IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BIG V CAPITAL LLC, BIG V ACQUISITIONS LLC, BIG V EQUITY LLC, and JEFFREY ROSENBERG, Plaintiffs, v. GREAT AMERICAN INSURANCE COMPANY Defendant.	)))))))))))))	C.A. No. N25C-07-046 PAW CCLD

Submitted: March 17, 2026
Decided: June 30, 2026

MEMORANDUM OPINION

Upon Plaintiffs' Motion for Summary Judgment;
GRANTED.

Upon Defendant's Motion for Judgment on the Pleadings;
DENIED.

Jennifer C. Wasson, Esq.; and Ryan D. Kingshill, Esq., of Potter Anderson & Corroon LLP; William G. Passannante, Esq.; and Grant E. Brown, Esq., of Anderson Kill P.C., *Attorneys for Plaintiffs Big V Capital LLC, Big V Acquisitions LLC, Big V Equity LLC, and Jeffrey Rosenberg*.

Bruce W. McCullough, Esq., of Bodell Bové, LLC; Scott A. Schecter, Esq.; and Neil A. Fox, Esq., of Kaufman Borgeest & Ryan LLP, *Attorneys for Defendant Great American Insurance Company*.

WINSTON, J.

I. INTRODUCTION

This insurance coverage dispute arises from an insurer's denial of coverage for a derivative action that the insureds contend is a covered claim under a renewed insurance policy. The insurer denied coverage, asserting the derivative action related back to an earlier-filed books-and-records matter and was therefore first made before the renewal period. The insured filed this action seeking a declaratory judgment that coverage exists, and seeking damages for breach of contract. The insured brought a motion for partial summary judgment on the declaratory judgment claim, while the insurer moved for judgment on the pleadings on both claims. The parties' dispute turns on whether the policy precludes coverage for related matters that would otherwise be available under the insuring agreement as a claim first made during the renewal period.

For the reasons that follow, the Court concludes the plain language of the renewal policy does not preclude coverage for a claim linked to prior matters. Accordingly, the Court grants Plaintiffs' motion for partial summary judgment on the declaratory judgment claim and denies Defendant's motion for judgment on the pleadings.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Big V Capital ("Capital") purchased a liability insurance coverage policy (the "Policy") from Defendant Great American Insurance Company, which provided coverage for a period of time stretching from January 1, 2023 to March 1, 2024 (the "Initial Period").[1] It renewed the Policy (the "Renewal Policy") for a period covering between March 1, 2024 and March 1, 2025 (the "Renewal Period").[2] The Policy and Renewal Policy are functionally the same across both periods, except that the Initial Period defines "Insured Organizations" to include Big V Capital and Plaintiff Big V Acquisitions ("Acquisitions"), while the Renewal Period is endorsed to add Plaintiff Big V Equity, LLC ("Equity") as an Insured Organization.[3] Together, these entities are the "Big V Entities," with their member-manager Plaintiff Jeffrey Rosenberg, they are the "Big V Parties."

A. THE RENEWAL POLICY

The Policy is made up of three separate insuring agreements (the "Insuring Agreements"). Insuring Agreement B provides that:

> [t]he **Insurer** will pay on behalf of the **Insured Organization**:

[1] D.I. 26 (hereinafter "Compl.") ¶ 24.

[2] Compl. ¶ 25.

[3] *Id.* ¶¶ 26, 32-33; D.I. 29 (hereinafter "Mot. Summ. J.") Exs. 5 (hereinafter "Policy"), 6 (hereinafter "Renewal Policy").

> (1) **Loss** which the **Insured Persons** become legally obligated to pay as a result of a **Claim** but only to the extent an **Insured Organization** is permitted or required by law to indemnify such **Insured Persons**; or
>
> (2) **Loss** which the **Insured Organization** becomes legally obligated to pay as a result of a **Claim**;
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> [P]rovided that such claim is first made during the Policy Period … for a Wrongful Act.[4]

"**Claim**" means, in relevant part, "a civil proceeding . . . made against any **Insured** and commenced by the . . . service of a complaint, pleading, or similar document,"[5] while "**Loss**" includes "settlements . . . and **Costs of Defense**," meaning reasonable fees, costs and expenses incurred in defending a Claim.[6] A "**Wrongful Act**" is "any actual or alleged . . . error, misstatement, misleading statement, act, omission, neglect or breach of duty . . . by the **Insured Persons**, in their capacity as such; [or] . . . by the **Insured Organization**[.]"[7] Interrelated Wrongful Acts means "**Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision."[8]

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[4] Renewal Policy § I(B). Bolded words are defined terms bolded in the Policy.

[5] *Id.* § III(A)(3).

[6] *Id.* § III(B), (N).

[7] *Id.* § III(Z).

[8] *Id.* § III(L).

If a Claim is covered, the Renewal Policy requires Great American to advance defense costs. The Renewal Policy notes that "[t]he **Insurer** shall advance on behalf of the **Insureds**, excess of any applicable Retention, covered **Costs of Defense** which the **Insureds** have incurred in connection with covered **Claims** made against them prior to disposition of such **Claims**. Such advancement shall be provided on a current basis, and no later than sixty (60) days after receipt of written evidence that such Costs of Defense have been incurred."[9]

The Renewal Policy includes separate retentions (the "Retentions") for each Insuring Agreement. The Retention for Insuring Agreement B is $250,000 for "[e]ach **Claim**[.]"[10] The Retentions section further provides "[e]ach and every **Claim** shall be potentially subject to a Retention, regardless of whether the **Insured** has satisfied a Retention with respect to another **Claim**, except as set forth in Section VI.B., below."[11] That section provides:

> [m]ore than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the

[9] *Id.* § VII(C).

[10] *Id.*, Declarations.

[11] *Id.*§ VI(A).

> earliest date on which any such **Wrongful Act** or **Interrelated Wrongful Acts** was reported under this Policy or any other policy providing similar coverage.[12]

The Renewal Policy also excludes coverage for Claims involving Wrongful Acts or Interrelated Wrongful Acts noticed under a prior policy (the "Related Claims Exclusion"). This exclusion provides that "[t]he **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured** . . . based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or **Interrelated Wrongful Acts**, or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement[.]"[13]

B. THE BOOKS AND RECORD ACTION AND SUBSEQUENT DERIVATIVE ACTION

On January 10, 2024, Jason Nidiffer—a non-party to this action and a minority member of Capital and Acquisitions—brought a books and record action against those entities in the Court of Chancery (the "Books and Records Action").[14] The Books and Records Action was brought for the purposes of inquiring into Capital's and Acquisitions's accounting practices based on a

[12] Renewal Policy § VI(B).

[13] *Id.* § IV(B).

[14] Compl. ¶¶ 49-50.

suspicion of an "egregious misuse of company assets for the personal benefit of the Companies' manager and sole managing member, Jeffrey Rosenberg[.]"[15] Capital and Acquisitions did not seek coverage for the Books and Records Action, nor did they tender notice to Great American.[16] The Books and Records Action settled after Capital and Acquisitions provided Nidiffer documents and records.[17]

On May 13, 2024, Nidiffer brought a direct and derivative complaint against the Big V Parties in the Court of Chancery (the "Derivative Action"), asserting that Rosenberg breached his fiduciary duties by taking certain actions to diminish the assets of Capital and Acquisitions in order to fund other business ventures and his own lifestyle.[18] On June 12, 2024, the Big V Parties provided notice of the Derivative Action and requested coverage from Great American.[19] Great American requested and received more information, and ultimately declined to provide coverage.[20]

Great American's purported basis for declining coverage was that the Derivative Action was interrelated with the Books and Records Action and the

[15] D.I. 29 Ex. 3 (hereinafter "Books and Records Action") ¶ 35.

[16] Compl. ¶¶ 53-54.

[17] *Id.* ¶ 52.

[18] *Id.* ¶ 58.

[19] *Id.* ¶ 61.

[20] *Id.* ¶¶ 62-64.

Derivative Action was deemed a Claim first made prior to the Renewal Period.[21] Great American concluded it was too late for the Big V Parties to make a claim under the Initial Period.[22]

The Big V Parties [redacted]—incurring millions of dollars in defense costs—[redacted].[23] [redacted], Great American refused to provide coverage.[24]

C. PROCEDURAL HISTORY

The Big V Parties brought this action, seeking a declaratory judgment that the Derivative Action is covered under the Renewal Policy (Count I)[25] and damages for breach of contract resulting from Great American's failure to provide coverage (Count II).[26]

After the pleadings closed, the Big V Parties moved for partial summary judgment on their declaratory judgment claim.[27] Great American moved for

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[21] Compl. ¶ 65.

[22] *Id.*

[23] *Id.* ¶¶ 72-77.

[24] *Id.* ¶¶ 78-80.

[25] *Id.* ¶¶ 81-93.

[26] Compl. ¶¶ 94-100.

[27] Mot. Summ. J.

judgment on the pleadings on both of the complaint's claims.[28] Both parties answered each other's motions,[29] and each party filed a brief in reply at which point both motions were fully briefed.[30] This Court heard oral argument on the motions and reserved its decision, which it now issues.

III. STANDARD OF REVIEW AND INTERPRETATIVE PRINCIPLES

A. SUMMARY JUDGMENT

Summary judgment is appropriate "when the [record] show[s] that there is no genuine issue as to any material fact, and [] the moving party is entitled to a judgment as a matter of law."[31] The movant bears the burden of establishing the nonexistence of issues of material fact.[32] Upon such a showing, the burden shifts to the nonmovant to demonstrate genuine factual issues exist.[33] "If the facts permit reasonable persons to draw from them but one inference, the question is

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[28] D.I. 31 (hereinafter "Mot. J. Pleadings").

[29] D.I. 37; D.I. 38 (hereinafter "Def.'s Opp'n").

[30] D.I. 42; D.I. 43.

[31] Super. Ct. Civ. R. 56(c).

[32] *KBranch, Inc. v. BS13 Menu Buyer Inc.*, 2026 WL 446425, at *3 (Del. Super. Jan. 30, 2026) (citing *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979)).

[33] *Id*. (citing *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995)).

ripe for summary judgment."[34] The Court views the facts in the light most favorable to the non-movant.[35]

B. JUDGMENT ON THE PLEADINGS

Rule 12(c) permits a motion for judgment on the pleadings "[a]fter the pleadings are closed but within such time as not to delay [] trial."[36] On such a motion, the Court's review "is limited to a review of the contents of the pleadings" and documents integral thereto.[37] Courts evaluate motions for judgment on the pleadings under the same framework as a 12(b)(6) motion to dismiss.[38] As such, the Court "view[s] the facts pleaded and the inferences to be drawn from such facts in [the] light most favorable to the non-moving party."[39] Judgment on the pleadings is proper "only when no material issue of fact exists and the movant is entitled to judgment as a matter of law."[40]

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[34] *Brzoska*, 668 A.2d at 1364 (citing *Wootten v. Kiger*, 226 A.2d 238 (Del. Super. 1967)).

[35] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

[36] Super. Ct. Civ. R. 12(c).

[37] *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1204 (Del. 1993).

[38] *Forte Biosciences, Inc. v. Wesco Ins. Co.*, 2026 WL 66768, at *5 (Del. Super. Jan. 8, 2026).

[39] *Desert Equities*, 624 A.2d at 1205 (citations omitted).

[40] *Id.* (citations omitted).

C. INSURANCE POLICY INTERPRETATION

The Delaware Supreme Court has summarized the principles governing insurance policy interpretation as follows:

> Insurance contracts, like all contracts, are construed as a whole, to give effect to the intentions of the parties. Proper interpretation of an insurance contract will not render any provision illusory or meaningless. If the contract language is clear and unambiguous, the parties' intent is ascertained by giving the language its ordinary and usual meaning. Where the language is ambiguous, the contract is to be construed most strongly against the insurance company that drafted it. A contract is not ambiguous simply because the parties do not agree on the proper construction. Rather, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings.
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> Insurance contracts should be interpreted as providing broad coverage to align with the insured's reasonable expectations. Generally, an insured's burden is to establish that a claim falls within the basic scope of coverage, while an insurer's burden is to establish that a claim is specifically excluded. Courts will interpret exclusionary clauses with a strict and narrow construction . . . [and] give effect to such exclusionary language [only] where it is found to be specific, clear, plain, conspicuous, and not contrary to public policy.[41]

[41] *RSUI Indem. Co. v. Murdock*, 248 A.3d 887, 905-906 (Del. 2021) (internal quotations omitted) (citations omitted).

IV. ANALYSIS

Both motions turn on whether the Derivative Action was "first made" during the Renewal Period. Delaware courts begin insurance analyses by determining whether the underlying matter is within the scope of coverage, and this opinion begins there too. Then, this opinion addresses Great American's argument that the Retention section precludes coverage. In addressing these issues, the Court concludes that Plaintiffs are entitled to partial summary judgment because based on the plain language of the Policy, the Derivative Action is a Claim first made during the Renewal Period asserting Wrongful Acts that resulted in Loss. While the Wrongful Acts alleged in the Derivative Action are Interrelated with the Books and Record Action, Great American's interpretation of the Policy's Retention provision is not reasonable and would render the Related Claims Exclusion meaningless.

A. APPLICABLE LAW

The Big V Entities are organized under the laws of Delaware, and have their principal place of business in New York.[42] Both parties agree that Delaware and New York law do not differ in any manner relevant to this dispute.[43] When there is no conflict between the laws of Delaware and the laws of another

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[42] Compl. ¶¶ 11-13.

[43] Mot. Summary J. 16; Mot. J. Pleadings 21 n.3.

potentially relevant jurisdiction, Delaware courts apply Delaware law.[44] Accordingly, the Court will apply Delaware law in resolving the motions.

B. THE DERIVATIVE ACTION IS A CLAIM "FIRST MADE" DURING THE RENEWAL PERIOD.

Great American asserts that the Derivative Action was not "first made" during the Renewal Period because the Derivative Action relates back to the Books and Record Action.[45] But under the plain language of the Policy, the Derivative Action was "first made" during the Renewal Period. The Derivative Action was initiated on May 13, 2024, and the Big V Parties noticed it to Great American on June 12, 2024, both within the Renewal Period.

To argue that the Derivative Action relates back to the Initial Period, Great American invokes the "meaningful linkage" standard set forth in *In re Alexion Pharm., Inc. Ins. Appeals*.[46] Because there is a meaningful linkage between the Books and Record Action and Derivative Action, Great American posits, the Derivative Action must relate back to and be deemed first made at the time Books and Record Action was first made.[47] But determining that Claims are

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[44] *Hertz Glob. Holdings, Inc. v. ACE Am. Ins. Co.*, 2024 WL 4668435, at *4 (Del. Super. Oct. 9, 2024).

[45] Mot. J. Pleadings 31-33.

[46] Mot. J. Pleadings 25 (citing *In re Alexion Pharm., Inc., Ins. Appeals*, 339 A.3d 694, 704-705 (Del. 2025)).

[47] Mot. J. Pleadings 31.

"meaningfully linked" is just the first step. Even if a Claim relates back to a prior matter, that does not mean the Claim must be deemed made at the time of the prior matter for coverage purposes.[48] "With all insurance policies, '[t]he scope of . . . coverage . . . is prescribed by the language of the policy."[49] Accordingly, even if the Derivative Action and Books and Record Action are meaningfully linked—and there is no dispute that they are—that will only preclude coverage if directed by the Renewal Policy.[50] Here, the Renewal Policy does not direct exclusion for unreported related claims.

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[48] *See Seritage Growth Props., L.P. v. Endurance Am. Ins. Co.*, 2022 WL 18046813, at *12 (Del. Super. Dec. 19, 2022) (holding claims were covered, despite being related to earlier claims, because policy contained no provision stating that a claim related to a pre-policy-period claim was uncovered).

[49] *First Solar, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 274 A.3d 1006, 1013 (Del. 2022) (quoting *Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 745 (Del. 1997)); *see also Alexion*, 339 A.3d at 702 ("We look to the contract language to determine the parties' intent." (citing *First Solar*, 274 A.3d at 1013)). The Court in *First Solar* held that a Claim was deemed first made and excluded by a "Related Claims" provision. *See First Solar*, 274 A.3d at 1009, 1018. That provision, unlike Retention section here, included a clause directing that "Claims actually first made or deemed first made prior to the inception date of this policy . . . are not covered under this policy." *See id.* at 1009.

[50] Great American is utilizing the Retentions section as an exclusion and its contention otherwise is unavailing. Def.'s Opp'n 13-16. Delaware courts have recognized that a policy provision does not need to be titled as an "exclusion" to be classified as one. *Viacom Inc. v. U.S. Specialty Ins. Co.*, 2023 WL 5224690, at *7 (Del. Super. Aug. 10, 2023) (finding that a provision in the defined terms section operated as an exclusion based on its exclusionary effect). "An exclusion in the context of an insurance policy is a provision which eliminates coverage where were it not for the exclusion, coverage would have existed." *State Farm Mut. Auto. Ins. Co. v. Kelty*, 126 A.3d 631 n.22 (Del. 2015) (internal quotations

C. THE RETENTIONS SECTION DOES NOT EXCLUDE COVERAGE

As grounds for coverage preclusion, Great American relies on what it refers to as a "deemer" clause in the Retention section of the Renewal Policy.[51] Great American contends that the "central premise" of the Retentions section is to define the relevant timeline for when Claims are deemed made as a general matter.[52] This interpretation is unreasonable.

As noted above, the Retentions section provides that: "[m]ore than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest

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omitted) (citation modified). A provision is an exclusion if it has an "exclusionary effect," regardless of where it is found in the policy. *Id*; *See Northrop Grumman Innovation Sys., Inc. v. Zurich Am. Ins. Co.*, 2021 WL 347015, at *18-19 (Del. Super. Feb. 2, 2021) (holding that a "bump up" provision in a policy was an exclusion despite being found in the policy's definition of "loss," because it had the effect of excluding coverage that would otherwise be provided).

[51] Mot. Summary J., Ex. 10 at 1.

[52] *Id*; Def.'s Opp'n 13.

date on which any such **Wrongful Act** or **Interrelated Wrongful Acts** was reported under this Policy or any other policy providing similar coverage."[53]

By its plain language, the Retentions section does not preclude coverage for Claims related to other matters arising before the Renewal Period. The Retentions section is clearly labeled as relating to retentions.[54] While the section does discuss a timeline for when Claims are deemed first made, it does so *in the context of retentions*, allowing for a party to make just one retention payment for several Claims alleging Interrelated Wrongful Acts.

This interpretation finds further support when reading the Renewal Policy as a whole, as the Court must.[55] Elsewhere in the Policy, the parties addressed circumstances in which related Claims would be excluded. The Related Claims Exclusion expressly excludes Wrongful Acts and Interrelated Wrongful Acts

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[53] Policy § VI(B).

[54] *See New Start Holdings, LLC v. Zhou*, 2024 WL 4039440, at *22 (Del. Ch. Sept. 4, 2024) ("A [contract] section's title may be looked to in determining its meaning, because headings and titles provide context and can inform the meaning of the sections they label. While contract headings are not controlling evidence of the meaning of a contract's substantive provisions, they may be considered to support the interpretation of a substantive provision.") (internal quotations omitted).

[55] *Murdock*, 248 A.3d at 905; *see also Origis USA LLC v. Great Am. Ins. Co.*, 345 A.3d 936, 954 (Del. 2025) ("What is needed is a more in-depth analysis that considers the combination of these provisions and how they function together.").

from coverage when those acts had been the subject of a prior reported Claim.[56] Because the Related Claims Exclusion applies only to prior reported claims, Great American's interpretation of the Retentions section would render the Related Claims Exclusion meaningless by broadly applying to all prior related claims, regardless of whether the insured provided notice.

Read as a whole and giving effect to each provision, the Renewal Policy's Insuring Agreements determine whether coverage is available, the Related Claims Exclusion precludes coverage of Claims that had been the subject of a prior reported Claim, and the Retentions section addresses the amount and timing of the insured's payment obligation once coverage is triggered.[57]

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Insureds are entitled to rely on the plain meaning of policy provisions, which must be "interpreted as providing broad coverage to align with the

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[56] Renewal Policy § IV(B).

[57] This holding is in line with our Supreme Court's decision in *Axis Reinsurance Co. v. HLTH Corp.*, 993 A.2d 1057 (Del. 2010). In that case, the Court held that the retentions section of an insurance policy did not function to effectively create coverage by superseding an otherwise operative exclusion, noting that the retentions section and the exclusion both "ha[ve] a distinct and independent purpose and function . . . [and] that where a contract provision lends itself to two interpretations, a court will not adopt the interpretation that leads to unreasonable results, but instead will adopt the construction that is reasonable and that harmonizes the affected contract provisions" *Id.* at 1062-63.

insured's reasonable expectations."[58] The Renewal Policy provides coverage for the Derivative Action, and Great American bears the burden to show that coverage is "specifically excluded."[59] Great American has not met that burden. The Court grants partial summary judgment in Plaintiffs' favor on the declaratory judgment claim. Great American's motion for judgment on the pleadings is necessarily denied for the same reasons Plaintiffs' motion is granted.

V. CONCLUSION

For the reasons set forth above, the Court **GRANTS** Plaintiffs' motion for partial summary judgment on the declaratory judgment claim and **DENIES** Defendant's motion for judgment on the pleadings.

IT IS SO ORDERED.

/s/ *Patricia A. Winston*
Patricia A. Winston, Judge

[58] *Murdock*, 248 A.3d at 906.

[59] *Id.*