

Affirmed and Opinion filed March 31, 2026.



In The

Fourteenth Court of Appeals

NO. 14-24-00724-CV

HOUSTON LIVESTOCK SHOW AND RODEO, INC., Appellant

V.

NATIONAL FIRE & MARINE INSURANCE COMPANY, Appellee

**On Appeal from the 55th District Court
Harris County, Texas
Trial Court Cause No. 2020-64224**

O P I N I O N

An insured appeals the trial court's summary-judgment orders dismissing its breach-of-contract and extracontractual claims. Concluding that the summary-judgment evidence proves as a matter of law that the pollution and contamination exclusion applies to preclude coverage for the loss in question, that the insured has not alleged any injury independent of the policy benefits, and that therefore the insured's extra-contractual claims fail as a matter of law, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant/plaintiff Houston Livestock Show and Rodeo (“HLSR”) is a Texas non-profit corporation that runs one of the largest livestock shows and rodeos in the world. The Houston Livestock Show and Rodeo (“Houston Rodeo”) takes place annually beginning in February and continuing through March.

In recent years the Houston Rodeo has been conducted at NRG Park. HLSR rents NRG Park from the Harris County Sports & Convention Corporation (“Convention Corporation”). The Convention Corporation obtained property insurance from various insurers, including appellee/defendant National Fire & Marine Insurance Company (“National Fire”). Different insurers participated in coverage at the primary layer and at different levels. HLSR was designated as an additional insured.

The 2020 Houston Rodeo was scheduled to run from March 3, 2020 until March 22, 2020, but was cut short on March 11, 2020, after a rodeo patron developed COVID-19.¹ The City of Houston issued a quarantine order that prohibited access to the NRG Park Complex and forced HLSR to shut down the 2020 Houston Rodeo, allegedly resulting in millions of dollars of lost income to HLSR. HLSR sought coverage for its alleged business-interruption losses as an additional insured under Commercial Property policy No. 42-PRP-302377-04 issued by National Fire to the Convention Corporation (the “Policy”).

HLSR filed suit against National Fire and other insurers, asserting claims for breach of contract, breach of the covenant of good faith and fair dealing, violations of chapters 541 and 542 of the Texas Insurance Code, and an alleged claim for conspiracy to breach the covenant of good faith and fair dealing. In its live petition when the trial court granted summary judgment, HLSR sought coverage only

¹ COVID-19 is a communicable disease caused by the SARS-CoV-2 virus.

under section 2B of the Policy² and section 2C of the Policy.³ HLSR had previously sought coverage based on section 8 of the Policy which states that the Policy “insures against all risk of **direct physical loss or damage** to property including General Average, salvage, and all other charges on shipments issued hereunder except as hereinafter excluded.”⁴ But HLSR dropped this part of its claims in its live petition.

National Fire filed an amended traditional motion for summary judgment (“First Motion”) seeking judgment as to all of HLSR’s claims on the following grounds: (1) all coverages in the Policy require direct physical loss or damage to covered property, but HLSR has not alleged direct physical loss or damage to covered property and the presence of the COVID-19 virus on the property does not constitute direct physical loss or damage to the property; (2) coverage is excluded under the Policy’s Pollution and Contamination Exclusion (“Contamination Exclusion”) and the Policy’s Biological or Chemical Substances Exclusion Endorsement (“Biological Exclusion”); and (3) because there is no coverage and HLSR has not alleged any independent injury, HLSR’s extra-contractual claims fail as a matter of law.

HLSR filed a motion for partial summary judgment, which was a cross-motion arguing that there was coverage under the Policy as a matter of law (“Second Motion”). National Fire filed another traditional motion for summary judgment as to the extra-contractual claims (“Third Motion”). In this motion

² Section 2B is a single sentence: “This policy is extended to insure loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6., access to property is impaired by order or action of civil or military authority.”

³ Section 2C is also a single sentence: “This policy is extended to insure loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6., ingress to or egress from real or personal property is impaired.”

⁴ Emphasis added.

National Fire repeated its argument that there could be no extra-contractual liability because there was no coverage and added an argument that even if there was coverage, there was evidence establishing a *bona fide* coverage dispute and therefore HLSR could not demonstrate bad faith.

After supplemental briefing the trial court granted the First and Third Motions and denied the Second Motion. Because HLSR had settled its claims against all of the other insurers, these rulings constituted a final judgment, from which HLSR timely appealed.

II. ISSUES AND ANALYSIS

A. Did the trial court err by impliedly granting summary judgment as to the breach-of-contract claims on the ground that there is no coverage under the Policy as a matter of law based on the Contamination Exclusion?

We presume for the sake of argument that direct physical loss or damage to property is not required for there to be coverage under Sections 2B and 2C and that each of these sections is an insuring clause independent of Section 8.

In its second issue HLSR asserts that the trial court erred in granting summary judgment to National Fire and denying summary judgment to HLSR on coverage based on the Contamination Exclusion and the Biological Exclusion because these exclusions do not apply to the extensions of coverage under Sections 2B and 2C. HLSR also argues that these two exclusions may not be rewritten under the guise of “mutual mistake,” which National Fire raised in the trial court.

Texas courts generally interpret insurance policies under the same rules of construction that apply to other contracts, reading all parts of an insurance policy together and viewing the policy in its entirety to give effect to the written expression of the parties’ intent. *Balandran v. Safeco Ins. Co. of Am.*, 972 S.W.2d

738, 740–41 (Tex. 1998). Applying the ordinary rules of contract construction to insurance policies, this court must ascertain the parties’ intent by looking only to the four corners of the policy to see what the policy states without considering what the parties allegedly meant. *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 747 (Tex. 2006); *Williams Consol. I, Ltd./BSI Holdings, Inc. v. TIG Ins. Co.*, 230 S.W.3d 895, 902 (Tex. App.—Houston [14th Dist.] 2007, no pet.). This court seeks to give effect to all of the policy’s provisions so that none will be meaningless. *See Gilbert Tex. Const., L.P. v. Underwriters at Lloyd’s London*, 327 S.W.3d 118, 126 (Tex. 2010). We give a term not defined in the Policy its plain, ordinary, and generally accepted meaning unless the Policy itself shows the term to be used in a technical or different sense. *See id.*

If this court can ascertain only one reasonable meaning of the policy provision, then we will not adjudge the insurance contract ambiguous, and will enforce it as written. *Fiess*, 202 S.W.3d at 746; *State Farm Fire & Cas. Co. v. Vaughan*, 968 S.W.2d 931, 933 (Tex. 1998). But, if the words are prone to more than one reasonable interpretation, the court will deem the contract ambiguous. *See Kelley-Coppedge, Inc. v. Highlands Ins. Co.*, 980 S.W.2d 462, 464 (Tex. 1998). A policy is not ambiguous simply because the parties disagree about its meaning. *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 893 (Tex. 2017); *RSUI Indem. Co. v. Lynd Co.*, 466 S.W.3d 113, 119 (Tex. 2015). For an ambiguity to exist, both sides’ interpretations must be reasonable. *Great Am. Ins. Co.*, 512 S.W.3d at 893. If only one party’s interpretation of the policy is reasonable, then the court will find the policy unambiguous and adopt the reasonable interpretation. *Nassar v. Liberty Mut. Fire Ins. Co.*, 508 S.W.3d 254, 258 (Tex. 2017). Like all contracts, an insurance policy is ambiguous if, “after applying the pertinent rules of contract interpretation,” its language is susceptible to two or more reasonable interpretations. *Id.* A provision of the Policy provides that regardless of who may

have drafted or prepared the Policy, or any portions thereof, the Policy’s provisions shall be deemed to have been authored by National Fire. The rule that any ambiguity is construed against the drafter does not apply until after an ambiguity has been found in the Policy. *See Piranha Partners v. Neuhoff*, 596 S.W.3d 740, 749 (Tex. 2020).

We first examine whether the trial court erred by impliedly granting summary judgment as to the breach-of-contract claims on the ground that there is no coverage under the Policy as a matter of law based on the Contamination Exclusion. Policy Endorsement BH-4, entitled “Pollution, Contamination, Debris Removal Exclusion Endorsement,” provides that (1) **“THIS ENDORSEMENT CHANGES THE POLICY”**;⁵ (2) **“This endorsement modifies insurance provided under the following: COMMERCIAL PROPERTY POLICY”**;⁶ and (3) “This endorsement . . . [f]orms a part of [the Policy].” The part of this endorsement that contains the Contamination Exclusion provides in its entirety as follows:

2. Pollution and Contamination Exclusion

This policy does not cover loss or damage caused by, resulting from, contributed to[,], or made worse by actual, alleged[,], or threatened release, discharge[,], escape[,], or dispersal of CONTAMINANTS or POLLUTANTS, all whether direct or indirect, proximate or remote[,], or in whole or in part caused by, contributed to[,], or aggravated by any physical damage [i]nsured by this policy.

Nevertheless, if fire is not excluded from this policy and a fire arises directly or indirectly from seepage or contamination or pollution, any loss or damage insured under this policy arising directly from that fire is insured, subject to the provisions of this policy.

⁵ Emphasis and all caps in the original.

⁶ Emphasis and all caps in the original.

CONTAMINANTS OR POLLUTANTS means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals[,] and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, **including but not limited to, bacteria, fungi, virus**, or hazardous substances as listed in the Federal Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act or as designated by the U. S. Environmental Protection Agency. Waste includes materials to be recycled reconditioned or reclaimed.

This exclusion shall not apply when loss or damage is directly caused by fire, lightning, aircraft [i]mpact[,] explosion[,] riot, civil commotion, smoke, vehicle impact, windstorm, hail, vandalism, [or] malicious mischief. This exclusion shall also not apply when loss or damage is directly caused by leakage or accidental discharge from automatic fire protective systems.⁷

The Contamination Exclusion is not a model of clarity. *See Baylor College of Medicine v. XL Ins. Am., Inc.*, No. 14-22-00145-CV, 2024 WL 438019, at *2–4 (Tex. App.—Houston [14th Dist.] Feb. 6, 2024, no pet.) (interpreting a substantially similar exclusion) (mem. op.). This exclusion provides that “CONTAMINANTS OR POLLUTANTS” as used in the exclusion “means any solid, liquid, gaseous or thermal irritant or contaminant, . . . which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder. . . .” Under this language, to fall within the definition of “CONTAMINANTS OR POLLUTANTS,” a “solid, liquid, gaseous or thermal irritant or contaminant” must after its release be able to cause or threaten damage to human health or human welfare or must cause or threaten damage, deterioration, loss of value, marketability or loss of use to property insured under the Policy. *See*

⁷ Emphasis added.

id. This text is followed by the final phrase “including but not limited to, bacteria, fungi, virus, or [various hazardous substances].” “[B]acteria, fungi, virus, or [various hazardous substances]” are neither “property insured [under the Policy]” nor “damage, deterioration, loss of value, marketability or loss of use to property insured [under the Policy]; rather “bacteria, fungi, virus, or [various hazardous substances]” are things that after their release can “cause or threaten damage to human health or human welfare.” *See id.* at *3. Therefore, this final phrase must modify “any solid, liquid, gaseous or thermal irritant or contaminant, . . . which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder. . . .” *See id.* at *2–3. The only reasonable interpretation of the Contamination Exclusion is that “bacteria, fungi, virus, or [various hazardous substances]” are listed as additional types of “solid, liquid, gaseous or thermal irritant[s] or contaminant[s] . . . which after [their] release can cause or threaten damage to human health or human welfare or cause[] or threaten[] damage, deterioration, loss of value, marketability or loss of use to property insured [under the Policy]. . . .” *See id.* Thus, under the plain text of the Contamination Exclusion a virus, including the SARS-CoV-2 virus that causes COVID-19, is a “solid, liquid, gaseous or thermal irritant or contaminant” that falls within the definition of “CONTAMINANTS OR POLLUTANTS” as used in the exclusion. Under the unambiguous language of the exclusion, the Policy “does not cover loss or damage caused by, resulting from, contributed to[,], or made worse by actual, alleged[,], or threatened release, discharge escape or dispersal of” a virus, including the SARS-CoV-2 virus. *See id.* at *2–4.

In its live pleading HLSR alleges that before March 11, 2020, individuals visiting the NRG Park Complex Property that is covered under the Policy

(“Property”) “unknowingly carried COVID-19 onto the premises.” HLSR asserts that on March 11, 2020, Dr. David Persse of the Public Health Authority for the City of Houston Health Department issued a “Health Order to Quarantine the NRG Park Complex Property,” which required HLSR and the Convention Corporation to prohibit persons from entering the Property. According to HLSR, the City of Houston determined that the Property “is . . . infected or contaminated with SARS-CoV-2. . . requiring a quarantine of the [Property].” HLSR contends that by order of the civil authorities, HLSR and the Convention Corporation had to immediately end the 2020 Houston Rodeo prematurely due to a valid civil quarantine order specific to the Property. HLSR claims that it suffered a total loss of business income as a result for the remainder of the 2020 Rodeo Season, which HLSR seeks to recover as a covered loss under the Policy. As a matter of law this alleged loss or damage was caused by, resulted from, or was made worse by the actual, alleged, or threatened release, discharge, escape, or dispersal of the SARS-CoV-2 virus, which falls with the definition of “CONTAMINANTS or POLLUTANTS” in the Contaminant Exclusion. *See id.* As a matter of law the loss or damage for which HLSR seeks coverage under the Policy falls within the scope of this exclusion, and therefore HLSR’s alleged loss is not covered under the Policy. *See id.*

HLSR argues that National Fire did not have to use the phrase “loss, damage or an event not excluded in Clause 6” in either section 2B or section 2C, and HLSR discusses other language that could have been used in place of this phrase. But the fact that National Fire could have used different language does not instruct our construction of the language National Fire actually used. Courts “should not ignore what is, based on what might have been.” *See Air Routing Int’l Corp. (Canada) v. Britannia*, 150 S.W.3d 682, 700 (Tex. App.–Houston [14th Dist.] 2004, no pet.).

HLSR acknowledges this court’s *XL Insurance* precedent but claims that it is

not on point because that case did not involve an insuring clause like section 2B or section 2C. *See XL Ins. Am., Inc.*, 2024 WL 438019, at *2–4. HLSR contends that these sections “only reference ‘loss, damage, or an event not excluded in Clause 6,’” so Clause 6 must be the only exclusion that applies.⁸ According to HLSR any other construction of this language would make meaningless the phrase “loss, damage, or an event not excluded in Clause 6.”

HLSR’s interpretation of the Policy is not reasonable. Section 8 states that the Policy “insures against all risk of **direct physical loss or damage** to property”⁹ and mentions no exclusion, but that does not mean that no exclusions apply. Under the plain text of the Contamination Exclusion, this exclusion applies to all coverage in the Policy. In addition, the references in section 2B and section 2C to Clause 6 are not references to an exclusion of coverage that applies to either section; rather these references are part of the description of what falls within the insuring clauses in these sections. In section 2B the Policy is extended to insure (A) “loss sustained,” (B) “during the time period when,” (C) “access to property is impaired by order or action of civil or military authority,” (D) “as a result of loss, damage or an event not excluded in Clause 6.” In section 2C the Policy is extended to insure (A) “loss sustained,” (B) “during the time period when,” (C) “ingress to or egress from real or personal property is impaired,” (D) “as a result of loss, damage or an event not excluded in Clause 6.” The phrase “as a result of loss, damage or an event not excluded in Clause 6” is not a statement that the only exclusions from coverage that apply are those stated in Clause 6. Instead this phrase specifies that to fall within these insuring clauses the loss must be sustained “as a result of loss, damage or an event not excluded in Clause 6.” Thus this phrase

⁸ As will be discussed later, it is unclear what, if anything “Section 6” refers to.

⁹ Emphasis added.

is not meaningless even though it does not limit the exclusions that apply to section 2B or section 2C.

The Contamination Exclusion provides that it applies to the entire Policy, and neither section 2B nor section 2C provide otherwise. Under the unambiguous language of sections 2B and 2C, neither section provides that Clause 6 is the only applicable exclusion or that the Contamination Exclusion does not apply. Therefore, the Contamination Exclusion applies to coverage under sections 2B and 2C.¹⁰ *See XL Ins. Am., Inc.*, 2024 WL 438019, at *2–4.

Section 2B extends the Policy to insure loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6, access to property is impaired by order or action of civil or military authority. Section 2C extends the Policy to insure loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6, ingress to or egress from real or personal property is impaired. Nonetheless, coverage under the Policy is excluded to the extent the Contamination Exclusion or any other exclusion in the Policy so provides. Under the plain text of the Contamination Exclusion, this provision does not exclude all of the coverage provided under section 2B or Section 2C. Thus, giving effect to this exclusion does not make section 2B or

¹⁰ To resolve this issue the court need not decide what the reference to Clause 6 in section 2B or section 2C means. This reference appears to be one of several scrivener’s errors in the Policy. Clause 6 in the main body of the Policy addresses National Fire’s liability in the event of loss or damage to buildings or structures insured under the Policy that causes the enforcement of any law or ordinance regulating the construction, repair or use of the property. Clause 6.E provides that “[n]o liability is assumed under [Clause 6] for any increase of loss associated with the enforcement of any law or ordinance which requires the Insured or others to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of Pollutants.” Clause 6.F provides that “[n]o liability is assumed under [Clause 6] for any increase of loss incurred to install process improvements or process modifications to property, when either is required or performed to comply with either OSHA regulations or other similar work[]place safety regulations or EPA regulations or other similar environmental regulations.”

section 2C meaningless.

We conclude that the trial court did not err by impliedly granting summary judgment as to the breach-of-contract claims on the ground that there is no coverage under the Policy as a matter of law based on the Contamination Exclusion. *See id.* Therefore, to the extent HLSR argues under the second issue that the trial court erred by impliedly granting summary judgment as to the breach-of-contract claims on the ground that there is no coverage under the Policy based on the Contamination Exclusion, we overrule the second issue. We need not and do not address whether the trial court's summary judgment as to the breach-of-contract claims may be affirmed based on the Biological Exclusion or National Fire's mutual mistake argument.

B. Did the trial court err in granting summary judgment as to the extra-contractual claims?

In its third issue HLSR asserts that the trial court erred in granting summary judgment as to its extra-contractual claims because National Fire did not conclusively defeat coverage under the Policy. We have concluded that the trial court did not err in granting summary judgment in National Fire's favor on the coverage issue, and HLSR has not alleged any injury independent of the Policy benefits. Therefore, HLSR's extra-contractual claims fail as a matter of law because its breach-of-contract claims fail as a matter of law. *See USAA Texas Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 490, 499–501 (Tex. 2018). We overrule the third issue.¹¹

¹¹ We need not and do not address the first issue, in which HLSR asserts that the trial court erred in granting summary judgment in favor of National Fire on the ground that there is no coverage based on an absence of “direct physical loss or damage.”

III. CONCLUION

HLSR has not shown that the trial court erred in granting summary judgment as to its breach-of-contract claims or as to its extra-contractual claims. Therefore, we affirm the trial court's judgment.

/s/ Randy Wilson
 Justice

Panel consists of Justices Wilson, Hart, and McLaughlin.