodge, while the Grossman Trust would become owner of the two-story upstairs unit.

Partway into the renovation, the Grossman Trust concluded that the project was not financially viable and assigned its interest in the purchase and sale agreement to Patel. Neither the purchase and sale agreement nor the assignment reference Dipika. Patel was the president and sole owner of Dipika, which operated a Super 8 motel in Weymouth. Patel also had prior experience, separate and distinct from his interest in Dipika, owning and operating several other hotels.[7] He intended to convert the upstairs condominium unit in the Masonic Temple into a "boutique hotel."

During Patel's stewardship of the renovation, the Masons requested that he provide them with proof of insurance for the work. In response, Patel contacted Roblin Insurance Agency, Inc. (Roblin), which had acted as Dipika's agent in acquiring its existing commercial property and general liability insurance policy for the Weymouth Super 8 motel from Union Insurance Company (Union). On July 25, 2013, Patel left a voicemail

[7] Before its involvement at the Temple, Dipika's business consisted solely of operating the Super 8 motel.

message with Dipika's account manager at Roblin, stating: "I need to do a name, loss payee of Quincy Masonic Temple Associates, and this is something I need right away." One minute later, he also sent Roblin an e-mail message, which read: "I need ryder [sic] for dipika inc name quincy masonic Temple association loss payee." Roblin responded to Patel's e-mail message within one-half hour, transmitting a certificate of insurance for Dipika's current policy. A Roblin account manager also followed up the next day, sending an e-mail message to Patel asking, "What is the relationship between Quincy Masonic Temple Association and Dipika? Are they asking you for a certificate?" Patel received that message but never responded to it.

Several months later, two workers were on site, cutting metal, when a fire broke out.[8] The damage was extensive; the Masons, through their public adjuster, submitted a claim to their property insurer for over $12 million, only about one-half of which was paid out. Shortly after the fire, Patel notified Union and requested coverage under the Dipika policy.

[8] Dipika did not employ the workers who started the fire; rather, they worked for a company owned by the Grossman Trust's real estate manager. The record contains some evidence that Patel was involved in supervising them and paying for their work.

A tangle of litigation ensued. The Masons brought claims for negligence against Patel and Dipika, both in starting the fire and in failing to obtain proper insurance.[9] Dipika then brought third-party claims against Union, for wrongful denial of coverage, and Roblin, for, inter alia, professional negligence.[10] The Masons subsequently amended their complaint to also assert a number of claims against Union and Roblin,[11] and later moved to amend a second time to add a coverage claim against Dipika's umbrella policy insurer, Acadia Insurance Company (Acadia).

Union and Roblin filed motions for summary judgment against the Masons, Dipika, and Patel. A Superior Court judge granted

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[9] Dipika and the Masons settled these claims prior to this appeal. Union's and Roblin's oppositions to the resulting entry of separate and final judgment were overruled, a decision they now cross-appeal.

[10] Specifically, Dipika alleged four counts against Roblin: indemnification and contribution, breach of contract, negligence, and violation of G. L. c. 93A.

Dipika also impleaded the Grossman Trust and related entities and individuals for indemnification and contribution; those claims, too, settled prior to this appeal.

Additionally, Patel, acting in his individual capacity, brought claims that mirrored Dipika's. Our references to Dipika's claims and arguments should be understood to include Patel's.

[11] These included claims for breach of contract, violation of G. L. c. 93A, misrepresentation, coverage by estoppel, and negligence, and a request for a judgment declaring that the Masons' fire loss was covered under Dipika's policy.

summary judgment in favor of Union and Roblin on all counts.[12] This appeal followed.[13]

Discussion. We review the grant of summary judgment de novo, and in doing so examine "whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c), as amended, 436 Mass. 1404 (2002).

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[12] The motion judge concluded, and the parties on appeal agree, that the claims against Acadia rise or fall with the coverage determination under the Union primary policy. After finding no coverage, the judge denied as futile the Masons' motion to add Acadia as a party. To preserve their appellate rights, the Masons and Dipika then filed separate suits against Acadia, which were dismissed. Those two companion cases were consolidated with the main case for the purposes of this appeal.

[13] To summarize, the dismissed causes of action now before us are (1) the Masons' claims against Union for misrepresentation, negligence, and violations of G. L. c. 93A; (2) the Masons' claims against Roblin for misrepresentation and negligence; (3) the Masons' request for a declaratory judgment as to coverage; (4) Dipika's and Patel's claims against Roblin for indemnification and contribution, breach of contract, negligence, and violations of G. L. c. 93A; (5) Dipika's and Patel's claims against Union for indemnification and contribution, breach of contract, negligence, and violations of G. L. c. 93A; (6) Dipika's and Patel's request for a declaratory judgment as to coverage; (7) the Masons' claims against Acadia, mirroring those they brought against Union; and (8) Dipika's and Patel's claims against Acadia, mirroring those they brought against Union. Also before us are Union's and Acadia's cross appeals of the trial court's entry of a consent judgment between Dipika and the Masons.

1. Coverage under the policy. a. Scope of the base policy. Dipika's policy contains two distinct coverages, a commercial property part and a commercial general liability part. Dipika does not press a claim that the former applies, so we concern ourselves with the latter. The designation of the named insured is located on the policy's common declarations page, which expressly notes that the designation is part of the policy. The general liability coverage vows that the insurer will "pay those sums that the insured becomes legally obligated to pay as damages because of . . . 'property damage' to which this insurance applies." All agree that Dipika's fire-related losses would be qualifying sums; the disagreement is over whether the insurance applies to those losses.

The heart of the parties' dispute over the scope of coverage is the designation of the named insured as "Dipika Inc. dba Super 8." According to Dipika and the Masons, because use of a "dba" name does not create a separate legal entity, all of Dipika's activities are covered under the policy, whether related to the Super 8 or not.[14] In their view, "dba Super 8"

[14] Massachusetts appellate courts have not explicitly decided that a "dba" designation does not create a separate legal entity, but for the purposes of our decision we will assume, without deciding, that this is the case. See Roberts vs. Delta Air Lines, Inc., U.S. Dist. Ct., No. 07-cv-12154-DPW, n.3 (D. Mass. Dec. 4, 2008), aff'd 599 F.3d 73 (1st Cir. 2010) ("The designation 'd/b/a' typically describes an entity's

merely clarifies that the Weymouth Super 8 business was included within the broader Dipika coverage. Union's stance is that the identification of the named insured as "Dipika Inc. dba Super 8" means that the policy covers only liability arising from Dipika's activities doing business as the Super 8.

"The interpretation of an insurance policy is a question of law." Wilkinson v. Citation Ins. Co., 447 Mass. 663, 667 (2006). "The interpretation of an insurance contract is no different from the interpretation of any other contract, and we must construe the words of the policy in their usual and ordinary sense." Hakim v. Massachusetts Insurers' Insolvency Fund, 424 Mass. 275, 280 (1997). "If the language is clear and unambiguous, we must give effect to that language, without considering the underlying intent of the parties." Great Divide Ins. Co. v. Lexington Ins. Co., 478 Mass. 264, 267 (2017). Moreover, "we must read the language of an insurance policy as a whole," id. at 270, and, if possible, "every word in a policy should be given meaning," Vickodil v. Lexington Ins. Co., 412 Mass. 132, 138 (1992).

Applying these familiar principles, we decline the invitation of both parties to establish a bright-line rule that a "dba" designation means either everything or nothing. Rather,

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efforts to conduct business under another name [an alias], rather than describing a separate legal entity").

we decide the issue before us: does Dipika's policy cover losses stemming from the Temple fire? We need not determine the precise outer boundaries of the policy's coverage to conclude that it unambiguously does not.

Although "dba Super 8" may not be determinative on its own, this is not to say that its plain meaning is not an important consideration in our analysis. Here, the ordinary understanding of the phrase "doing business as Super 8" suggests that the policy covers only liability arising from Dipika's activities that it undertakes doing business as a Super 8. Even if the phrase "doing business as" does not operate to create a separate legal entity, see note 14, supra, that does not preclude it from being used in the ordinary sense, as here, to describe the ambit of a policy's coverage. See Hakim, 424 Mass. at 280. Notably, Dipika has not even argued that the Temple project was to create a new Super 8 or was in any way connected to its existing Super 8 business, and the record is devoid of any evidence of such.

Other language in the policy supports the conclusion that it affords no coverage for the Temple fire. For example, elsewhere in the policy declarations Dipika's "Business Description" is given as "Motel."[15] "General usage recognizes

[15] In exercising our duty to interpret the language of the policy as a whole, we have previously relied on provisions like business descriptions to determine the extent of a policy's coverage. See, e.g., Anderson's Case, 276 Mass. 51, 52-53

differences between conventional hotels and most motels." Gallagher v. Board of Appeals of Falmouth, 351 Mass. 410, 416 (1966). "A motel is more restrictive" and generally has direct access to rooms from outside. Id. A boutique hotel, on the other hand, has been defined "as a smaller, uniquely designed independent hotel that provides a high level of service to its guests and has a signature restaurant on site."[16] In re Miami Beach Hotel Investors LLC, 304 B.R. 532, 535 (Bankr. S.D. Fla. 2004). The performance of demolition and construction work to

(1931) ("on the face of the policy it would seem that only the employees of the hay, grain and feed business were insured; and it could have been found that [the insured] was not in the junk business when the policy was issued, that the insurer had no knowledge that the insured was in the junk business, that the wrecking of a power building was not part of the junk business"); People's Ice Co. v. Employers' Liab. Assur. Corp., 161 Mass. 122, 125 (1894) (policy of insured ice cutting business afforded no coverage for liabilities arising out of construction work because "the agreement between these parties [did] not refer to or include an operation of that character"). Accord Westfield Ins. Co. v. Vandenberg, 796 F.3d 773, 779 (7th Cir. 2015) (business designation, liability schedule, and incorporated application, when read together, limit scope of policy to described business).

[16] Indeed, that the policy does not extend to any "boutique hotel" at the Temple is underscored by the name after the "dba." Dipika is doing business as "Super 8," an internationally known affordable chain. See Wyndham Hotels & Resorts, Super 8 by Wyndham, https://corporate.wyndhamhotels.com/our-brands/super-8/ [https://perma.cc/UB2A-4H4Y]. See also Barnes vs. Marriott Hotel Servs., Inc., U.S. Dist. Ct., No. 15-cv-01409-HRL (N.D. Cal. Feb. 16, 2017) (taking judicial notice of hotel chain website); Mass. G. Evid. § 201(b) (2021).

transform the Temple into a "boutique hotel" is a significantly different business from operating a motel.

Additionally, we note that the policy indicates that its premium was based on the gross revenue generated at a single location, which could only have been the existing Super 8. This suggests to us that it should not provide coverage for liabilities arising from Dipika's activities at the Temple, which, as discussed, were of a different scope and nature from those of the Super 8.[17] Cf. Fidelity & Deposit Co. of Md. v. Charter Oak Fire Ins. Co., 66 Cal. App. 4th 1080, 1086 (1998) ("The insured's payment of a relatively small premium suggests that [the insurer] provided coverage for the relatively small risks associated with the ["dba" business], not the much larger risks associated with all of [the insured's] projects").

Taken together, these provisions clearly express that the policy does not cover Dipika's losses arising out of the Temple fire. Our analysis is similar to that undertaken by courts in

[17] A necessary implication of the Masons' and Dipika's proposed interpretation is that Dipika has coverage under the policy for a vast array of possible activities that are even more dissimilar to operating a Super 8 than its renovation of the Temple. Our decision today rests on the plain language of the insurance contract and not on any public policy considerations, but we are skeptical of an interpretation that would allow such an open-ended risk of liability, unforeseeable to the insurer at the time of contracting, for an insured's unilateral decision to undertake drastically different business ventures not even in existence at the time the policy was executed.

many other jurisdictions that have likewise relied on a "dba" designation alongside other policy details to determine that coverage did not extend to a largely unrelated enterprise. For example, the facts of Budget Rent-A-Car Sys., Inc. v. Shelby Ins. Group, 197 Wis. 2d 663 (Ct. App. 1995), are similar to the case at bar. There, the insured ran a video rental business and held a policy identifying the named insured as "Robert C. Smith, d/b/a Sunnyside Audio and Video." Id. at 668. Smith subsequently started a construction business, and after an accident during a renovation job saddled him with liability, he sought coverage under the policy. Id. Because the declarations page identified the named insured as Smith "d/b/a Sunnyside Audio and Video" and described his business as "video rental," the court held that there could be no coverage for risks arising from his construction business. Id. at 671.

Likewise, in Musselwhite v. Florida Farm Gen. Ins. Co., 273 So. 3d 251, 255 (Fla. Dist. Ct. App. 2019), the policy declaration page "identified 'JODH3, Inc. d/b/a Bell Feed & Farm' as the named insured and described the business as a 'feed store.'" Considering the plain language of these provisions, the court concluded that there was no coverage for liabilities incurred by the insured entity where those liabilities arose from its operation of "a well drilling business that did not exist when the policy terms were agreed upon." Id.

This is the only interpretation that appropriately lends meaning to the choice of the insurer and insured to include the "dba Super 8" language when designating the named insured.[18] See J.A. Sullivan Corp. v. Commonwealth, 397 Mass. 789, 795 (1986), quoting Charles I. Hosmer, Inc. v. Commonwealth, 302 Mass. 495, 501 (1939) ("every phrase and clause must be presumed to have been designedly employed, and must be given meaning and effect"). Cf. Gordon Chem. Co. v. Aetna Cas. & Sur. Co., 358 Mass. 632, 634, 638-639 (1971) (honoring express designation of three corporations as named insureds in declining to treat them as one entity). The Masons' and Dipika's interpretation, conversely, requires us to render "dba Super 8" wholly superfluous, which we cannot do.[19] See United States Fid. &

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[18] The dissent cites Green Mountain Ins. Co. v. Wakelin, 484 Mass. 222, 234 (2020), as requiring us to consider whether the insurer could have included more explicit limiting language in the policy. See post at note 5. This principle of construction may be useful in interpreting ambiguous terms, as was the case in the Green Mountain decision, but need not be employed here, where we see no similar ambiguity. See Mission Ins. Co. v. United States Fire Ins. Co., 401 Mass. 492, 499 (1988) (where policy language is clear, comparison "with a separate unrelated document[] does not justify construing [the] policy other than as written").

[19] We note that the identity of the insured is essential to determining the scope of coverage. See, e.g., Home Ins. Co. v. Liberty Mut. Fire Ins. Co., 444 Mass. 599, 607 (2005) (no coverage for employee leasing company under client company's policy where leasing company was not named insured under client's policy's plain language); Jacobs v. United States Fid. & Guar. Co., 417 Mass. 75, 79 (1994) ("for purposes of uninsured and underinsurance benefits, officers and employees of a

Guar. Co. v. Hanover Ins. Co., 417 Mass. 651, 658 n.5 (1994) (noting "[t]he better definition" of policy term is "the one which would not make [it] redundant"); Shea v. Bay State Gas Co., 383 Mass. 218, 225 (1981) ("It is neither reasonable nor practical to interpret the clause as being meaningless").

Trustees of Tufts Univ. v. Commercial Union Ins. Co., 415 Mass. 844 (1993), the principal case from this court that the Masons and Dipika cite in support of their interpretation, is in accord with our decision. There, the insurer disclaimed any duty to defend by arguing that the insured's loss was not contemplated by its general liability policy's schedule of hazards. Id. at 855-856. We observed that the policy unambiguously granted comprehensive coverage for property damage liability -- like the loss in question -- and "[n]owhere [did it] unambiguously provide that coverage is limited to the specific hazards listed in the schedule." Id. at 856. Thus, in that case, the insured prevailed because the plain language of the policy did not limit the scope of coverage as argued by the insurers. In the instant case, the insured cannot prevail

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corporation do not qualify as named insureds when the corporation is listed as the named insured"). By disregarding the plain language of the declarations pages and relying only on the coverage form to determine the scope of the policy, the dissent runs afoul of our customary directive to read "the insurance policy as a whole 'without according undue emphasis to any particular part over another.'" Hakim, 424 Mass. at 282 n.11, quoting Mission Ins. Co., 401 Mass. at 497.

because the plain language of the policy does limit the scope of coverage as argued by the insurers.[20,21]

b. Endorsements. The Masons and Dipika also argue that two endorsements to the commercial general liability policy expand coverage to include the Masonic Temple fire losses, pointing to schedules applying the endorsements to "ALL PROJECTS" and "ALL LOCATIONS." We disagree. The endorsements unambiguously raise the maximum dollar amount recoverable under the policy in certain circumstances, but -- equally

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[20] The Masons and Dipika also direct us to GRE Ins. Group v. Metropolitan Boston Hous. Partnership, 61 F.3d 79 (1st Cir. 1995), where an insured who inspected apartments was named as a defendant in tenant lawsuits alleging injurious exposure to lead. While that case is not binding on us, the court's approach there was the same as ours today. Reading the plain language of the policy as a whole, the court weighed certain references to the insured's home office against an endorsement that applied "anywhere in the world" and another that contemplated off-site liability, concluding that coverage was not limited to liabilities arising at the home office. See id. at 81-84. The named insured had no "dba" designation in the policy at issue; in the instant case, the different language of Dipika's policy dictates a different result.

[21] Because we do not find the relevant policy language to be ambiguous, we need not utilize additional interpretive tools. See Dorchester Mut. Ins. Co. v. Krusell, 485 Mass. 431, 437 (2020) ("we first must determine whether the term . . . is ambiguous; if it is, we proceed to consider how an objectively reasonable insured would interpret the term"); Great Divide Ins. Co., 478 Mass. at 269 ("we strive to effectuate not our own ideas about the language that could have been used to best effectuate the intent of the parties but, rather, the actual contract language").

unambiguously -- they do not affect what losses are covered in the first instance.

The first endorsement, titled "DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT," states that it "modifies insurance provided under the . . . COMMERCIAL GENERAL LIABILITY COVERAGE PART," and goes on to provide, in pertinent part:

> "For all sums which the insured becomes legally obligated to pay as damages caused by 'occurrences' under Section I - Coverage A . . . which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above[, a] separate Designated Construction Project Aggregate Limit applies to each designated construction project . . . ."

The schedule lists the designated construction projects as "ALL PROJECTS." The second endorsement is nearly identical, save that it substitutes "location" for "construction project"; it is titled "DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT," operates on occurrences attributable "only to operations at a single designated 'location,'" creates a "Designated Location General Aggregate Limit," and includes a schedule listing "ALL LOCATIONS" as designated locations.

A careful reading of the endorsements reveals that they do not expand the scope of coverage to encompass occurrences not otherwise covered. Rather, the endorsements operate exactly as advertised in their titles: they create separate general aggregate limits for occurrences at different locations or involving different construction projects. See United Specialty

Ins. Co. v. Tzadik Acquisitions, LLC, 859 Fed. Appx. 426, 427 (11th Cir. 2021) ("[T]he coverage limits for scheduled properties were subject to a Designated Locations General Aggregate Limit Endorsement (DLE). The DLE assigned each scheduled property its own liability limit"). Practically, and consistent with our interpretation of the scope of the policy's coverage, this means Dipika could enjoy a separate aggregate limit if, for example, it incurred liability while constructing a new building for its Super 8, or as a result of Super 8-related activities at a different location.[22] The endorsements do not, either by plain language or implication, affect what losses are covered in the first instance, and therefore do not extend coverage to include the Masonic Temple losses.

c. Application. Interpreting the policy language as a whole, we conclude that it provides no coverage for Dipika's liabilities associated with the fire at the Temple. Union therefore has no duty to indemnify Dipika for the resulting losses, and summary judgment on the claims against Union was proper.[23]

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[22] If, for example, a Dipika Super 8 employee's negligence at an out-of-State industry convention led to liability for Dipika, Dipika could benefit from a separate aggregate limit under the locations endorsement.

[23] As discussed in note 12, supra, our holding dictates that the denial of the motion to add Acadia in the primary case, and the dismissal of the two companion cases, were proper.

2. Duty to defend. Dipika argues that, whatever the ultimate determination of indemnity, Union was at least obligated to defend it against fire-related lawsuits. "An insurer has a duty to defend an insured when the allegations in a complaint are reasonably susceptible of an interpretation that states or roughly sketches a claim covered by the policy terms." Metropolitan Prop. & Cas. Ins. Co. v. Morrison, 460 Mass. 352, 357 (2011) (Metropolitan), quoting Billings v. Commerce Ins. Co., 458 Mass. 194, 200–201 (2010). "However, when the allegations in the underlying complaint lie expressly outside the policy coverage and its purpose, the insurer is relieved of the duty to investigate or defend the claimant" (quotations omitted). Metropolitan, supra at 357-358, quoting Billings, supra. Although "an insurer's duty to defend is independent from, and broader than, its duty to indemnify," Union had no duty to defend here. Metropolitan, supra at 357, quoting A.W. Chesterton Co. v. Massachusetts Insurers Insolvency Fund, 445 Mass. 502, 527 (2005). The factual allegations against Patel all concern the fire at the Masonic Temple. When matched to the policy's terms -- which, as discussed supra, unambiguously do not extend coverage to Dipika's activities at the Temple -- the allegations cannot reasonably supply even a rough sketch of a claim. See Herbert A. Sullivan, Inc. v. Utica Mut. Ins. Co., 439 Mass. 387, 395 (2003).

3. Dipika's claims against Roblin. Dipika insists that, should it be unable to recover from Union, its losses should instead fall upon Roblin. All Dipika's claims against Roblin, however, suffer from the same fundamental flaw: they are all premised on Patel requesting additional insurance for Dipika from Roblin. But even viewed in the light most favorable to Dipika, Patel's asking to add the Masons as a "loss payee" was not a request for insurance.[24] Brokers have a duty to obtain insurance coverage that their client asks them for, see Rae v. Air-Speed, Inc., 386 Mass. 187, 192 (1982), but Roblin cannot be liable for failing to procure insurance when there was no intelligible request for it to do so.

Dipika insists that Patel's communications should have nevertheless triggered a duty to inquire further, so that Roblin could have better understood what Patel wanted. Even if we were to put aside that Roblin did attempt to contact Patel again, and Patel never called Roblin back or otherwise responded, we think this asks too much of Roblin. We have never held that such proactive behavior is part of a broker's general duty of care;

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[24] Patel requested that the Masons be added as a "loss payee." Such a designation could act to redirect any payout under the policy, but would do nothing to expand the granted coverage. See Commerce Bank & Trust Co. v. Centennial Ins. Co., 388 Mass. 289, 291 (1983) ("the loss payee, who is not the insured, but is only a designated payee, can recover only what the insured is entitled to recover under the contract").

it aligns more closely with the heightened duty we apply when there exists "special circumstances of assertion, representation and reliance" between a broker and their client. Rapp v. Lester L. Burdick, Inc., 336 Mass. 438, 442 (1957). See Baldwin Crane & Equip. Corp. v. Riley & Rielly Ins. Agency, Inc., 44 Mass. App. Ct. 29, 32 (1997) (heightened duty "generally exists when the agent holds himself out as an insurance specialist, consultant or counselor and is receiving compensation for consultation and advice apart from premiums" [citation omitted]). Dipika concedes that no such special circumstances exist here, and we decline to impose a heightened duty in the absence of special circumstances. Summary judgment on Dipika's claims against Roblin was therefore warranted.

4. The Masons' claims against Roblin. The Masons also assert claims for misrepresentation and negligence against Roblin, premised on Roblin's sending of the certificate of insurance to Patel. These claims, too, must fail.

In the context of a liability policy like Dipika's, "a certificate of insurance is simply a form that is completed by an insurance broker or agent at the request of a policyholder to document the fact that an insurance policy has been written." Commonwealth v. Gall, 58 Mass. App. Ct. 278, 289 (2003). The one-page certificate furnished to Patel accurately describes his commercial general liability policy, lists the Masons as the

"Certificate Holder," and states on its face: "THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. . . . THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE . . . ."

In Quigley v. Bay State Graphics, Inc., 427 Mass. 455 (1998), the owner of a fire-destroyed building claimed that he was deceived into thinking he had coverage for his losses because his lessee's insurance agency had furnished him a certificate of insurance for the policy his lessee had taken out on the building. We held that no claim for misrepresentation could lie, for three independently sufficient reasons: (1) the certificate was accurate; (2) by its plain language, it did not apply to the losses in question; and (3) there was no evidence that the broker had actual knowledge that the owner would rely on the certificate as proof of coverage. Id. at 462. The decision in Quigley disposes of the misrepresentation claim here. The certificate Roblin furnished is accurate, and nothing on its face suggests that Dipika's existing coverage extended to the project at the Masonic Temple. Further, it is undisputed that, at the time the certificate issued, Roblin had no contact with the Masons, no knowledge about Dipika's relationship with them, and no awareness of Dipika's work at the Masonic Temple. The record is thus devoid of evidence that Roblin had actual

knowledge that the Masons "would rely on the certificate as confirming that [Dipika] had procured insurance to cover their interests . . . . The plain terms of the certificate stated otherwise."[25] Id.

The Masons' negligence claim against Roblin also suffers from fatal defects. "[I]n certain limited circumstances an agent's failure to procure insurance coverage may give rise to liability to a third party." Quigley, 427 Mass. at 459. But "a necessary prerequisite to a recovery under either tort or third-party contract liability is the existence of a promise by the agent to procure the insurance requested by the client" (emphasis added). Id. at 459-460. As discussed supra, there is no evidence that Dipika requested relevant insurance. Nor is there evidence that Roblin ever promised Dipika to obtain such

[25] The Masons also rely on Witkowski v. Richard W. Endlar Ins. Agency, Inc., 81 Mass. App. Ct. 785 (2012), for the premise that even a facially accurate certificate can be the basis for a misrepresentation claim if the context in which it was issued was misleading. Witkowski's facts are readily distinguishable from the case at bar. There, the plaintiff specifically asked the insurer for a certificate verifying flood insurance coverage for his condominium unit. Id. at 791. The certificate he received in response accurately listed that the condominium building master policies included flood coverage, but not that his unit was specifically excluded from that coverage. Id. In contrast, the Masons never had any interaction with Roblin, Patel never specifically requested from Roblin a certificate evincing coverage for the work at the Masonic Temple, and nothing on the face of the certificate suggests that such coverage existed.

insurance.[26] Without these necessary elements, Roblin owed no duty to the Masons.[27]

Conclusion. Summary judgment properly entered in favor of Union and Roblin, and the denial of the Masons' motion to amend their complaint was proper. The judgments are therefore affirmed. The judgments of dismissal in the two companion cases are also affirmed.

So ordered.

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[26] We reject the Masons' assertion that the sending of the insurance certificate could be construed as an "implied promise" to obtain coverage, given the undisputed facts that Dipika did not request coverage and that Roblin knew nothing about Dipika's relationship with the Masons, the project at the Masonic Temple, or any resulting obligation to procure insurance.

[27] Because we hold that neither Roblin nor Union is liable, we need not address their arguments regarding their standing to request a reasonableness hearing regarding the settlement between the Masons and Dipika.

BUDD, C.J. (dissenting in part). I agree with the court that summary judgment on the claims against Roblin Insurance Agency, Inc., was proper. However, I do not agree that the commercial general liability policy (policy) issued by Union Insurance Company (Union) to Dipika, Inc. (Dipika), unambiguously limits the operations covered by the policy to those associated with Dipika's Super 8 motel. The court infers that the scope of coverage is so limited based on language in the policy that does not reference the scope of coverage, and despite language elsewhere in the policy that expressly provides for coverage the court here denies. We previously have refused to grant summary judgment to an insurer in similar circumstances, see Trustees of Tufts Univ. v. Commercial Union Ins. Co., 415 Mass. 844, 856 (1993), and ought to do so here as well.

"As with any contract, in interpreting an insurance policy, we begin with the plain language of the policy." Holyoke Mut. Ins. Co. in Salem v. Vibram USA, Inc., 480 Mass. 480, 485 (2018), quoting Mount Vernon Fire Ins. Co. v. Visionaid, Inc., 477 Mass. 343, 348 (2017). The policy's coverage form states that Union "will pay those sums that the insured[1] becomes

[1] The policy specifies that "insured" refers to the insured entity designated in the declarations. That entity is Dipika. Neither Union nor the court contends otherwise.

legally obligated to pay as damages because of . . . 'property damage' to which this insurance applies." The policy has detailed provisions concerning the types of property damage to which the insurance expressly does and does not apply. The court does not dispute that the fire-related damage to the Masonic Temple in Quincy (Temple) is "'property damage' to which this insurance applies," nor that Dipika is the insured, see note 1, supra, and has accrued liability for this damage. Thus, applying the plain contractual language, Dipika's liability arising from the fire at the Temple falls within the policy's broad grant of coverage.

Concluding otherwise, the court asserts that the policy's coverage clearly does not encompass Dipika's liability arising from the fire at the Temple. Ante at . The court bases this conclusion on (1) the description of Dipika as "dba Super 8"[2] and

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[2] In the declarations, under the heading "named insured and address," the policy lists:

> Dipika Inc.
> dba Super 8
> 655 Washington Street
> Weymouth, MA 02188.

The phrase "dba Super 8" indicates that Dipika does business under the trade name "Super 8." See Providence Washington Ins. Co. v. Valley Forge Ins., 42 Cal. App. 4th 1194, 1200 (1996), quoting Duval v. Midwest Auto City, Inc. 425 F. Supp. 1381, 1387 (D. Neb. 1977), aff'd, 578 F.2d 721 (8th Cir. 1978) ("The designation 'd/b/a' means 'doing business as' but is merely descriptive of the person or corporation who does

of Dipika's business as "Motel" on the declarations page, and (2) the indication that the premium was calculated based on gross sales at a single location, presumably the Super 8 motel in Weymouth. Ante at . Notably, however, these aspects of the policy are not accompanied by any language indicating that they define the scope of coverage.

The stand-alone phrase "dba Super 8" means only "doing business as Super 8." See Providence Washington Ins. Co. v. Valley Forge Ins., 42 Cal. App. 4th 1194, 1200 (1996). The phrase itself says nothing about the scope of coverage under the policy. Compare American Family Mut. Ins. Co. v. Teamcorp., Inc., 659 F. Supp. 2d 1115, 1122, 1132 (D. Colo. 2009) (that insured's trade name was listed on declarations page did not, as matter of law, limit coverage to only those operations of insured associated with that name). Likewise, the stand-alone description of Dipika's business as "Motel" says nothing about the scope of coverage. See Mount Vernon Fire Ins. Co. v. Belize NY, Inc., 277 F.3d 232, 239 (2d Cir. 2002) (designation on declarations page of insured business as "carpentry" did not limit coverage to insured's carpentry operations). As a matter of plain language, both these descriptions are just descriptions: declarative statements that Dipika does business

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business under some other name"). The phrase "dba Super 8" neither appears nor is referenced anywhere else in the policy.

as "Super 8" and is in the motel industry.[3] For these descriptions to have an effect on coverage, they would need to be accompanied or referenced by language delineating the scope of coverage.[4,5]

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[3] I do not agree with the court that the inclusion of "dba Super 8" in the declarations is rendered "wholly superfluous" if not read as a limitation on the scope of coverage. Ante at . Rather, the phrase assists in identifying the insured by providing one of its names. See S. Plitt, D. Maldonado, & J.D. Rogers, 3 Couch on Insurance 3d § 40:4 (rev. ed. 2011) ("the purpose of [providing] a name [for the insured] is to designate a person"). It is logical that in the declarations, under the heading "named insured and address," the insured is identified by its corporate name as well as any name under which it does business.

[4] Although the declarations page undoubtedly is part of the policy, information provided in that portion of the policy cannot define the scope of coverage unless it does so expressly. Indeed, that Dipika's address is listed in the declarations does not mean that coverage is limited to liabilities arising from operations at that address.

[5] Union easily could have added such language to its policy. That it did not counsels against interpreting these stand-alone phrases as limiting coverage to Dipika's operation of its Super 8 motel. See Green Mountain Ins. Co. v. Wakelin, 484 Mass. 222, 234 (2020) ("where the insurer had the ability to include . . . language in its policy" that clearly would have excluded disputed loss from coverage and "failed to do so," court will not interpret policy to exclude coverage for such loss); Vermont Mut. Ins. Co. v. Zamsky, 732 F.3d 37, 44 (1st Cir. 2013) (applying Massachusetts law) (interpreting policy to cover specific liabilities where, had insurer wanted to exclude these risks from coverage, "it would have been child's play to say so," yet insurer had not). Compare Carlson v. Doekson Gross, Inc., 372 N.W.2d 902, 906 (N.D. 1985) ("any limitation on coverage should be accomplished by specific exclusions or endorsements to the policy, not by a limiting designation of the named insured"); Providence Washington Ins. Co., 42 Cal. App. 4th at 1202 ("We agree with the Carlson court that such a limitation cannot be fairly read in the designation of an

Similar reasoning applies to the portion of the policy indicating that the premium was calculated based off gross sales from the operation of Dipika's Super 8 motel. No language in the policy indicates that coverage is limited to those of Dipika's operations that Union factored into the calculation of the premium. Compare Mount Vernon Fire Ins. Co., 277 F.3d at 239 ("Mount Vernon contends that it calculated its premiums based on the number of Belize's employees engaged in carpentry. However, it failed to include in its Policy any indication that it limited its risk to carpentry operations. It therefore is precluded from denying coverage here").

Neither the "dba" designation, nor the business description, nor the premium calculation explicitly addresses the scope of coverage. Nevertheless, by interpreting these aspects of the policy as defining the scope of coverage, the court adds meaning not supplied by any of the policy's words -- something we typically avoid. See Massachusetts Insurers Insolvency Fund v. Premier Ins. Co. of Mass., 439 Mass. 318, 323 (2003) ("Although insurance provisions that are plainly

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individual as a 'dba', although coverage limited to certain business operations could be the subject of specific exclusions or endorsements"). Indeed, the policy contains a detailed list of exclusions, but none excludes liabilities arising from operations unassociated with Dipika's Super 8 motel.

expressed must be enforced, those that are conspicuously absent should not be implied" [citation omitted]).

The court appears to infer from these aspects of the policy that the parties contemplated only operations connected with the Super 8 motel when the policy was put in place. However, regardless of the specific risks that the parties may have contemplated, the coverage language that they agreed to explicitly provides for a broader scope of coverage -- and it is this language that binds them. Union may have intended to provide narrower coverage; however, "we strive to effectuate not our own ideas about the language that could have been used to best effectuate the intent of the parties but, rather, the actual contract language." Great Divide Ins. Co. v. Lexington Ins. Co., 478 Mass. 264, 269 (2017).[6] See Trustees of Tufts

[6] The court expresses concern that interpreting the scope of this policy's coverage in line with its plainly expansive coverage language will force general liability insurers to incur "open-ended risk of liability, unforeseeable to the insurer at the time of contracting, for an insured's unilateral decision to undertake drastically different business ventures not even in existence at the time the policy was executed." Ante at note 17. But that is precisely the risk that general liability insurers take on (unless they expressly provide otherwise). See Liberty Mut. Fire Ins. Co. v. Bizzack Constr., LLC, 259 F. Supp. 3d 451, 456 (W.D. Va. 2017), quoting Bituminous Cas. Corp. v. Kenway Contr., Inc., 240 S.W.3d 633, 638 (Ky. 2007) ("because the purpose of commercial general liability insurance is to 'provide broad comprehensive insurance . . . all risks not expressly excluded . . . are covered, including those not contemplated by either party'"). See also Quaker State Minit-Lube, Inc. v. Fireman's Fund Ins. Co., 868 F. Supp. 1278, 1295 (D. Utah 1994), aff'd, 52 F.3d 1522 (10th Cir. 1995); J.W.

Univ., 415 Mass. at 849, quoting Continental Cas. Co. v. Gilbane Bldg. Co., 391 Mass. 143, 147 (1984) ("We read the policy as written. We are not free to revise it").

We previously have refused to narrow coverage based on hints in a policy that the parties contemplated fewer risks than those encompassed by the policy's expansive coverage language. In Trustees of Tufts Univ., 415 Mass. at 855-856, we considered an insurer's argument that coverage under its general liability policy was limited to those risks included in the policy's schedule of hazards. We rejected this argument even though such schedules indicate those risks that an insurer contemplated when a policy was drafted, reasoning that "[n]owhere d[id] the policy unambiguously provide that coverage is limited to the specific hazards listed in the schedule." Id. at 856. Likewise here, even though the "dba" designation, business description, and premium calculation indicate that Union contemplated the risks associated with Dipika's operation of its Super 8 motel when this policy was drafted, nowhere does the policy unambiguously state that coverage is limited to those operations.

Stempel & E.S. Knutsen, 2 Stempel & Knutsen on Insurance Coverage § 14.01(C) (4th ed. & Supp. 2021-1) (unless policy expressly provides otherwise, insurer "accepts the risk that [a] policyholder's operations will expand or diversify along with the risk that these expanded or diversified activities will result in lawsuits, settlements, and adverse judgments").

At a minimum, it is not unreasonable to interpret the policy as covering the fire-related damages at the Temple in line with the policy's express coverage language. Thus, although the "dba" designation, business description, and premium calculation may hint at the parties' contrary intention, these clues at most render the policy's scope of coverage ambiguous. See Dorchester Mut. Ins. Co. v. Krusell, 485 Mass. 431, 437 (2020), quoting Citation Ins. Co. v. Gomez, 426 Mass. 379, 381 (1998) (policy language "is ambiguous where 'it is susceptible of more than one meaning and reasonably intelligent persons would differ as to which meaning is the proper one'").[7]

Because the policy nowhere expressly provides that coverage is limited to operations associated with Dipika's Super 8 motel, this interpretation cannot form the basis of summary judgment in favor of Union. See Trustees of Tufts Univ., 415 Mass. at 856. Accordingly, I dissent from the court's affirmance of the order granting summary judgment on the claims against Union and the denial of the motions to add Acadia as a defendant. I instead

[7] I note, however, that any such ambiguities must be "interpreted against the insurer who" drafted the unclear policy "and in favor of the insured." Dorchester Mut. Ins. Co., 485 Mass. at 437, quoting Allmerica Fin. Corp. v. Certain Underwriters at Lloyd's, London, 449 Mass. 621, 628 (2007). See Trustees of Tufts Univ., 415 Mass. at 849, quoting Hazen Paper Co. v. United States Fid. & Guar. Co., 407 Mass. 689, 700 (1990) ("where 'there are two rational interpretations of policy language, the insured is entitled to the benefit of the one that is more favorable to it'").

would vacate the order granting summary judgment on the claims against Union and remand for the Superior Court's reconsideration.[8] Insofar as the court affirms this order, I dissent.

[8] I would therefore also vacate the Superior Court's order denying the motion by Masonic Temple Association of Quincy, Inc., to add Acadia Insurance Company (Acadia) as a defendant (or alternatively dismissing the independent actions against Acadia), because the claims against Acadia have merit to the same extent as those against Union.