NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-12533
Non-Argument Calendar

MELISSA INSOFT,
PARKER INSOFT,

Plaintiffs-Appellants,

versus

HISCOX INSURANCE CO., INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:24-cv-01988-WFJ-TGW

Before JORDAN, KIDD, and ANDERSON, Circuit Judges.

PER CURIAM:

Melissa and Parker Insoft appeal the district court's dismissal of their suit against Hiscox Insurance Company based on the application of an exclusion in the operative insurance policy. On appeal, the Insofts argue that the district court erroneously interpreted the term "arising out of" in the exclusion based on Florida law.

We write only for the parties who are already familiar with the facts. Therefore, we include only so many of the facts as are appropriate to understand our opinion.

I. FACTS

Parker Insoft was bullied at his school. Unfortunately, he was placed in a hotel room with two of his bullies on a school trip, where the bullying escalated to an attempted sexual assault. The Insofts sued the school, the educational tour organizer, and the firm that worked security on the trip, Overwatch Security Group. Overwatch has a professional liability insurance policy with Hiscox and tendered the case to Hiscox for defense and coverage. However, Hiscox denied coverage and defense based on the "Sexual Misconduct Exclusion," which states:

> We will have no obligation to pay any sums under this Coverage Part, including any damages or claim expenses, for any claim:
>
> . . .

> based upon or arising out of any actual, alleged, or threatened abuse, molestation, harassment, mistreatment, or maltreatment of a sexual nature, including the negligent employment, investigation, supervision, training, or retention of a person who commits such conduct, or the failure to report such conduct to the proper authorities.

Dist. Ct. Doc. 1-4 at 3 & 6. Overwatch and the Insofts entered into a settlement agreement under which the Insofts were awarded a one million dollar judgment and Overwatch's rights under the policy.

The Insofts then filed this action against Hiscox alleging breach of duty to defend, indemnify, and settle the underlying case. After Hiscox removed the case to federal court, it moved for dismissal. The magistrate judge held a hearing and then recommended that the motion be granted because the alleged sexual abuse and bullying were intertwined, satisfying the Florida court's definition of "arising out of" as encompassing "connected with." Noting that it was a close case, the district court accepted the recommendation and dismissed the case.

II. DISCUSSION

We apply Florida's substantive law to resolve the enforceability of the policy language. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). We employ several interpretive principles when interpreting an insurance policy under Florida law. First, we interpret the policy's terms "in accordance with the plain language of the policies as bargained for by the parties." *Prudential Prop. & Cas. Ins. Co. v. Swindal*, 622 So. 2d 467, 470 (Fla. 1993). When "a policy provision is clear and unambiguous, it should be enforced according to its terms whether it is a basic policy provision or an exclusionary provision." *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005) (quotation marks omitted). We "may not rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties." *Id.* (quotation marks omitted). That means "[w]hen contractual language is clear and unambiguous, [we] cannot indulge in construction or interpretation of its plain meaning." *Detroit Diesel Corp. v. Atl. Mut. Ins. Co.*, 18 So. 3d 618, 620 (Fla. 4th DCA 2009).

"[A]n insurer's duty to defend under Florida law is determined solely by the allegations of the complaint in which the insured has been sued, and if those allegations identify facts within the scope of the policy's coverage, the insurer must defend." *EmbroidMe.com, Inc. v. Travelers Prop. Cas. Co. of Am.*, 845 F.3d 1099, 1107 (11th Cir. 2017). "[T]he theories advanced and labels used in a complaint are subordinate to the facts alleged for the purpose of determining the duty to defend." *Trailer Bridge, Inc. v. Illinois Nat'l Ins. Co.*, 657 F.3d 1135, 1145 (11th Cir. 2011) (citations omitted). "If the complaint alleges facts partially within and partially outside the scope of coverage, the insurer is obligated to defend the entire suit." *Id.* at 1141 (citation omitted). "Furthermore, any doubt about the duty to defend must be resolved in favor of the insured." *Id.*

"The Supreme Court of Florida has concluded that the phrase 'arising out of' is not ambiguous and has a broad meaning, even when used in a policy exclusion." *Zucker for BankUnited Fin. Corp. v. U.S. Specialty Ins. Co.*, 856 F.3d 1343, 1349 (11th Cir. 2017) (citing *Taurus Holdings*, 913 So. 2d at 539). In *Taurus*, the court canvased other states' cases and determined that "the term 'arising out of' is broader in meaning than the term 'caused by' and means 'originating from,' 'having its origin in,' 'growing out of,' 'flowing from,' 'incident to' or 'having a connection with.'" 913 So.2d at 539. The court later clarified the holding in *Taurus*, stating "[w]e reviewed cases interpreting the phrase 'arising out of' and concluded that it requires only 'some level of causation greater than coincidence.'" *Garcia v. Fed. Ins. Co.*, 969 So. 2d 288, 293 (Fla. 2007)(quoting *Taurus*, 913 So.2d at 533). Causation means "[t]he causing or producing of an effect." CAUSATION, Black's Law Dictionary (12th ed. 2024).

Here, the magistrate judge found a reasonable reading of the complaint, in the light most favorable to the plaintiff, was that the allegations included bullying that was of a non-sexual nature. However, the magistrate judge then adopted Hiscox's argument that any such non-sexual bullying must have been inextricably connected to the alleged sexual abuse, presumably because all of the alleged bullying for which Overwatch was potentially liable happened on the same day or night while Parker and the two perpetrators were in their hotel room. While that may well be one reasonable inference from the sparse allegations, another reasonable inference is that the non-sexual bullying that had been occurring over the course of the school year continued in the hotel room before and was in no way caused by the sexual abuse that occurred later. Of course, established law required the court to assume the latter reasonable inference; in failing to do so, error occurred. At this early stage of the proceedings, we conclude that the district court erred when it held that the sexual misconduct exclusion applied. We thus vacate and remand for further proceedings.[1]

VACATED and REMANDED.

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[1] Hiscox's reliance on the district court's opinion in the related case of *Insoft v. Steadfast Insurance Co*., 2025 WL 826718 (M.D. Fla. Mar. 17, 2025), is misplaced. There, the insurance contract excluded suits that arose in whole or *in part* from sexual misconduct. The inclusion of the words "in part" served to exclude all of the claims.