

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

HEARTLAND CO-OP,)	
)	Case No. LACL152428
Plaintiff,)	
)	
v.)	RULING ON PLAINTIFF'S
)	MOTION FOR PARTIAL
NATIONWIDE AGRIBUSINESS)	SUMMARY JUDGMENT AND
INSURANCE COMPANY,)	DEFENDANT'S MOTION FOR
)	SUMMARY JUDGMENT
Defendant.)	

On October 28, 2022, Plaintiff Heartland Co-Op's (Heartland) Motion for Partial Summary Judgment and Defendant Nationwide Agribusiness Insurance Company's (Nationwide) Motion for Summary Judgment came before the Court for argument. Heartland was represented by Attorneys John F. Lorentzen and Dana Waterman Hempey. Nationwide was represented by Attorney Sean M. O'Brien. After having considered the evidence presented, the written and oral arguments of counsel, and the applicable law, the Court enters the following ruling on the pending motions.

FACTUAL & PROCEDURAL BACKGROUND

The following facts are undisputed.¹ Heartland is an Iowa cooperative association with its principal place of business in West Des Moines, Iowa. Heartland owns and operates a multitude of agricultural business locations across Iowa. Nationwide is an Iowa corporation that is domiciled in Iowa and licensed as an Iowa Stock Fire and Casualty Insurance Company.

Nationwide issued Heartland an insurance policy that was effective from July 1, 2020 to July 1, 2021 ("the Policy") and covered Heartland's 86 business locations. (Heartland's App. pp.

¹ Heartland's Petition ¶¶ 1–3; Nationwide's Answer ¶¶ 1–3.

1–441; Nationwide’s App. pp. 1–441). Two primary forms from the Policy are at issue—the Commercial Output Program (COP) Property Coverage Part and the COP Income Coverage Part.

The COP Income Coverage Part of the Policy specifically includes certain provisions of the COP Property Coverage Part. The initial paragraph of the COP Income Coverage Part states:

Coverage provided under this coverage part is also subject to the “terms” and conditions in the Commercial Output Program – Property Coverage Part under the sections titled Agreement, Definitions, Property Not Covered, Perils Covered, Perils Excluded, What Must Be Done in Case of Loss, Loss Payment, and Other Conditions.

The COP Income Coverage Part states the following about earnings and extra expense:

EARNINGS

“We” cover “your” actual loss of net income (net profit or loss before income taxes) that would have been earned or incurred and continuing operating expenses normally incurred by “your” “business”, including but not limited to payroll expense.

...

EXTRA EXPENSE

“We” cover only the extra expenses that are necessary during the “restoration period” that “you” would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a covered peril.

“We” cover any extra expense to avoid or reduce the interruption of “business” and continue operating at a “covered location”, replacement location, or a temporary location. This includes expenses to relocate and costs to outfit and operate a replacement or temporary location.

“We” will also cover any extra expense to reduce the interruption of “business” if it is not possible for “you” to continue operating during the “restoration period”.

(Heartland’s App. p. 46; Nationwide’s App. p. 46). The Policy has the following relevant definitions:

1. The words “you” and “your” mean the persons or organizations named as the insured on the schedule of coverages”.

...

4. “Business” means the usual business operations occurring at “covered locations” including the tenantability of “covered locations” when the selected coverage option includes “rents”.

...

9. “Covered location” means any location or premises where “you” have buildings, structures, or business personal property covered under this coverage. However, if the Scheduled Locations Endorsement is added to this policy, “covered location” means a location that is described on the Location Schedule....

(Heartland’s App. pp. 15–16; Nationwide’s App. pp. 15–16). As to the Income Coverage payout, the Policy states:

HOW MUCH WE PAY

Other “terms relating to How Much We Pay also apply. These “terms” are described in the Commercial Output Program – Property Coverage Part.

“We” pay no more than the Income Coverage “limit” indicated on the “schedule of coverages” for any one loss. Payment for earnings, extra expense, and “rents” combined “does not exceed the “limit”.

(Heartland’s App. p. 51; Nationwide’s App. p. 51). The COP’s Income Coverage Part states:

INCOME COVERAGE PART

COVERAGE (check one)

☐ Income Coverage Does Not Apply

☐ Earnings, Rents, and Extra Expense

☒ Earnings and Extra Expense

☐ Rents and Extra Expense

☐ Extra Expense Only

LIMIT (check one)

☐ Income Coverage Limit – The most “we” pay for loss at any one “covered location” is:

☒ Refer to Scheduled Locations (check if applicable)

...

LOCATION SCHEDULE

...

Loc.**No. Covered Locations (Describe)**

087 ALL "COVERED LOCATIONS"

Covered Property/Coverage Provided (Describe)**Limit**

...

EARNINGS AND EXTRA EXPENSE

\$3,000,000

(Heartland's App. pp. 55, 58; Nationwide's App. pp. 55, 58).

On August 10, 2020, a derecho swept across Iowa and caused damage to 48 of Heartland's covered locations under the Policy. (Heartland's SMF ¶¶ 5, 12; Nationwide's SMF ¶¶ 9, 14). A derecho "is a widespread, long-lived storm that is associated with a band of rapidly moving individual showers and/or thunderstorms." (Heartland's App. p. 459; Nationwide's App. p. 488).

Between August 2020 and September 2020, Heartland submitted an insurance claim to Nationwide for damage caused by the derecho. (Heartland's App. pp. 467, 470; Nationwide's App. p. 444). Under the Earnings and Extra Expense coverage, Nationwide paid Heartland a total of \$3 million. (Heartland's App. p. 473; Nationwide's Affidavit of Ryan Boswell ¶ 6). Nationwide also paid Heartland a total of \$131,284,460.86 under the Policy. (Nationwide's App. 495, Affidavit of Ryan Boswell ¶ 5).

On February 3, 2022, Heartland filed this action against Nationwide. Heartland alleges that Nationwide breached the insurance policy by denying Heartland's earnings and extra expenses losses that collectively exceed \$3 million. (Heartland's Petition ¶¶ 39–40).

Heartland moves for partial summary judgment, and Nationwide also moves for summary judgment. In their respective motions, both parties ask the Court to interpret and construct the language of the policy in their respective favor. Heartland asserts that the policy language provides that it is entitled to a maximum of \$3 million for each of its damaged locations in business income earnings and extra expense losses. Nationwide asserts that the insurance policy limits the earnings and extra expense income coverage to \$3 million total for all covered locations.

ANALYSIS

I. Summary Judgment Standard

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Iowa R. Civ. P. 1.981(3). Partial summary judgment is appropriate if there is no genuine issue of material fact on certain issues, and the moving party is entitled to judgment on those issues as a matter of law. Iowa R. Civ. P. 1.981(4); *Lamantia v. Sojka*, 298 N.W.2d 245, 248 (Iowa 1980).

The moving party carries the burden of proving the absence of an issue of material fact and affirmatively demonstrating that it is entitled to judgment as a matter of law. *Hallett Const. Co. v. Meister*, 713 N.W.2d 225, 229 (Iowa 2006) (citation omitted). “If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists.” *McIlravy v. N. River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002) (citations omitted). “An issue of fact is ‘genuine’ if the evidence is such that a reasonable finder of fact could return a verdict or decision for the nonmoving party.” *Parish v. Jumpking, Inc.*, 719 N.W.2d 540, 543 (Iowa 2006). “A fact is

material if it will affect the outcome of the suit, given the applicable law.” *Id.* However, speculation and mere allegations are not material facts. *Hlubek v. Pelecky*, 701 N.W.2d 93, 95–96 (Iowa 2005) (citations omitted).

In ruling on a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party. *Id.* at 95. Thus, the court “consider[s] on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.” *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 717–18 (Iowa 2001) (citations omitted). “An inference is legitimate if it is ‘rational, reasonable, and otherwise permissible under the governing substantive law.’” *Id.* (quoting *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994)). An inference cannot be based on mere speculation or conjecture. *Id.*

A nonmoving party “cannot rely on the mere assertions in his pleadings but must come forward with evidence to demonstrate that a genuine issue of fact is presented.” *Linn v. Montgomery*, 903 N.W.2d 337, 342 (Iowa 2017) (quoting *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007)). If the record establishes that the “resisting party has no evidence to factually support an outcome determinative element of that party’s claim, the moving party will prevail on summary judgment.” *Wilson v. Darr*, 553 N.W.2d 579, 582 (Iowa 1996). Even where factual disputes exist, summary judgment may nevertheless be appropriate if those in dispute are not material to the resolution of the case, and the uncontroverted facts establish that the moving party is entitled to judgment in its favor. *See Linn*, 903 N.W.2d at 345–47.

II. Breach of Insurance Policy

“A contract is an agreement between parties for the doing or not doing of some particular thing.” *Churchill v. Gronewig*, 46 N.W. 1063, 1065 (Iowa 1890). To establish a claim for breach of contract, the plaintiff must show the following:

(1) the existence of a contract; (2) the terms and conditions of the contract; (3) that it has performed all the terms and conditions required under the contract; (4) the defendant's breach of the contract in some particular way; and (5) that plaintiff has suffered damages as a result of the breach.

Iowa Arboretum, Inc. v. Iowa 4-H Found., 886 N.W.2d 695, 706 (Iowa 2016) (internal citations omitted).

Whether Heartland or Nationwide can prevail in this breach of contract action comes down to the language of the insurance policy. Since the construction and interpretation of the insurance policy are the crux of each party's summary judgment motion, the Court will first lay out the primary arguments of each party's motion² and then discuss the construction and interpretation of the insurance policy.

A. Heartland's Motion for Partial Summary Judgment

Heartland asserts five primary reasons that the insurance policy language provides a maximum of \$3 million of business income earnings and extra expense coverage for each covered location that sustained damage from the derecho. First, Heartland argues that the plain ordinary meaning of the policy language "any one loss" means that the number of losses can be indefinite. Therefore, the \$3 million limit applies to each and every covered location that sustained a loss. Second, Heartland argues that the policy fails to specify that \$3 million limit applies to a single occurrence or is a blanket limit for the policy's duration (one year). Heartland contends that Nationwide could have clearly stated that \$3 million was an "aggregate" limit for a single occurrence or was the total limit for all business income earnings and expense losses resulting from the same occurrence.

² While the Court has also read and considered each party's resistance and reply to the other party's motion, the Court finds it unnecessary to restate every single argument.

Third, Heartland asserts that in reading the policy as a whole, Nationwide uses different languages in different coverages to create distinctions between various limits. Fourth, Heartland asserts that the policy has different restoration periods that reflect different losses for each location's use and occupancy. Heartland contends that the differences demonstrate that the policy's purpose was to treat each location's losses as separate losses with separate limits. Fifth, Heartland asserts that its accounting practices of treating each location as a separate source of income, expense, profit, and loss make the practical meaning of the word "loss" under the policy to mean that each location's loss is distinct.

B. Nationwide's Motion for Summary Judgment

Nationwide asserts six primary reasons that the insurance policy unambiguously limits the coverage to \$3 million for losses at all covered locations. First, Nationwide argues that the COP Income Coverage states that the maximum payout for any one loss is stated in the schedule of coverages. Second, Nationwide argues that under the policy, "any one loss" means the occurrence of direct physical loss or damage at a covered location caused by a covered peril that interrupts Heartland's business. Third, Nationwide argues that the \$3 million limit applies per occurrence which is consistent with the COP Property Coverage's deductible and restoration limits. Fourth, Nationwide argues that the schedule of coverage limits the \$3 million to all covered locations that are listed in the policy. Fifth, Nationwide argues that interpreting the policy as a whole can only result in the \$3 million limit applying to all losses at all locations per occurrence. Sixth, Nationwide asserts that it makes no sense for it to quote Heartland a \$2,760 premium for \$258 million in earnings and extra expense coverage.

C. Insurance Policy Interpretation & Construction

“Generally, interpretation of an insurance policy is a question of law.” *City of W. Liberty v. Emp’rs Mutual Cas. Co.*, 922 N.W.2d 876, 879 (Iowa 2019). “Interpretation requires [a court] to give meaning to contractual words in the policy. Policy interpretation is always an issue for the court, unless [the court is] required to rely upon extrinsic evidence or choose between reasonable inferences from extrinsic evidence.” *Boelman v. Grinnell Mut. Reins. Co.*, 826 N.W.2d 494, 501 (Iowa 2013) (citing *Connie’s Constr. Co. v. Fireman’s Fund Ins. Co.*, 227 N.W.2d 207, 210 (Iowa 1975)). “If the policy does not define a term, [the court gives] the word its ordinary meaning. The plain meaning of the insurance contract generally prevails.” *Boelman*, 826 N.W.2d at 501 (internal citation omitted). A court “strive[s] to interpret every term in an insurance policy in a manner that will not render it superfluous unless it is evident that adopting an interpretation giving meaning to a term would be unreasonable when consider[ing] the term in context. *Nat’l Sur. Corp. v. Westlake Inv., LLC*, 880 N.W.2d 724, 734 (Iowa 2016).

“The construction of an insurance policy is the process of determining the policy’s legal effect.” *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 681 (Iowa 2008). The determination of an insurance policy’s construction “is always a matter of law for the court.” *Boelman*, 826 N.W.2d at 501.

There are “well-settled rules guiding the construction and interpretation of insurance policies.” *Just v. Farmers Auto Ins. Ass’n*, 877 N.W.2d 467, 471 (Iowa 2016) (citing *Amish Connection, Inc. v. State Farm Fire and Cas. Co.*, 861 N.W.2d 230, 236 (Iowa 2015)). “The cardinal principle in the construction and interpretation of insurance policies is that the intent of the parties at the time the policy was sold must control. Except in cases of ambiguity, the intent of the parties is determined by the language of the policy.” *Am. Family Mut. Ins. Co. v.*

Corrigan, 697 N.W.2d 108, 111 (Iowa 2005) (quoting *LeMars Mut. Ins. Co. v. Joffer*, 574 N.W.2d 303, 307 (Iowa 1998)).

“Because insurance policies are contracts of adhesion, an insurer assumes a duty to define in clear and explicit terms any limitations or exclusions to the scope of coverage a policy affords.” *Metro. Prop. and Cas. Ins. Co. v. Auto-Owners Mut. Ins. Co.*, 924 N.W.2d 833, 840 (Iowa 2019) (quoting *Nat’l Sur. Corp.*, 880 N.W.2d at 734). A court interprets and adopts construction of ambiguous policy provisions in the light most favorable to the insured. *Boelman*, 826 N.W.2d at 502; *Am. Family Mut. Ins. Co.*, 697 N.W.2d at 111. “An ambiguity exists if, after the application of pertinent rules of interpretation to the policy, a genuine uncertainty results as to which one of two or more meanings is the proper one.” *Am. Family Mut. Ins. Co.*, 697 N.W.2d at 111 (internal citations and quotations omitted) (quoting *LeMars Mut. Ins. Co.*, 574 N.W.2d at 307). “Ambiguity is not present merely because the provision could have been worded more clearly or precisely than it in fact was.” *Cairns v. Grinnell Mut. Reins. Co.*, 398 N.W.2d 821, 824 (Iowa 1987) (internal citation and quotations omitted). “[A] mere disagreement between the parties regarding the meaning of undefined terms does not automatically establish an ambiguity.” *Am. Family Mut. Ins. Co.*, 697 N.W.2d at 111 (quoting *LeMars Mut. Ins. Co.*, 574 N.W.2d at 307). A court cannot “strain the words or phrases of the policy in order to find liability that the policy did not intend and the insured did not purchase.” *City of W. Liberty*, 922 N.W.2d at 879.

1. The term “any one loss” does not mean “each and every loss”?

Under the COP Income Coverage Part of the Policy, Nationwide will “pay no more than the Income Coverage ‘limit’ indicated on the ‘schedule of coverages’ for any one loss.” (Heartland App. p. 51). Heartland urges the Court to interpret “any one loss” to mean the \$3 million limit applies to each separate covered location where Heartland sustained damage as a

result of the derecho. Heartland argues the phrase “any one loss” actually means “each and every loss.”³ Heartland also suggests that the Court could find the phrase “any one loss” to be ambiguous. For the reasons set forth below, the Court finds that the phrase, “any one loss”, when considered in the context of the entire Policy, is not ambiguous.

The meaning of the word “any” is not ambiguous. The Iowa Supreme Court has previously held that the word “any” in an insurance policy means “all or every.” *Thomas*, 749 N.W.2d at 683. The plain meaning of the word “any” means “one, some, or all indiscriminately of whatever quantity.”⁴ The meaning of the word “one” is also not ambiguous. Its plain meaning is “being a single unit or thing.”⁵ In the insurance context, the ordinary meaning of the word “loss” is “[t]he amount of financial detriment caused by...an insured property’s damage, for which the insurer becomes liable.”⁶ “Loss” has been recognized by the Iowa Court of Appeals to mean “damage or destruction.” *Milligan v. Grinnell Mut. Reins. Co.*, No. 00-1452, 2001 WL 427642, at *2 (Iowa Ct. App. Apr. 27, 2001).

Here, the phrase “any one loss” must be read in connection with the limits “indicated on the ‘schedule of coverages.’” (Heartland App. p. 51). The “Limit” for the Income Coverage Part of the Schedule of Coverages has the box checked for “Refer to Scheduled Locations.” (Heartland’s App. p. 55). The Location Schedule provides a \$3 million limit for earnings and extra expense. (Heartland’s App. p. 58). The Location Schedule describes the Covered Locations as “All ‘Covered Locations’”. In total, 86 physical locations are included on the schedule. Each separate location contains a description of covered property with a separate limit. For instance,

³ Heartland’s Brief, filed 9/9/22, p. 17.

⁴ *Any*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/any> (last visited Oct. 31, 2022).

⁵ *One*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/one> (last visited Oct. 31, 2022).

⁶ *Loss*, *Black’s Law Dictionary* (11th ed. 2019), available at Westlaw. Merriam-Webster’s definition of the word “loss” is almost identical. *Loss*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/loss> (last visited Oct. 31, 2022) (defining “loss” as the amount of an insured’s financial detriment by...damage that the insurer is liable for.”).

Location number 1 in Alleman, Iowa provides a limit of \$3,934,875 for “Business Personal Property Consisting of ‘Stock’”. (Heartland’s App. p. 60). Location number 2 in Belle Plaine, Iowa provides a limit of \$5,467,204 for “Business Personal Property Consisting of ‘Stock’”. (Heartland’s App. p. 61). None of the individual locations provide a separate limit for earnings and extra expense.

Ultimately, the Court finds that the answer turns on the box that is not marked with an “X”. The COP’s Income Coverage Part does not have the Income Coverage Limit box marked. Heartland’s core argument falls directly under the unmarked box that had no amount across from it. The unmarked box states:

[] Income Coverage Limit – The most “we” pay for loss at any one “covered location” is: (Heartland’s App. p. 55; Nationwide’s App. p. 55).

Heartland argues that the policy requires Nationwide to pay up to \$3 million for “each and every one” of its covered locations. But that is not what the Policy says. The Court notes that if the Income Coverage Limit box had been marked and there had been no amount across from it, then there would be ambiguity. To accept Heartland’s argument would render meaningless the decision to leave the box blank next to the Income Coverage Limit. Further, there would be no reason for the Income Coverage Limit option. The location schedule applies to “ALL ‘COVERED LOCATIONS’” whereas the unmarked box contemplates the limit for “any one ‘covered location.’” The Court cannot strain the policy’s phrases to find Nationwide liable for coverage that Heartland elected not to purchase.

In addition, the Court cannot ignore that Heartland Co-Op is one business entity with many locations. Under the DEFINITIONS, on page 1 of the COP Property Coverage Part, the policy defines “you” and “your” to mean “the persons or organizations named as insured on the

“schedule of coverages.” Rather than purchase separate policies of insurance for each location, Heartland elected to purchase one COP Policy to cover 86 locations. Those locations were separately identified in a Location Schedule. Heartland reported damage in 48 of those locations as a result of the derecho.⁷ The purchase of one insurance policy to cover all locations demonstrates an intent by Heartland to treat the locations as one business entity. On first page of the Policy, Heartland is identified as a “Diversified Cooperative.”⁸

The Court cannot find the phrase “any one loss” to be ambiguous when examined in light of the Policy. The phrase “any one loss” is used to define how much Nationwide pays under the COP Income Coverage Part. To qualify for payment, there must be coverage as a result of direct physical loss or damage. Coverage is provided during the “restoration period.”

Boiled to its core, Heartland’s argues that interpreting the phrase - “any one loss” -to mean - “each and every loss” - is a reasonable interpretation of the Policy language. As such, Nationwide is stuck with the interpretation most favorable to Heartland. That effect of that interpretation would be that Heartland has a \$3,000,000 limit for earnings and extra expense coverage for the 48 locations that suffered losses. Heartland believes losses at different locations are different losses. Because losses at each location are distinct, Heartland argues, the combined loss sustained by Heartland cannot be one loss.

But this argument could be stretched even farther. For instance, in its Brief, Heartland identifies six locations that sustained damage. At the Rippey location, for example, Heartland maintains two concrete elevators and ten steel bins. Using Heartland’s interpretation of the Policy—that “any one loss” means “each and every loss”—one could argue that each elevator produces separate income streams. If one of the two concrete elevators remained out of operation

⁷ Affidavit of Ryan Boswell ¶4, Nationwide’s App. p. 495.

⁸ Heartland’s App. p. 4.

for longer than the other, this would generate two separate and distinct losses of earnings and extra expense. The fact that the losses were at the same location would be irrelevant because the Policy provides coverage for “each and every loss”. The Court does not believe the parties intended such an interpretation under the Policy. The Court further finds that Heartland’s interpretation of the Policy is not reasonable.

Heartland also argues that losses at each location occurred at different times triggering different restoration periods. Heartland points to the definition of “restoration period” which is “the time it should reasonably take to resume ‘your’ ‘business’ after the first 72 hours...following the direct physical loss of or damage to property at a ‘covered location’ that is caused by a covered peril;...” (Nationwide App. 225). But this clause simply defines how the restoration period is determined for purposes of calculating the earnings loss. Nothing in the definition modifies the \$3 million limits for all scheduled locations on the Schedule of Coverages. In other words, the fact that the definition of “restoration period” speaks to a loss at *a covered location* does not mean each covered location is entitled to a separate \$3 million limit.

Relying on principles of insurance policy construction, Heartland argues that the Court must consider how an “earnings” loss is calculated. To do so, the Court must look to the VALUATION section of the COP Income Coverage Part. That section states, in part:

1. **Earnings** – In determining an earnings loss “we” consider:

b. “your” continuing operating expenses normally incurred by “your” “business”, including but not limited to payroll expense necessary to resume “business” to a similar level of service that existed before the occurrence of direct physical loss or damage;

(Heartland’s App. p. 50 ; Nationwide’s App. p. 50).

The parties spar over the meaning of the word “occurrence” in the context of determining earnings loss. The word “occurrence” appears in the section of the Policy – VALUATION – that

determines loss of earnings. That section sets out three factors to consider in determining an earnings loss. Section 1(b) allows consideration of “continuing operation expenses normally incurred by ‘your’ ‘business’ necessary to resume ‘business’ to a similar level that existed before the occurrence of direct physical loss or damage...”

An “occurrence” is generally defined as “[s]omething that happens or takes place; specif., an accident, event, or continuing condition that results in...property damage that is neither expected nor intended from the standpoint of an insured party.”⁹ But in the context of this section of the Policy, “occurrence” clearly means “happening”. The meaning of the term must be determined from the context of its use. The sentence is understood to say, “to a similar level that existed before the *happening* of direct physical loss or damage...”

Two additional reasons support the Court’s finding that “occurrence” and “loss” do not have the same meaning under this section of the Policy. First, “occurrence” and “loss” are used in the same sentence in various portions of the Policy. As an example, in the COP’s earthquake endorsement, the How Much We Pay Deductible states “‘We’ pay only that part of ‘your’ loss over the earthquake deductible indicated on the ‘schedule of coverages’ in any one occurrence.” (Heartland’s App. p. 227; Nationwide’s App. p. 227). The COP’s flood endorsement and stock coverage endorsement have similar language. (Heartland’s App. pp. 231, 249; Nationwide’s App. pp. 231, 249).

Second, the COP’s earthquake and flood endorsements define “occurrence limit” as “the amount of coverage that applies to a loss in any one occurrence at each location.” (Heartland’s App. pp. 226, 230; Nationwide’s App. pp. 226, 230). Therefore, “occurrence” and “loss” are not interchangeable terms under the Policy, but that does not change the result. In sum, under the

⁹ Occurrence, *Black’s Law Dictionary* (11th ed. 2019), available at Westlaw.

totality of the words' plain meanings, "any one loss" is an unambiguous phrase that means an indiscriminate singular amount of financial detriment suffered at all covered locations as a result of a covered peril.

However, the phrase "any one loss" having an unambiguous meaning and the omission of the term "occurrence" in the COP's Income Coverage Part does not mean that Heartland is entitled to \$3,000,000 per location. The Court notes two more things about the Policy. First, the owned railcars and locomotives endorsement has the following schedule:

Description of Owned Railcars And Locomotives	Limit of Insurance
ALL "OWNED RAILCARS AND LOCOMOTIVES"	\$ 2,000,000
	Rental Reimbursement:
	Occurrence Limit
	\$ 0
	Each 12 Month Policy Period Limit
	\$ 0
	Deductible
	\$ 25,000

(Heartland's App. p. 298; Nationwide's App. p. 298). The endorsement states the following about the limit of insurance for the owned railcars and locomotives: "The most 'we' will pay for loss to 'owned railcars and locomotives' during this policy period is the amount shown in the SCHEDULE of this endorsement under Limit of Insurance." (Heartland's App. p. 299; Nationwide's App. p. 299). Therefore, the Policy can have a total limit of insurance without stating the words "blanket limit."

Second, the COP's Property Coverage Part has the limits box marked that instructs the policy holder to refer to scheduled locations. (Heartland's App. p. 52; Nationwide's App. p. 52). Upon referring to the location schedule for property, each of Heartland's locations is listed out and has distinct limits for each location. (Heartland's App. pp. 60–145; Nationwide's App. pp. 60–145). Therefore, the Policy can take into account the individuality of each location on a location schedule. In fact, the Policy did account for specific needs of each covered location as

evidenced by the description of “Covered Property/Coverage Provided” for all 86 locations. Noticeably absent is any additional coverage limit for Earnings and Extra Expense. The only limit provided for Earnings and Extra Expense is the \$3 million stated on page 1 of the Location Schedule.

The Court’s interpretation and construction of the income part in this manner does not render “‘We’ pay no more than the Income Coverage ‘limit’ indicated on the ‘schedule of coverages’ for any one loss” insignificant. The appropriate application is that Heartland can get up to \$3 million for an indiscriminate singular amount of financial detriment caused by a covered peril. Nationwide does not dispute that the derecho is a covered peril. As an example, if the derecho caused damage to covered location “A”, Heartland can claim the entire \$3,000,000 in the income coverage’s earning and expense for that one loss at covered location “A”. If Heartland claimed the \$3,000,000 for the loss at covered location “A,” Heartland cannot then claim up to \$3,000,000 for other covered locations that were damaged because the limit applies to all covered locations. The sentence provides Heartland the choice where to apply their coverage. Heartland purchased Earnings and Extra Income coverage for all covered locations in the amount of \$3 million for any one loss. Heartland did not purchase an individual limit of earnings and extra expense loss for each covered location. That option was available under the policy but Heartland elected not to go that route. The Court finds that the phrase “any one loss” means the \$3 million limit applies to the combined loss at all covered locations as a result of a covered peril.

2. The derecho was a single event causing one loss to Heartland.

Heartland argues a question of fact exists concerning whether the derecho created one, or multiple, losses. Nationwide uses the term “occurrence” to frame the issue. The provisions of the

Policy at issue here do not depend on an “occurrence”, as that term is traditionally used in insurance policies. As discussed above, the operative event is the *happening* of a covered peril causing a business interruption that leads to a loss of earnings as a result of direct physical loss or damage.

In *Just v. Farmers Auto. Ins. Ass’n*, the Iowa Supreme Court applied “the cause theory” in the context of an automobile insurance policy to determine whether a chain reaction automobile accident was a single accident. 877 N.W.2d at 480. In reaching that conclusion, the Court reasoned that the cause theory is “consistent with Iowa’s existing approach to insurance policy interpretation.” *Id.* Under “the cause theory” approach, the Court must determine whether there is “‘but one proximate, uninterrupted, and continuing cause which resulted in all of the injuries and damage.’” *Id.* at 472 (citing *State Auto Prop. & Cas. Co. v. Matty*, S.E.2d 614, 617 (Ga. 2010)).

The Court finds no material issue of fact exists that the derecho on August 10, 2020 was a single storm. This finding is supported by Nationwide’s consulting meteorologist, Lee Branscome who stated “In general, the derecho is considered by meteorologists...to be a single weather event.” (Nationwide’s App. p. 467). Heartland’s expert meteorologist, Michael McClellan, concluded: “A derecho by definition is a widespread, long-lived wind storm that is associated with a band of rapidly moving individual showers and/or thunderstorms. When the damage swath extends more than 240 miles and includes wind gusts of at least 58 mph or greater along most of its length, then the event may be classified as a derecho.” (Heartland’s App. p. 459). A company called Verisk assigns catastrophic serial numbers to loss events in the United States. (Affidavit of Jason Berkland, ¶12, Nationwide App. 502). Verisk categorized the derecho

on August 10, 2020 as a single event and assigned it PCS serial number 2046. (Affidavit of Jason Berkland, ¶13, Nationwide App. 502).

Applying the cause theory to the definition of a derecho articulated by Michael McClellan, the damages sustained by Heartland across the state of Iowa constitute one loss. The fact that the derecho may have consisted of “dozens of individual thunderstorm cells” with difference characteristics does not alter the fact that this was one event. The experts agree the common denominator is strong winds. Verisk considered the derecho that moved across Iowa to be one storm. Variations in wind speed, rain amounts and hail size at Heartland’s individual locations does not create an issue of fact related to the interpretation of “any one loss” in the Policy. The derecho moved across Iowa in an uninterrupted and continuous fashion.

As the Policy indicates, Heartland operated as a Diversified Cooperative. Heartland elected to include 86 separate Covered locations under one policy. Because the derecho, is a single weather event, and Heartland is one entity, the Court finds that Heartland sustained one loss and that the limits of insurance under the earnings and extra expense coverage is \$3 million.

D. Conclusion

The Court finds that under the policy Heartland is entitled to \$3,000,000 total for all covered locations in earnings and extra expense coverage as a result of the derecho on August 10, 2020. The Court further finds that no material question of fact exists that the derecho caused one loss to Heartland’s business under the Policy’s earnings and extra expense coverage. Because the derecho resulted in one loss, the limit of coverage available to Heartland under the earnings and extra expense coverage as a result of the derecho on August 10, 2020 is \$3 million. Nationwide paid Heartland \$3,000,000 under the earnings and extra expense coverage. Therefore, Nationwide did not breach the policy of insurance issued to Heartland.

Accordingly, the Court finds that summary judgment in favor of Nationwide is appropriate, and partial summary judgment in favor of Heartland is not appropriate.

RULING

For all of the above-stated reasons, it is the ruling of the Court that Plaintiff Heartland's Motion for Partial Summary Judgment is DENIED and Nationwide's Motion for Summary Judgment is GRANTED.

IT IS THEREFORE ORDERED that Heartland's Petition for Breach of Contract against Nationwide is DISMISSED.

IT IS FURTHER ORDERED that costs are assessed against Heartland.



State of Iowa Courts

Case Number
LACL152428

Case Title
HEARTLAND CO OP VS NATIONWIDE AGRIBUSINESS INS
CO
Type: ORDER REGARDING DISMISSAL

So Ordered

A handwritten signature in black ink that reads "Jeffrey D. Bert".

Jeffrey D. Bert, District Court Judge
Seventh Judicial District of Iowa

Electronically signed on 2022-12-29 15:10:45