

United States Court of Appeals
for the Fifth Circuit

No. 25-40583

United States Court of Appeals
Fifth Circuit

FILED

September 11, 2026

Lyle W. Cayce
Clerk

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,

Plaintiff—Appellee,

versus

ERICSSON INCORPORATED; ERICSSON AB;
TELEFONAKTIEBOLAGET LM ERICSSON; BORJE ECKHOLM,

Defendants/Counter-Claimants—Appellants,

versus

ACE AMERICAN INSURANCE COMPANY,

Plaintiff/Counter-Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:23-CV-1068

Before RICHMAN, HIGGINSON, and DOUGLAS, *Circuit Judges*.

PER CURIAM: *

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Defendants-Appellants Ericsson Incorporated and its subsidiaries (the “Ericsson Entities” or “Appellants”) appeal from the district court’s award of summary judgment in favor of Plaintiff-Appellee Travelers Property Casualty Company and Counter Claimant-Appellee ACE American Insurance Company (the “Insurers” or “Appellees”). The district court ruled that the Insurers have no duty to defend the Ericsson Entities in two underlying lawsuits pending in the United States District Court for the District of Columbia. Those lawsuits (the “Underlying Suits”) accused Ericsson of intentionally paying protection money to Foreign Terrorist Organizations (“FTOs”) through third-party contractors that ultimately funded terrorist attacks that killed or injured the third-party plaintiffs and their family members, in violation of the Anti-Terrorism Act (“ATA”). 18 U.S.C. § 2333. Following the filing of the Underlying Suits, Travelers filed an action seeking a declaratory judgment that it was not bound to defend the Ericsson Entities because its insurance policy only covered “occurrences,” defined in the policy as accidents. After the Ericsson Entities filed their answer, ACE filed a counterclaim seeking the same relief as Travelers. Because the Ericsson Entities’ payments were volitional, the Insurers argued, the attacks were not accidents and therefore they owed no duty to defend the Underlying Suits. The district court agreed with the Insurers and granted their motion for summary judgment. Thereafter, the Ericsson Entities filed their notice of appeal.

I

Appellees issued commercial general liability (“CGL”) policies to certain of the Ericsson Entities from May 1, 2003, to May 1, 2014, (the “Policies”). The Policies provide coverage for “those sums that the insured becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage,’ pursuant to its terms and conditions.” The Policies apply only if the injury is caused by an “occurrence” which the Policies

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define as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.” The Policies also contain exclusions for injuries that are “[e]xpected or [i]ntended” and for injuries that arise, “directly or indirectly,” out of “War,” “Warlike action by a military force,” or “Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.”

On August 5, 2022, U.S. Service members and civilians who were killed, wounded, or kidnapped in Iraq, Syria, Turkey, and Afghanistan in terrorist attacks between 2005 and 2021 and their families filed suit against the Ericsson Entities under the ATA. 18 U.S.C. § 2333. On February 23, 2024, a second group of similarly situated plaintiffs sued the Ericsson Entities for the same reason, for attacks and kidnappings in Iraq, Syria, Afghanistan, and Niger. Both the August 2022 lawsuit and the February 2024 suit (collectively, the “Underlying Suits”) assert seven claims under the ATA, for which “liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance . . . [to] the person who committed such an act of international terrorism.” 18 U.S.C. § 2333(d)(2). The complaints for the Underlying Suits are substantial, each complaint comfortably exceeding five hundred pages.¹

Following the initiation of the Underlying Suits, Travelers brought a coverage suit against the Ericsson Entities. In its complaint, Travelers claims that it has no duty to defend or to indemnify the Ericsson Entities in the Underlying Suits because the injuries alleged in the Underlying Suits were not “occurrences” as defined by the Policies. Travelers instead claims that

¹ The parties treat the Underlying Suits as substantively similar enough to be treated as one instrument. We do the same.

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the injuries were a result of intentional conduct by the Ericsson Entities, which is not covered by the Policies. ACE filed a counterclaim against the Ericsson Entities, raising the same issues as Travelers, namely that it does not owe the Ericsson Entities a duty to defend under its policy. The parties jointly stipulated that the controlling terms of the ACE and Travelers insurance policies are the same.

Upon being sued in the coverage suit, the Ericsson Entities filed a counterclaim wherein they argued breach of contract by Travelers and ACE for their failure to defend them in the Underlying Suits. The Ericsson Entities sought damages related to the Insurers' refusal to defend and statutory damages under Texas insurance law that requires prompt payment of claims.

The parties then filed cross-motions for summary judgment. The district court first determined that the duty to indemnify is not ripe, concluding that "additional factual development in the Underlying Suits could affect whether [the Insurers] owe[] [the Ericsson Entities] a duty to indemnify." The district court then stayed determination on the issue of indemnification, which will be decided after the conclusion of the Underlying Suits. Sorting through all other claims and counterclaims, the district court ultimately "conclude[d] that the injuries to the servicemembers and civilians were *not* accidents." Applying Texas law, the district court held that because the Underlying Suits allege that the Ericsson Entities intentionally made payments to the FTOs, the injuries fell outside of the umbrella of coverage.

The Ericsson Entities then filed a motion for entry of judgment under Federal Rule of Civil Procedure 54(b) to certify the partial summary judgment order as final for purposes of appeal. The district court granted the motion, and the Ericsson Entities timely filed their notice of appeal.

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II

Our court reviews the district court's grant of partial summary judgment de novo. *Acadian Diagnostic Lab's L.L.C. v. Quality Toxicology, L.L.C.*, 965 F.3d 404, 409 (5th Cir. 2020). Because this case implicates diversity jurisdiction, our court, like the district court, will apply Texas substantive law, which the parties agree controls the Policies. *See id.* While partial grants of summary judgment ordinarily are not final appealable orders, the district court's certification of a partial summary judgment under Federal Rule of Civil Procedure 54(b) makes an order immediately appealable. *See Fed. Savings & Loan Ins. Corp. v. Cribbs*, 918 F.2d 557, 559 (5th Cir. 1990).

III

On appeal, the parties discuss whether the Insurers owe the Ericsson Entities a duty to defend. The parties further interpret the term "occurrence" as defined by the Policies.

A

To determine whether an insurance company has a duty to defend, Texas courts apply their "eight corners" approach, which compares the third-party pleadings to the operative insurance policy without considering extrinsic evidence. *Zurich Am. Ins. Co. v. Nokia*, 268 S.W.3d 487, 491 (Tex. 2008). The Texas duty to defend law is "very favorable to insureds." *Gore Design Completions, Ltd. v. Hartford Fire Ins.*, 538 F.3d 365, 368 (5th Cir. 2008). "It is the factual allegations" in the underlying petitions, "not the legal theories, that control." *Id.* at 369. The parties jointly stipulate that the Policies cover incidents of bodily injury and property damage when they were "caused by an 'occurrence.'" The parties further stipulate that an occurrence is defined in the Policies as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." "Under Texas law, a person's act is not an accident 'when he [1] commits an

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intentional act that [2] results in injuries that ordinarily follow from or could be reasonably anticipated from the intentional act.’” *Discovery Prop. & Casualty Co. v. Blue Bell Creameries USA Inc.*, 73 F.4th 322, 329 (5th Cir. 2023) (quoting *Am. States Ins. Co. v. Bailey*, 133 F.3d 363, 372 (5th Cir. 1998)).

Appellants argue that Texas law imposes a broad duty to defend and that the district court “inverted” Texas’s rule. They claim that rather than examining whether the underlying complaints contained any claim that could be subject to the Policies, the district court instead looked for claims that would bring the Underlying Suits outside of the scope of coverage. Appellees respond that the district court’s finding of no-coverage was well supported. They argue that the complaints allege intentional conduct which therefore means that the injuries cannot be accidental.

Appellees are correct that the district court did not err in construing the conduct described by the Underlying Suits as non-accidents. The complaints describe intentional conduct by the Ericsson Entities. Their payments to third-party contractors were volitional—it is not alleged by Ericsson that the payments were made under duress or by accident. In *Blue Bell Creameries*, a *Listeria* outbreak led to a shutdown of Blue Bell factories and a nationwide recall of its products. 73 F.4th at 325. The financial loss caused by the shutdown resulted in a shareholder lawsuit against Blue Bell’s directors and officers, alleging breach of fiduciary duties. *Id.* Relevant here, the shareholder suit alleged that the “directors and officers knew that [the] manufacturing plants had repeatedly tested positive” for contamination but “they continued to manufacture and distribute ice cream products in conscious disregard of the known risks.” *Id.* at 326. *Blue Bell Creameries*, like the instant case, also turned on whether the company’s insurer owed a duty to defend. *Id.* at 326. Further, the insurer in that case argued there was no duty to defend because there was no “occurrence” in the policy, which was defined exactly as occurrence is in this case. *Id.* Our court held that the

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conduct of Blue Bell’s board of directors and officers were “easily” considered intentional acts because “there were no allegations that the directors or officers were acting involuntarily,” noting that, in the context of a coverage suit, “an intentional act and the intent to cause injury are two distinct concepts.” *Id.* at 329–30.

Under *Blue Bell Creameries*, the argument that the Ericsson Entities did not know, or did not intend, for the payments to end up with the FTOs therefore holds no weight—whether they intended the payments to reach the FTOs is irrelevant. Additionally, the Ericsson Entities’ characterization of the third-party complaints contravenes the allegations in the Underlying Suits. Indeed, the Texas Supreme Court has held that a policy cannot impose a duty to defend a claim “that might have been alleged but was not, or a claim that more closely tracks the true factual circumstances surrounding the third-party claimant’s injuries but which, for whatever reason, has not been asserted.” *Pine Oak Builders, Inc. v. Great Am. Lloyds Ins. Co.*, 279 S.W.3d 650, 655–56 (Tex. 2009). In another duty-to-defend case, this court rejected an insured’s arguments that were “[d]etached from the allegations as written” because those arguments were “out of bounds on the duty-to-defend analysis.” *Liberty Mut. Fire Ins. Company v. Copart of Conn., Inc.*, 75 F.4th 522, 531 (5th Cir. 2023). In that case, our court held that we “may not ‘imagine factual scenarios which might trigger coverage.’” *Id.* (quoting *Waste Mgmt., Inc v. AIG Specialty Ins. Co.*, 974 F.3d 528, 535 (5th Cir. 2020)).

Although Appellees are able to cite to sporadic mentions of words like “reckless” that they argue defeat allegations of intentional conduct, it is clear from the language in the Underlying Suits that the third-party plaintiffs intended to sue the Ericsson Entities for their alleged intentional conduct. What’s more, these complaints are far from typical, spanning 816 and 671 pages each. From the sheer magnitude of the complaints, it stands to reason that a party will be able to pull a self-serving phrase from those 1,487 pages.

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But even where the underlying complaints use the word “recklessly,” the complaints do not allege accidental conduct. Of the twelve uses of “recklessly” across the two underlying complaints, two are generalized descriptions of behavior, four quote SEC findings, and six modify disregard. As to disregard, our court has already held that an insured who acted in “conscious disregard of the known risk” acted volitionally and its actions could therefore not be considered accidental. *Blue Bell Creameries*, 73 F.4th at 326. The underlying complaints do not allege accidental conduct.

B

The remaining arguments by Appellants are unpersuasive and lack factual development. In their reply brief, Appellants argue that the complaints contain allegations that were not the natural and probable cause of Appellants’ actions.² Texas law prohibits this examination, as the court is only to “focus on the factual allegations rather than the legal theories” of the third-party actions. *Griffin*, 955 S.W.2d at 82. Appellants also argue that transactions with a third party without knowing the ultimate destination of its resources are “akin to the hunter unaware of his true target.” Our court, using that same analogy, reached the opposite conclusion. *See Blue Bell Creameries*, 73 F.4th at 329 (“To illustrate, the hunter who deliberately fires a gun at what he believes to be a deer but is actually a person committed an ‘intentional’ act, even though the harm was not intentional”) (citation

² Relying on *Frederking v. Cincinnati Insurance*, the Ericsson Entities argue that the injuries were not the “natural and expected consequence” of their alleged acts and they therefore cannot be considered intentional. 929 F.3d 195, 200 (5th Cir. 2019). *Frederking* focused on intentionality as it related to whether insurance companies could be made to cover drunk-driving accidents. 929 F.3d at 196. Our court ultimately held that the term “‘accident’ plainly include[d] the drunk driving collision that gave rise to [that] dispute.” *Id.* at 197. *Frederking* is a poor fit for many reasons—namely, it defines “accident” as the term relates to a drunk driving crash, a far cry from alleged payments made to terrorist organizations.

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modified). In using this analogy, though, Ericsson is improperly defending itself against the third-party plaintiffs' claims. It may be true that the terrorist attacks' connection to Ericsson is so attenuated that it cannot be held responsible. But this case is not the proper forum for that argument. Our court "must focus on the factual allegations rather than the legal theories asserted in reviewing the underlying petition." *Farmers Tex. Cty. Mut. Ins. Co. v. Griffin*, 955 S.W.2d 81, 84 (Tex. 1997). Appellants' argument as to the form of the third-party plaintiffs' claims is therefore misplaced and does not help to establish an accident.

The third-party complaints allege intentional conduct. Appellants therefore fail to allege an accident under the Policies.

IV

The Ericsson Entities are alleged to have committed grave harm in violating the Anti-Terrorism Act. The third-party complaints allege that they knowingly made payments, directly or indirectly, to terrorist organizations to protect their own projects in locations plagued with conflict. Under Texas law, when considering whether the injuries resulting from the Ericsson Entities' conduct ought to be covered, our court is instructed to look only to the factual allegations of the third-party complaints. And those allegations are telling—they allege intentional acts on behalf of the Ericsson Entities, not only in paying the FTOs, but in covering up their payments to those organizations. The complaints are extensive, collectively spanning over a thousand pages, but their claim is clear: the Ericsson Entities willfully made payments to the FTOs. We therefore AFFIRM the judgment of the district court.