

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 2, 2026

Christopher M. Wolpert
Clerk of Court

GENEVA ROCK PRODUCTS, INC.,

Plaintiff - Appellant,

v.

QBE INSURANCE CORPORATION,

Defendant - Appellee.

No. 25-4105
(D.C. No. 2:23-CV-00424-DAK)
(D. Utah)

ORDER AND JUDGMENT*

Before **PHILLIPS** and **MORITZ**, Circuit Judges, and **GARCIA**, District Judge.**

This case concerns whether QBE Insurance Corporation must provide insurance coverage for two employment-discrimination claims filed against Geneva Rock Products, Inc. QBE prevailed below, obtaining summary judgment on the grounds that Geneva did not give timely notice of the discrimination claims under the relevant insurance policy and that QBE did not have to demonstrate prejudice from the untimely notice before relying on untimely notice to deny coverage.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

** The Honorable Matthew L. Garcia, United States District Judge for the District of New Mexico, sitting by designation.

We reverse. Under Utah law, an insurer generally must demonstrate prejudice before denying coverage based on untimely notice, and the statutory exception to that rule does not apply to the policy at issue. QBE must therefore show prejudice from the untimely notice before relying on untimeliness to deny coverage. And because the district court never ruled on prejudice, we remand for further proceedings.

Background

Among other things, the policy at issue provides coverage for certain employment-discrimination claims asserted against Geneva. The relevant section of the policy declares that it “provides *claims[-]made coverage*, which applies only to claims first made against the insureds during the policy period.” App. vol. 1, 247 (cleaned up) (emphasis added). And its insuring clause specifies that QBE “shall pay, on behalf of an [i]nsured, [l]oss on account of a [c]*laim first made* during the [p]olicy [p]eriod.” *Id.* at 248 (cleaned up) (emphasis added).

The policy separately discusses Geneva’s responsibility of providing notice of claims made against it. It states that Geneva’s notice “shall be given in writing to” QBE’s physical address or email. *Id.* at 239. The policy also provides two possible deadlines for Geneva to report claims made against it: an as-soon-as-practicable deadline and a final deadline of 60 days following the policy’s expiration or termination. Only the latter is relevant here: “in no event shall any notice be provided later than[,], if the applicable [l]iability [c]overage [p]art expires (or is otherwise terminated) without being renewed with the [i]nsurer, 60 days after the effective date of such expiration or termination.” *Id.* at 237.

Here, the policy terminated or expired on August 21, 2018. According to QBE, it first received written notice of the two employment-discrimination claims against Geneva in April 2021—over two years after the reporting deadline. QBE thus declined to defend or indemnify Geneva in those matters on untimeliness grounds.

Geneva sued QBE in Utah state court, asserting claims for breach of contract, fiduciary duty, and the implied covenant of good faith and fair dealing. Geneva also sought a declaratory judgment obligating QBE to pay covered losses arising out of the underlying employment matters. QBE removed the action to federal court, and both parties moved for summary judgment. The district court found that QBE did not receive proper notice of the claims until April 2021, that such notice was untimely and thus did not trigger coverage, and that QBE was not required to demonstrate prejudice to deny coverage because the policy was a claims-made policy. It accordingly entered summary judgment in QBE’s favor on all Geneva’s claims.

Geneva appeals.

Analysis

“We review summary judgment de novo, applying the same legal standard as the district court.” *Dyno Nobel v. Steadfast Ins. Co.*, 85 F.4th 1018, 1024–25 (10th Cir. 2023) (quoting *Gutierrez v. Cobos*, 841 F.3d 895, 900 (10th Cir. 2016)). That means “we ‘view the facts in the light most favorable to the party opposing the motion, drawing all reasonable inferences in the opposing party’s favor.’” *Id.* at 1025 (cleaned up) (quoting *Cyprus Amax Mins. Co. v. TCI Pac. Commc’ns, LLC*, 28 F.4th 996, 1006–07 (10th Cir. 2022)). Summary judgment is proper when “the movant

shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

The parties agree that Utah law applies here. Utah treats “[i]nsurance policies [as] contracts between the insurer and the insured,” and courts interpret them accordingly. *Ohio Cas. Ins. Co. v. Unigard Ins. Co.*, 268 P.3d 180, 184 (Utah 2012). Utah courts aim to effectuate the parties’ intentions as expressed by “the language they chose to use in the contract,” considered ““in accordance with the usual and natural meaning of the words, and in the light of existing circumstances, including the purpose of the policy.”” *Compton v. Houston Cas. Co.*, 393 P.3d 305, 310 (Utah 2017) (quoting *Doctors’ Co. v. Drezga*, 218 P.3d 598, 603 (Utah 2009)). Similarly, when interpreting statutes, Utah courts aim to ““evince the true intent and purpose of the [l]egislature,”” based on “a statute’s plain language.” *Midwest Fam. Mut. Ins. v. Hinton*, 567 P.3d 524, 533 (Utah 2025) (quoting *Truck Ins. Exch. v. Rutherford*, 395 P.3d 143, 145 (Utah 2017)). They won’t “infer substantive terms into the text that are not already there.” *Zilleruelo v. Commodity Transporters, Inc.*, 506 P.3d 509, 514 (Utah 2022) (quoting *Berrett v. Purser & Edwards*, 876 P.2d 367, 370 (Utah 1994)).

With this background, we turn to the statutes at issue here. Utah has specific provisions governing when an insurer may deny coverage based on an insured’s untimely notice of a claim made against the insured.¹ Broadly, Utah Code Ann.

¹ Of course, these statutes only come into play *if* Geneva’s notice was untimely. The district court concluded as much, and Geneva fails to meaningfully challenge that ruling on appeal, twice listing it as an issue on appeal but analyzing it only in a footnote. So we decline to consider Geneva’s inadequately presented

§ 31A-21-312(1)(b) provides that an insured’s failure to give required notice “within the time specified in the policy does not invalidate a claim . . . if the insured shows that it was not reasonably possible to give the notice . . . within the prescribed time and that notice was given . . . as soon as reasonably possible.” More to the point, the same statute provides that “[f]ailure to give notice . . . as required by [s]ubsection (1)(b) *does not bar recovery* under the policy *if the insurer fails to show it was prejudiced* by the failure.” § 31A-21-312(2) (emphases added). However, a separate Utah statute creates an exception to this notice-prejudice rule, specifying that “[§] 31A-21-312(1) may not be construed to extend the normal provisions of [1] *any claims-made coverage* [2] that required notice of an occurrence or claim *prior to the expiration of the policy* for coverage to be in force.” Utah Code Ann. § 31A-22-203 (emphases added).²

The parties here agree that the policy provides “claims-made coverage.”³ *Id.* Geneva’s policy both declares that it is a claims-made policy and states that coverage

timeliness argument and proceed from the premise that its notice was untimely. *See Pharm. Care Mgmt. Ass’n v. Mulready*, 78 F.4th 1183, 1204–05 (10th Cir. 2023) (finding argument presented in a single footnote waived via inadequate briefing).

² Section 31A-22-203, by its terms, only specifically references § 31A-21-312(1). But the district court reasoned that the exception also applies to the prejudice requirements set forth in § 31A-21-312(2). The only case that appears to have addressed this issue accords with that interpretation. *See Westport Ins. v. Ray Quinney & Nebeker*, No. 07-CV-236, 2009 WL 2474005, at *10 (D. Utah Aug. 7, 2009) (unpublished). And because the parties don’t urge a different interpretation, we accept it here.

³ Broadly speaking, a claims-made policy is one “that protects the insured against claims made during a specified period, regardless of when the incidents that gave rise to the claims occurred.” *Insurance Policy*, Black’s Law Dictionary (12th ed. 2024); *see also AOK Lands, Inc. v. Shand, Morahan & Co.*, 860 P.2d 924, 926 (Utah

applies only to claims “*first made during* the [p]olicy [p]eriod.”⁴ App. vol. 1, 52 (cleaned up) (emphasis added).

This appeal thus concerns the second question posed by the exception in § 31A-22-203: whether the policy “require[s] notice of a[] . . . claim *prior to the expiration of the policy* for coverage to be in force” or, instead, permits coverage for certain claims that Geneva reports to QBE after the policy expires. To answer that question, we look at the policy language, which provides that in the event of policy nonrenewal or termination, “in no event shall any notice be provided later than . . . 60 days after the effective date of such expiration or termination.” App. vol. 1, 237. Notably, this 60-day grace period means notice prior to expiration is *not* required “for coverage to be in force.” § 31A-22-203. Rather, under this policy, notice after expiration doesn’t dispositively defeat coverage. Instead, coverage remains in force for claims made against the insured during the policy period but reported to the insurer within 60 days after the expiration of the expired and not-renewed policy.⁵

Faced with the facts here—that is, that the policy doesn’t provide the “expiration of the policy” language required for application of § 31A-22-203’s

1993) (explaining that “[t]he typical claims-made policy provides insurance coverage for acts or omissions occurring either before or during the term of the policy, provided the claim is discovered and reported [by the insured] during the same policy term”).

⁴ It’s undisputed that the two employment-discrimination claims at issue here were made against Geneva during the policy period.

⁵ On that point, we reject Geneva’s argument that § 31A-22-203 doesn’t apply because the insuring clause doesn’t require notice as a precondition to coverage. As the district court reasoned, that view would “render the reporting provision . . . meaningless.” App. vol. 6, 1682.

exception—QBE suggests that because the policy “provides an ultimate end date by which notice of a [c]laim must be given,” it must still be construed as a claims-made policy subject to the exception. Aplee. Br. 16. As we’ve noted, everyone agrees that the policy is a claims-made policy. But, as we have also explained, that doesn’t end the matter because § 31A-22-203 also specifically mandates that notice prior to expiration is required “for coverage to be in force.” Simply stated, this policy doesn’t contain that requirement. And accepting QBE’s suggestion that the relevant period for assessing the applicability of § 31A-22-203 is the full period in which notice is timely functionally modifies the language of the statute. The statute refers to “required notice of an occurrence or claim *prior to the expiration of the policy*,” § 31A-22-203 (emphasis added), yet QBE’s argument requires replacing “expiration of the *policy*” with “expiration of the *period in which notice is timely*.”⁶ We are not free to rewrite the statute in that manner. *See Zilleruelo*, 506 P.3d at 514.

Recognizing that we must add words to the statute in order to apply the exception, QBE nevertheless urges us to do so in order to avoid “absurd results.” Aplee. Br. 23. QBE speculates that if an insured is permitted to provide notice many years after the policy expires, QBE might have difficulty demonstrating prejudice. And if QBE is unable to show prejudice, it could be required by Utah law to provide coverage for a claim made against the insured during the policy period but not timely

⁶ Indeed, QBE’s counsel downplayed but acknowledged as much at oral argument, noting that it was “correct” that the policy language permitting a 60-day grace period didn’t align with the language of the exception in § 31A-22-203. Oral Argument at 13:08–13:25.

reported to QBE, despite policy terms precluding such coverage. Maybe so. But that result isn't absurd; it's a natural consequence of Utah's general notice-prejudice rule, which, absent the exception, applies to many Utah insurance policies, including the one at issue here. Thus, we hold that QBE is required to show prejudice from the untimely notice to deny coverage on that basis.

Although Geneva urges us to address the prejudice question in this appeal, we decline to do so. Whether a party has been prejudiced for Utah insurance-law purposes is a quintessential factual question, *see F.D.I.C. v. Oldenburg*, 34 F.3d 1529, 1547 (10th Cir. 1994), and one the district court never reached (because it found the exception applied). We typically don't resolve factual questions that the district court never ruled on. *See Niemi v. Lasshofer*, 770 F.3d 1331, 1346 (10th Cir. 2014). Accordingly, we remand for the district court to assess prejudice in the first instance.⁷

Conclusion

Because the insurance policy at issue doesn't qualify for the exception in § 31A-22-203 to Utah's general notice-prejudice rule, we reverse and remand for

⁷ QBE argues in the alternative that even if it is obligated to cover Geneva's losses, it "did not breach any fiduciary duty in denying coverage as a matter of law" and thus summary judgment was proper regardless of prejudice. Aplee. Br. 28 (cleaned up). That is so, according to QBE, because its coverage denial was, among other reasons, not in bad faith, which QBE characterizes as fatal to an unspecified subset of Geneva's claims. *Id.* at 30. Typically, we affirm on alternative grounds only where they are clearly supported by the record and sufficiently addressed by the parties on appeal. *Champagne Metals v. Ken-Mac Metals, Inc.*, 458 F.3d 1073, 1088 (10th Cir. 2006). QBE's argument does not clear that hurdle. In fact, neither party sufficiently developed this argument, so we decline to consider it here.

further proceedings.

Entered for the Court

Nancy L. Moritz
Circuit Judge