[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 20-12711

CERTAIN UNDERWRITERS AT LLOYDS OF LONDON SUBSCRIBING TO POLICY NO. B0799MC029630K,

Plaintiff-Counter Defendant-Appellee,

versus

PERO FAMILY FARM FOOD CO., LTD.,

Defendant-Counter Claimant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:18-cv-81680-RAR

Before WILSON, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

This is an insurance coverage case. After Hurricane Irma damaged its property, Pero Family Farm filed an insurance claim. Lloyds of London accepted coverage for part of the claim but denied coverage for the rest. Lloyds sought a declaratory judgment that the insurance policy did not cover the denied portion of the claim, and Pero counterclaimed for breach of contract. The district court granted summary judgment for Lloyds. Pero now appeals. After oral argument and careful review of the record, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Pero's Business

Pero grows vegetables (primarily peppers and beans) that it prepares and packages for either retail sale at grocery stores or wholesale by food service companies. The seeds Pero uses are either prepared by Pero from its own vegetables or purchased from third-party seed providers. Pero plants some of its seeds in fields it owns or leases in Florida. But Pero also sends seeds to Trans Gro, a third-party plant grower. Trans Gro plants the seeds and grows the seedlings in its greenhouses in Immokalee, Florida, until the seedlings are mature enough to be transported to Pero's fields and planted in the ground.

Once Pero harvests its vegetables, it transports them to its cooled storage facility in Delray Beach, Florida, where it cleans,

sorts, stores, and packages the vegetables. Pero packages some of its vegetables in plastic packaging. It then transports the vegetables from the Delray Beach facility to its final customers.

The Policy

Pero first purchased insurance coverage from Lloyds in 2015. In its 2015 insurance application, Pero stated that its "primary operations" were "[g]rower, [p]acker, [s]eller of vegetables[,] mainly [p]eppers and [g]reen [b]eans"; that the "[t]ype of [g]oods to be [i]nsured" was "produce, primarily peppers [and] beans"; and that it sought to insure "[d]omestic shipments" of "[g]reen beans [and] peppers on vehicles (dump trucks) moving from field to packing house[;] seed is also stored on location." Pero renewed the policy in 2016 on the same terms and conditions as the expiring 2015 policy.

In 2017, Lloyds issued a renewed "Marine Cargo Insurance" policy to Pero on the same terms as the expiring 2016 policy. The 2017 policy was effective May 1, 2017 through May 1, 2018. The policy contained a Florida choice of law provision. Its terms provided:

> **Conveyances:**
> Any means of conveyance by land, sea[,] or air.
> **Voyage/Geographical Limits:**
> From: Ports and/or places in North America.
> To: Ports and/or places in North America.

Including whilst at rest and/or in store and/or whilst at contractors. Including transhipment risks whether customary or otherwise.

Subject-Matter Insured:

All goods and/or merchandise of every description incidental to the business of the Assured or in connection therewith consisting principally of, but not limited to, [p]eppers [and]/or [b]eans [and]/or seeds [and]/or [f]arm produce and/or packing and/or plastic covering[.]

Including duty if and as applicable. But excluding:

a) Furniture, fixtures, fittings, machinery, equipment, betterments, tenant improvements[,] and/or similar interest in the property of the insured or for which they are responsible.
b) Buildings, real property[,] and/or similar interest.
c) Retail outlets.

. . .

Conditions:

. . .

Duration of Voyage Clause

Within the geographical limits of this policy, cover hereunder shall attach from the time the Assured assumes an interest in and/or responsibility for the subject[-]matter insured and continues uninterrupted, including transit, stock[,] and location coverage until that interest and/or responsibility ceases. Further including the risks of loading prior to and unloading after arrival of all transits hereunder.

The policy defined "location" as "any building, tank, dock, wharf, pier, [or] bulkhead (or groups thereof) bounded on all sides by public streets or open waterways or open landspace, each of which shall be not less than fifty feet wide."

The policy's "Change of Destination/Deviation/Delay Clause" stated:

> In case of voluntary change of destination and/or deviation and/or delay within the Assured's control, the insured goods are held covered hereunder at a premium to be agreed . . . . In case of short shipment in whole or part by the vessel reported for insurance hereunder, Underwriters agree to hold the Assured covered against the risks insured hereunder until arrival at the final destination to which the goods are insured or until the goods are no longer at the risk of the Assured, whichever may first occur.

The policy included coverage for other risks of transit too, such as "non-delivery," "shortages" not attributable to "forcible entry" into a shipping container, "accumulation" of stored goods due to "interruption of transit beyond the control of the Assured," "insufficien[t] or unsuitab[le] . . . packing or preparation" (including "stowage in a container, trailer[,] or rail car") of the insured goods by someone other than the Assured, the mandated fumigation of a "vessel or conveyance," late-return penalties for containers retained for inspection or loss investigation purposes, and "physical loss of or damage to the goods insured arising out of" customs inspections or "directly caused by governmental authorities

acting . . . to prevent or mitigate a pollution hazard" from a "waterborne conveyance." The policy "also cover[ed] the subject[-]matter insured whilst on the premises of the Assured or their Agents . . . or other premises for packing, repacking, consolidation, deconsolidation[,] or similar incidental to and in the normal course of transit until the goods are delivered to the final destination(s)." The policy covered the insured goods even when "purchased [f]ree on [b]oard, [f]ree [a]longside [s]hip[,] or [c]ost and [f]reight." And "[c]oncealed [d]amage," which "[was] discovered upon the unpacking and/or opening of containers, cases[,] and/or packaging within 60 days of arrival at final destination," would "be deemed to have occurred during the insured transit."

The policy's "Information" section stated "SOV as attached" and "[t]ransits from field to packing house." "SOV" referred to a "statement of value" attached to the policy that listed two buildings (a "packing house" and an "office/distribution center") at Pero's Delray Beach facility. The statement of value indicated the packing house held $5,000,000 of "[s]tock/[i]nventory."

The policy limits were $150,000 for "[a]ny one domestic inland conveyance" and $5,000,000 for "[a]ny one location." And the policy provided a "Cargo Claims Handling Procedure" to be followed "[i]n the event of circumstances which may result in a claim." That procedure listed information Pero needed to include in any notification to Lloyds of a potential claim, including: (1) "Name of Vessel/conveyance"; (2) "Date of Shipment"; (3) "Insured Cargo"; and (4) "Copy of packing list."

Pero's Insurance Claim

On September 10, 2017, Hurricane Irma struck South Florida. Pero submitted a claim to Lloyds for the damages it suffered as a result of the hurricane. Pero sought coverage for the loss of vegetables stored in the coolers at its packing house in Delray Beach, as well as: (1) seedlings that had been growing in Trans Gro's greenhouses in Immokalee; (2) plants that had been growing in Pero's fields; and (3) plastic coverings that had been placed over the plants growing in Pero's fields. Lloyds accepted coverage (and issued payment) for Pero's loss of the vegetables in its coolers but denied coverage for the damage to the seedlings growing in Trans Gro's greenhouse, the plantings in Pero's fields, and the plastic coverings on Pero's fields.

The Lawsuit

Lloyds sued Pero in the Southern District of Florida, seeking a declaration that the policy did not cover the damage to the seedlings, plantings, or plastic coverings. Lloyds alleged that coverage was not due under the policy because: (1) "[t]he seedlings, planted crops, and crop covers were not in transit at the time of the loss," so "there [was] no 'in transit' coverage"; (2) "[t]he seedlings, planted crops, and crop covers were not in storage at any location as defined by the [policy]," so "there [was] no 'location' coverage"; and (3) "[s]eedlings and immature plants are crops and the [policy] d[id] not provide crop coverage"—because Pero "specifically sought cargo coverage for the transit and storage of fresh harvested produce, dry seeds[,] and packaging from field to storage and while

in storage," not "crop insurance." Pero counterclaimed for breach of contract, alleging that Lloyds breached the policy by denying coverage for Pero's covered losses.

Lloyds moved for summary judgment as to all claims, and Pero moved for partial summary judgment as to liability on its breach of contract counterclaim. Lloyds argued that the policy's language was "clear and unambiguous" and did not cover the damaged seedlings, plantings, and plastic coverings. According to Lloyds, there was no coverage because: (1) "the policy at issue [was] a marine *cargo* insurance policy and not a crop insurance policy"; (2) the "plants in greenhouses, plants in-ground[,] and plant coverings in the fields" were "not cargo or 'goods and/or merchandise' covered by the [policy]"; and (3) these items "were [not] in 'transit' or stored at a 'location' as defined by the [policy] at the time of the loss." Lloyds contended that the seedlings, plantings, and plant coverings didn't qualify for "location" coverage both because "open fields" were not a "location" as defined by the policy (that is, a "building, tank, dock, wharf, pier, [or] bulkhead") and because neither the open fields nor the Trans Gro greenhouses appeared on the statement of value attached to the policy—which listed only the packing house at Pero's Delray Beach facility as a location with a "stock/inventory" value.

Pero agreed that the policy was "clear and unambiguous," but argued that the policy's "clear, express, and unambiguously broad coverage language"—including "[a]ll goods and/or merchandise of every description incidental to" Pero's business—

meant that the policy covered the loss of Pero's seedlings, plantings, and plastic coverings. Pero contended that, because the policy did not define "goods" or "cargo" and did not use the term "crops," Lloyds could not deny coverage for the seedlings or plantings. Pero further argued that the Trans Gro greenhouses fell within the policy's definition of "location" and Lloyds had conceded "there [wa]s no merit to its denial" based on the greenhouses not appearing in the statement of value. The "transit" coverage also applied, Pero said, because the "Duration of Voyage Clause" meant that the policy "afford[ed] uninterrupted coverage . . . whether [covered goods were] in transit, by location, or as stock." In short, Pero asserted that the policy covered Pero's goods "in all settings and circumstances and at all times, from seed to store."

Summary Judgment for Lloyds

The district court granted summary judgment for Lloyds and denied Pero's motion because "the unambiguous language in the [p]olicy d[id] not provide coverage for Pero's damaged seedlings, plantings, and plastic coverings." The district court concluded that the policy's plain language "indicate[d] that it was intended to cover goods that are sold by Pero while in transit from the field to packaging to their final destination, and while they are stored in transit." And "a plain reading of 'goods and/or merchandise,'" the district court concluded, "necessitate[d] a finding that said objects must be moved in trade or commerce." Because Pero didn't sell "seedlings, plantings, [or] their plastic coverings," the

district court concluded that the items were therefore "not covered under the [p]olicy."

The district court rejected Pero's argument that the "Duration of Voyage Clause" supported Pero's broad interpretation of the term "goods." The district court concluded that the clause "d[id] not expand the definition of 'good' or 'subject-matter insured'" and instead "simply delineate[d] the temporal scope and contours of coverage" and so, "read in context," "clearly support[ed]" Lloyds' interpretation of the policy. The policy's title, the district court found, was "consistent with the coverage afforded" by the policy's plain meaning too.

The district court entered final judgment for Lloyds, and Pero timely appealed.

STANDARD OF REVIEW

We review de novo the district court's interpretation of the insurance policy and its grant of summary judgment, applying the same legal standards as the district court. *LaFarge Corp. v. Travelers Indem. Co.*, 118 F.3d 1511, 1514–15 (11th Cir. 1997). "Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Jurich v. Compass Marine, Inc.*, 764 F.3d 1302, 1304 (11th Cir. 2014).

DISCUSSION

We agree with Pero that the policy's language was clear and unambiguous. But we agree with Lloyds and the district court that

the policy did not cover Pero's damaged seedlings, plantings, and plastic coverings.

To determine the meaning of an insurance policy under Florida law, "we look at the policy as a whole and give every provision its full meaning and operative effect." *Hyman v. Nationwide Mut. Fire Ins.*, 304 F.3d 1179, 1186 (11th Cir. 2002) (citations omitted). In considering a contract as a whole, we must consider the insurance application, which "becomes a part of the agreement between the parties." *Nugget Oil, Inc. v. Universal Sec. Ins.*, 584 So. 2d 1068, 1069–70 (Fla. Dist. Ct. App. 1991) (citing Fla. Stat. § 627.419(1)). "We start with the plain language of the policy, as bargained for by the parties." *Hyman*, 304 F.3d at 1186. "If that language is unambiguous, it governs." *Id.*

Here, the policy unambiguously covered goods or merchandise only while they were in transit or, by extension, "in store" as "stock" at a "location" during the transit process. That's what the policy said was covered in the "Duration of Voyage Clause":

> Within the geographical limits of this policy, *cover hereunder shall attach* from the time the Assured assumes an interest in and/or responsibility for the subject[-]matter insured and continues uninterrupted, including transit, stock[,] and location coverage until that interest and/or responsibility ceases.

The limitation at the beginning of the clause is the key: "cover . . . attach[ed]" only "[w]ithin the geographical limits of the policy." The "geographical limits," or "voyage," started from a port or place

in North America, ended at a port or place in North America, and included while the goods or merchandise were "at rest," "in store," or "at contractors" during the journey. And "location" was "any building, tank, dock, wharf, pier, [or] bulkhead." In other words, the geographical limits of the policy were from a beginning point to an end location, and anywhere goods or merchandise stopped in between. Coverage "continue[d] uninterrupted, including transit, stock[,] and location coverage," during that trek.

The policy's title confirmed that the policy covered only goods or merchandise in transit or in storage during the transit process. The policy was titled "Marine Cargo Insurance," and "cargo," although not defined in the policy, was generally understood, at the time, to mean "[g]oods transported by a vessel, airplane, or vehicle." *See Cargo*, *Black's Law Dictionary* (10th ed. 2014).

The policy's claims handling procedure also confirmed that the policy covered only goods and merchandise in transit or in storage as part of the transit process. The claims procedure required that a series of transit-related pieces of information accompany notice of a loss, including the "[n]ame of vessel/conveyance"; the "[d]ate of shipment"; the "voyage"; the "[i]nsured cargo"; and the "[c]urrent location of insured cargo." The procedure also requested additional transit-related documentation—such as "the ocean bill of lading/airway bill/other contract of carriage"; the "commercial sales/purchase invoice"; the "packing list"; the "discharge tally or dock receipt"; and the "delivery receipt(s)"— "as

soon as possible in support of any claim." And the procedure required that "any packing materials . . . be retained."

Consistent with the "Duration of Voyage Clause," the policy's title, and the claims procedure, the policy's other provisions showed that it covered goods or merchandise only while in transit or in storage during the transit process. For example, the policy covered "[a]ny means of *conveyance* by land, sea[,] or air" *to* and *from* "[p]orts and/or places in North America," including both "transshipment risks" and "the risks of loading prior to and unloading after arrival of all *transits* [t]hereunder." The policy "also cover[ed] the subject[-]matter insured whilst on the premises of the Assured or their Agents . . . or other premises for packing, repacking, consolidation, deconsolidation[,] or similar incidental to and in the normal course of transit until the goods are delivered to the final destination(s)." And the policy provided coverage for various transit-related risks, including: "non-*delivery*"; a "change in *destination*"; "shortages" unrelated to "forcible entry" into a shipping container; "accumulation" resulting from transit interruption; late-returned shipping container penalties; "concealed damage" discovered "within 60 days of *arrival at final destination*"; and damage caused by *customs inspection*, mandated fumigation of a "vessel or conveyance," prevention or mitigation of a waterborne conveyance's pollution hazard, or insufficient packing, preparation, or stowage by a third party. Even goods purchased "[f]ree on [b]oard, [f]ree [a]longside [s]hip[,] or [c]ost and [f]reight" were covered.

What's more, the policy limited Lloyds' monetary exposure to $150,000 per "domestic inland *conveyance*" and $5,000,000 per "location," with conveyance defined as "[a]ny means of conveyance by land, sea[,] or air" and "location" as "any building, tank, dock, wharf, pier, [or] bulkhead." In other words, the policy covered up to $150,000 in losses sustained on any single "means of conveyance" and $5,000,000 in losses sustained while the goods or merchandise rested at a "location" during transit. The policy's "Information" section said that the policy covered "[t]ransits from field to packing house." And the statement of value attached to the policy noted that Pero's Delray Beach "packing house" held "[s]tock/[i]nventory" valued at $5,000,000—the same amount as the policy's per "location" coverage limit.

Finally, Pero's 2015 insurance application—which, again, we treat as part of the contract, *Nugget Oil*, 584 So. 2d at 1069–70—explained that the policy covered only goods or merchandise in transit or in storage during the transit process too. Specifically, the application documents showed that Pero sought to insure "[d]omestic shipments" of "[g]reen beans [and] peppers on vehicles (dump trucks) moving from field to packing house" and the "seed . . . stored on location."

Pero raises four arguments for why the policy covered the seedlings, plantings, and plastic coverings even though they were not in transit or in storage as part of the transit process. We are unpersuaded.

First, Pero contends that "goods and/or merchandise" under the subject-matter insured provision included seedlings, plantings, and plastic coverings (and not just, as the district court concluded, things Pero sold). But, even assuming seedlings, plantings, and plastic coverings were goods and merchandise under the policy (which we need not, and do not, decide), the "Subject-Matter Insured" provision didn't answer the question of *when* those goods and merchandise were covered. Rather, the "Duration of Voyage Clause" gave us the *when*. It said that goods and merchandise were covered only "[w]ithin the geographical limits of this policy." And the "geographical limits" of the policy were defined as voyages from one port or place in North America to another port or place in North America, including stops and storage during the transit process. Seedlings, plantings, and plastic coverings that were not in transit or resting between deliveries, like the ones destroyed at Trans Gro's greenhouses and in Pero's fields during Hurricane Irma, were not within the geographical limits of the policy.

Second, Pero argues that the "Duration of Voyage Clause" and geographical limits provision provided "seed-to-shelf" coverage because the sections "expressly" covered all goods in "places in North America." But Pero misreads the geographical limits provision and ignores the policy's title, the claims procedure, and the other transit-related provisions in the policy. The "Duration of Voyage Clause" and geographical limits provision offered coverage to Pero's goods and merchandise while in transit "from" field to packaging, "to" their final destination, and while stored as "stock"

during the course of transit; they did not cover goods and merchandise anywhere and anytime.

Third, Pero asserts that the language in the "Duration of Voyage Clause"—specifically, the phrase "including transit, stock[,] and location coverage"—meant that the clause included more than just transit, stock, and location coverage. "[T]he term 'including,'" Pero explains, "logically means the coverage [wa]s *not* limited to transit activities or maritime cargo." Although Pero's reading of the word "including" as non-limiting is correct, Pero again overlooks the limiting language—"[w]ithin the geographical limits of this policy"—at the beginning of the clause. This limitation—permitting coverage for goods or merchandise only from a beginning point to an end location and any stops in between—restricted the term "including" to the boundaries of the policy's geographical limits.

Fourth, Pero maintains that the district court erred by relying on the policy's title—"Marine Cargo Insurance"—in interpreting the policy. But the district court correctly recognized that, although "the headings or subheadings of a document do not dictate the meaning of the entire agreement under Florida law . . . where the literal language of the heading is contrary to the agreement's overall scheme," *Hinely v. Fla. Motorcycle Training, Inc.*, 70 So. 3d 620, 624 (Fla. Dist. Ct. App. 2011), here the policy's title was "consistent with the coverage afforded therein and thus . . . c[ould] be considered in interpreting its plain meaning." *See Nishman v. Stein*, 292 So. 3d 1277, 1283 (Fla. Dist. Ct. App. 2020) ("[W]hile

headings are not necessarily dispositive, contractual provisions are construed in the context of the entire agreement. Courts must strive to read a contract in a way that gives effect to all of the contract's provisions." (cleaned up)).

CONCLUSION

Because the insurance policy clearly and unambiguously did not cover the portion of Pero's claim that Lloyds denied, the district court properly granted summary judgment for Lloyds and denied partial summary judgment for Pero.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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April 10, 2023

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-12711-CC
Case Style: Certain Underwriters at Lloyds v. Pero Family Farm Food Co., Ltd
District Court Docket No: 9:18-cv-81680-RAR

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against appellant.

Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

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OPIN-1A Issuance of Opinion With Costs