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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

EDWARD STOUT, individually and as Trustee, etc., et al., Plaintiffs and Appellants, v. BALBOA INSURANCE COMPANY, Defendant and Respondent.	D053779 (Super. Ct. No. GIC881273)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald L. Styn, Judge. Reversed.

In the underlying action, the City of Rialto (Rialto) sued the trustees and beneficiaries of the E. F. Schulz Trust[1] for environmental contamination (the Rialto

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1 The E. F. Schulz Trust defendants in the Rialto action are the plaintiffs and appellants in this action. To avoid confusion, we will refer to them collectively as "the trust." The individual plaintiffs, as identified in their second amended complaint are: Edward Stout, individually and as trustee of the E. F. Schulz Trust; Elizabeth Rodriguez; John Callagy, individually and as trustee of the E. F. Schulz Trust, and as trustee of the

action) allegedly caused by Zambelli Fireworks Manufacturing Company (Zambelli) during a time period it occupied and used property owned by the trust. The trust tendered its defense in the Rialto action to Balboa Insurance Company (Balboa) under a comprehensive general liability (CGL) insurance policy that Balboa issued to Zambelli for the policy period of January 1, 1985, to January 1, 1986 (the policy). When Balboa denied the defense, the trust sued Balboa for breach of duty to defend and related causes of action. The court granted summary judgment in Balboa's favor based on its finding that there is no potential for coverage under the policy for the claims against the trust in the Rialto action. The trust appeals the judgment, contending that the claims against it in the Rialto action potentially fall within both the policy's completed operations coverage and products liability coverage, and that it is a named insured under the policy. We agree and, accordingly, reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2004, Rialto filed its initial complaint in the Rialto action against the trust and various other entities, including Zambelli, for environmental contamination in an area called the Rialto Ammunition Storage Point (RASP).[2] Rialto alleged the trust

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Frederiksen Children's Trust; Linda Frederiksen, individually and as trustee of the E. F. Schulz Trust, and as trustee of the Walter M. Pointon Trust, and as trustee of the Michelle Ann Pointon Trust; Mary Mitchell; Stephen Callagy; and Jeanine Elzie. In its reply brief, the trust explains that although some of the plaintiffs are identified in their capacities as trustees of other trusts, they were beneficiaries of the E. F. Schulz Trust in those trustee capacities.

2 The record includes a copy of a fifth amended complaint in the Rialto action.

has owned about 100 acres of land in the RASP area since 1947 and, beginning in 1950, leased portions of that land to various companies, including Zambelli, that "manufactured, assembled, tested, and stored pyrotechnic devices . . . containing perchlorate." Zambelli allegedly "leased, rented, controlled, and/or occupied a munitions storage bunker and fireworks manufacturing plant . . . within the RASP Area, from approximately 1982 (or earlier) through 1991." As part of its on-site manufacturing activities, Zambelli allegedly "handled raw perchlorate salts, tested fireworks, and accepted . . . return shipments of defective, unpackaged and unused perchlorate-containing fireworks products from its customers." Rialto alleged that Zambelli "released perchlorate into the environment through its manufacturing, maintenance, and other activities on the site . . . , and that it also arranged to have its perchlorate-contaminated wastes disposed of at [defendant San Bernardino County's] Mid-Valley Sanitary Landfill and/or with other waste handlers . . . doing business on the RASP Site . . . ." Rialto sought recovery of response costs and other relief against the trust under a number of statutory and common law causes of action.

In December 2004, the trust's counsel sent Balboa a written request that it provide the trust a defense in the Rialto action under the policy. A month later, the trust's counsel sent Balboa a follow-up letter stating the trust qualified as a named insured under the policy because the policy's definition of "Named Insured" includes "property owners." Balboa rejected the trust's request for a defense, asserting no defense was due because "the Trust Defendants" were not insureds under the policy, and the policy provided coverage only for liability arising from specific fireworks displays.

In October 2006, the trust filed the instant action against Balboa and others. The trust's operative second amended complaint includes causes of action against Balboa for breach of duty to defend (eighth cause of action), breach of duty to indemnify, breach of the duty of good faith and fair dealing, and unfair business practices, based on Balboa's refusal to defend them in the Rialto action.

Balboa filed a motion for summary judgment as to all of the causes of action against it in the second amended complaint, and the trust filed a cross-motion for summary adjudication of its eighth cause of action against Balboa for breach of the duty to defend. The court granted Balboa's motion for summary judgment on the ground there is no potential for coverage under the policy for the claims alleged against the trust in the Rialto action and that, absent a duty to defend, there is no basis for any of the trust's other claims against Balboa. The court denied the trust's motion for summary adjudication, ruling the trust failed to meet its initial burden of persuasion on the motion because it had not authenticated the two policies it relied on as evidence in support of its motion (the subject policy under which it seeks coverage and a prior policy that Balboa issued to Zambelli). The court added: "Even if the [trust] were to establish the authenticity of the policies, for the reasons stated in the court's ruling on Balboa's motion for summary judgment, [the trust's] motion would still be denied." The court entered judgment in Balboa's favor and the trust filed this appeal.

DISCUSSION

On appeal from a ruling on a motion for summary judgment, we independently review the moving and opposition papers and apply the same standard as the trial court in

determining whether the motion was properly granted. (*Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 873.)

I

Relevant Insurance Law Principles

"It has long been a fundamental rule of law that an insurer has a duty to defend an insured if it becomes aware of, or if the third party lawsuit pleads, facts giving rise to the potential for coverage under the insuring agreement. [Citations.] This duty, which applies even to claims that are 'groundless, false, or fraudulent,' is separate from and broader than the insurer's duty to indemnify." (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 19.)

"Courts first determine whether insurers have a duty to defend by 'comparing the allegations of the complaint with the terms of the policy.' [Citation.] Regarding the policy, contract terms are interpreted in their '"'ordinary and popular sense.'"' [Citation.] Any ambiguous terms are resolved in the insureds' favor, consistent with the insureds' reasonable expectations. [Citation.] Ambiguous terms are those capable of two or more reasonable constructions." (*Kazi v. State Farm & Casualty Co.* (2001) 24 Cal.4th 871, 879 (*Kazi*).)

"Regarding the complaint, insurers must defend a lawsuit that '*potentially* seeks damages within the coverage of the policy.' [Citation.] The insurers' duty to defend does not depend on whether damages are ultimately awarded. [Citation.] In fact, the duty to defend may '"'exist even where coverage is in doubt and ultimately does not develop,'"' and it continues until there is no potential for coverage. [Citation.] Any doubt as to

whether the facts establish that the duty to defend exists must be resolved in the insured's favor. [Citation.] When '"'there is no possibility of coverage, there is no duty to defend . . . .'"'" (*Kazi, supra*, 24 Cal.4th at pp. 879-880.)

Accordingly, to prevail on the issue of whether the insurer owes a duty to defend, "the insured must prove the existence of a *potential for coverage*, while the insurer must establish *the absence of any such potential.* In other words, the insured need only show that the underlying claim *may* fall within policy coverage; the insurer must prove it *cannot.* Facts merely tending to show that the claim is not covered, or may not be covered, but are insufficient to eliminate the possibility that resultant damages (or the nature of the action) will fall within the scope of coverage, therefore add no weight to the scales." (*Montrose Chemical Corp. v. Superior Court* (1993) 6 Cal.4th 287, 300.)

"In 'determining whether a particular policy provides a potential for coverage and a duty to defend, we are guided by the principle that interpretation of an insurance policy is a question of law.'" (*Kazi, supra,* 24 Cal.4th at p. 880.) Accordingly, we are not bound by the trial court's construction of the policy, but must independently interpret the policy provisions. (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 453.) "Our goal is to determine the mutual intention of the parties at the time the policy was created, and such intent should be inferred, if possible, solely from the written terms of the policy. [Citation.] 'The "clear and explicit" meaning of these provisions, interpreted in their "ordinary and popular sense," unless "used by the parties in a technical sense or a special meaning is given to them by usage" [citation], controls judicial interpretation. [Citation.]'" (*Ibid.*)

II

Relevant Policy Provisions

The policy is identified as a CGL policy, and includes form L6394a, which specifies four "General Liability Hazards" covered by the policy: (1) "Premises—Operations"; (2) "Independent Contractors"; (3) "Completed Operations"; and (4) "Products." Under the Premises—Operations hazard, the policy specifies three coverage areas, the first being "Premise Liability," with a reference to Endorsement No. 2 for "Location."[3] The second and third coverage areas under Premises—Operations are described as "Fireworks Exhibitions Named Insured Only," and "Fireworks Exhibitions other than Named Insured but furnished by Named Insured." Coverage for the latter is deemed "SUBJECT TO REPORTING," and premium rates for different amounts of that coverage are listed on the form. Under Products, the policy specifies "Class B Fireworks."

The policy defines Named Insured as "the person or organization named in Item 1 of the declarations of this policy." Item 1 of the "Declarations" section of the policy identifies the Named Insured as "Zambelli Fireworks MFG. Co., Inc. (See [Endorsement No. 1])." Endorsement No. 1 states: "It is hereby agreed that the Named Insured is to read as follows, effective 1-1-85: [¶] Zambelli International Fireworks Manufacturing

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3 Endorsement No. 2 states: "It is hereby agreed that the following locations are covered for Premise Liability, effective 1-1-85[:] [¶] Township of Beakman, New York 1 Building [¶] RD 2, Nassauh [*sic*] Harbor, Nerw [*sic*] Castle, Pa 15 Buildings."

Company, Inc. and Sponsors, property owners or Municipalities and Additional Insureds."

We will address other provisions of the policy where pertinent to our discussion.

III

Completed Operations Coverage

The trust contends the claims against it in the Rialto action potentially fall within the policy's Completed Operations coverage. As noted, Completed Operations is one of the four separate General Liability Hazards for which the policy provides coverage. The policy states, in relevant part, that the "'completed operations hazard' includes . . . property damage arising out of operations . . . , but only if the . . . property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured." The policy defines "'[o]perations' [to] include materials, parts or equipment furnished in connection therewith," and states that "[o]perations shall be deemed completed at the earliest of the following times: [¶] . . . [¶] (2) when all operations to be performed by or on behalf of the named insured at the site of the operations have been completed . . . ." The policy further provides that "[o]perations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed."

Thus, the policy's Completed Operations coverage applies to a claim that property damage arising out of the insured's operations occurred away from premises owned by or rented to the insured after the operations had been completed at the site of the operations.

Balboa contends there are no allegations in the Rialto complaint to suggest any property damage occurred after Zambelli's operations on the trust's Rialto premises were complete and after Zambelli vacated the premises. We disagree.

The fifth amended (and presumably operative) complaint in the Rialto action (the Rialto complaint)[4] claims that property damage in the form of environmental contamination arose from Zambelli's operations on the trust's property in the RASP area, alleging that Zambelli "released perchlorate and hazardous substances/wastes into the environment through its manufacturing, maintenance, and other activities on the site." The Rialto complaint effectively alleges this property damage occurred both *away* from premises owned by the trust and rented to Zambelli and *after* Zambelli's operations were completed on the site of the operations. First, it alleges that "the activities of *all Defendants* as alleged herein resulted in discharges and disposals of hazardous substances and wastes by Defendants which have *over time* significantly contaminated the soil and groundwater underlying the RASP Area, producing a contaminant plume of hazardous substances and wastes, *extending over many miles* through one or more contaminated aquifers and contaminating numerous of [Rialto's] municipal water supply wells, and surrounding property and natural groundwater resources . . . with hazardous substances and wastes, including perchlorate." (Italics added.) The Rialto complaint further alleges "that the perchlorate plume where the Defendants formerly operated . . . has and

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4 The relevant allegations in Rialto's fifth amended complaint concerning the trust are substantially the same as in the original Rialto complaint, and our duty to defend analysis would be the same under either pleading.

continues to migrate toward the City of Colton. Preliminary analysis and characterization of the perchlorate plume and its migration have revealed that a basin-wide cleanup is necessary." (Italics added.) By alleging that contamination arising from Zambelli's operations on the trust's Rialto property (which Zambelli allegedly ceased to occupy in 1991) has gradually spread and continues to cause damage since its initial release, the Rialto complaint satisfies the policy's requirement for completed operations coverage that there be a claim of property damage that occurred both away from premises owned by or rented to the insured and after "all operations to be performed by or on behalf of the named insured at the site of the operations have been completed."[5]

The Rialto complaint also claims property damage occurred after Zambelli's operations were completed at the site by alleging that Zambelli "accepted . . . return shipments of defective, unpackaged and unused perchlorate-containing fireworks products from its customers" and "released perchlorate and hazardous substances/wastes into the environment through its . . . maintenance, and other activities on the site." As noted, the policy's definition of "operations" includes "materials . . . furnished in connection therewith," and the policy states that any such operations that "may require

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5 The Rialto complaint also effectively alleges property damage occurring away from premises owned by the trust and rented to Zambelli by defining the "environment" allegedly contaminated by Zambelli's activities on the premises as "(A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States . . . and (B) any other surface water, groundwater, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States."

further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed." Accordingly, the alleged defective and unused perchlorate-containing fireworks products that Zambelli accepted from its customers constitute Completed Operations under the policy because, as "materials" furnished in connection with Zambelli's operations, they fall within the policy's definition of "operations," and are deemed to be "completed" under the policy because they may require further service, maintenance, correction, repair, or replacement but are otherwise complete. Because the defective fireworks qualified as completed operations when Zambelli accepted them, the Rialto complaint's allegations that Zambelli's subsequent activities in connection with them caused property damage satisfy the policy's requirement that claimed property damage arose after the operations had been completed at the site of the operations.[6]

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6 Balboa argues that the policy does not provide coverage for Zambelli's alleged acceptance of defective fireworks back from customers and disposal of them at the site because it expressly provides that "[t]he completed operations hazard does not include . . . property damage arising out of [¶] . . . [¶] (b) the existence of tools, uninstalled equipment or *abandoned or unused materials* . . . ." (Italics added.) We view the defective fireworks that Zambelli allegedly accepted on the Rialto premises as falling more within the policy provision defining Completed Operations to include "materials" that "may require further service or maintenance work, or correction, repair or replacement because of any *defect or deficiency*" (italics added) than the provision excluding property damage arising from "the existence of . . . abandoned or unused materials" from the Completed Operations hazard.

Balboa contends that the policy restricts Completed Operations coverage to the locations specified in Endorsement No. 2.[7] However, Endorsement No. 2 states that the specified locations in New York and Pennsylvania are "covered for *Premise Liability*." (Italics added.) As noted, Premise Liability is a separate area of coverage under the policy's Premises—Operations hazard, which is a separate covered hazard from the policy's Completed Operations hazard. There is no language in the policy that limits completed operations coverage to any specific location(s). The clear and explicit meaning of the language of Endorsement No. 2, interpreted in its ordinary and popular sense, is that only Premise Liability coverage under Premises—Operations is limited by Endorsement No. 2 to the locations identified in the endorsement.[8]

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7 Balboa notes that in contrast to the 1985 policy at issue here, a 1983 policy it issued to Zambelli specified the Rialto site as insured premises. However, the 1983 policy provided premises-operations coverage only; it did not cover completed operations or products liability, and the advance premium for the 1983 policy was $58,650, compared to $174,000 for the subject 1985 policy. The increased premium for the 1985 policy suggests that Zambelli was paying for additional coverage.

8 At oral argument, Balboa's counsel asserted no California case has ever found that where pollution is not covered under a policy's premises-operations hazard, it is nevertheless covered under a policy's completed operations hazard "as soon as it migrates one inch off the site." The absence of a case holding that completed operations coverage applies to a pollution claim under facts similar to those in this case is not a compelling reason to conclude the claims against the trust in the Rialto complaint do not fall within the policy's Completed Operations coverage. The policy requires that for Completed Operations coverage to apply, the property damage must occur "away from the premises owned by or rented to the named insured"; the policy does *not* say the property damage must occur away from the premises owned by or rented to the Named Insured *and covered under Premises-Operations*. We are unaware of any case holding, or even addressing whether, "the premises owned by or rented to the named insured" referenced in the standard completed operations provision must be covered under the policy's Premises—Operations hazard for Completed Operations coverage occurring away from

Balboa argues that Endorsement No. 3 (form GL9916) in the policy is evidence that completed operations coverage is tied to premises liability coverage. Endorsement No. 3, entitled "AMENDMENT – LIMITS OF LIABILITY," states that it "modifies" the policy and that the limits of liability for bodily injury and property damage are "$1,000,000 each occurrence" and "$1,000,000 aggregate." The endorsement is expressly "[a]pplicable to Premise Liability, Class B Display Liability and Class B Products Liability only." Balboa suggests that because the policy does not state separate limits for Completed Operations coverage, Completed Operations coverage must be related to and dependent upon Premises—Operations coverage.

We note that Endorsement No. 3 also fails to state liability limits for the separate Independent Contractors hazard. It is unclear why the policy does not state limits for two of its four separately covered hazards, but Endorsement No. 3 clearly provides that its stated limits apply to premise liability (including display liability) and products liability *only*. Even if Endorsement No. 3 is viewed as creating an ambiguity as to whether the Completed Operations and Independent Contractors coverages were intended to be independent coverages, it does not conclusively establish that the claims against the trust

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that property to apply. There being no guiding authority on that precise point, we determine the applicability of Completed Operations coverage by comparing the language of the policy with the allegations of the Rialto complaint. (*Kazi, supra,* 24 Cal.4th at p. 879.)

in the Rialto action do not potentially fall within the policy's Completed Operations coverage.[9]

Balboa further contends that two endorsements (Nos. 6 & 9) in the policy setting forth advance reporting requirements for fireworks displays would be rendered meaningless if Completed Operations coverage is not limited to the locations specified in Endorsement No. 2.[10] Balboa reasons that if there is no location restriction for Completed Operations coverage, all of Zambelli's operations, no matter where they occurred or whether they were reported in advance, would fall within Completed Operations coverage.

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9 Balboa asserts that form L6394a additionally evidences that Completed Operations coverage is tied to Premises—Operations coverage, but does not develop this argument other than to note: "Form L6394a does not independently describe 'completed operations,' but rather states that such coverage is 'included' in the description of that hazard." Balboa's point is unclear. Presumably, the word "included" in the hazard description area under both Completed Operations and Independent Contractors simply means those hazards are included in the policy's coverage.

10 Endorsement No. 6, entitled "DISPLAY REPORTING ENDORSEMENT," provides: "It is understood and agreed that such coverage as is afforded under Coverage Part L6394a, Comprehensive General Liability Insurance, applies only if the Named Insured reports in writing to Allied Specialty Insurance . . . with a copy of the certificate or other information showing the location of the fireworks display, the date of the display and the price of the display 24 hours prior to the date of the fireworks display. Company's Limit of Liability is shown on GL9916."

Endorsement No. 9, entitled "PACKAGE SHOW REPORTING ENDORSEMENT," provides: "It is understood that such coverage as is afforded under Coverage Part L6394a, Comprehensive General Liability Insurance, applies only if the insured reports in writing to Allied Specialty Insurance . . . with a copy of the application or other information showing the location of the fireworks display, the date of the display and the price of the display 24 hours prior to the date of the fireworks display. Company's Limit of Liability is shown on GL9916."

We disagree that the reporting endorsements are rendered meaningless by our view of the policy's Completed Operations coverage. Balboa's analysis disregards the distinction between Premises—Operations coverage and Completed Operations coverage. The two coverages are complementary and are not overlapping, and completed operations coverage, like products liability coverage, "'takes over where premises-operations [coverage] leaves off.'" (*Fibreboard Corp. v. Hartford Accident & Indemnity Co.* (1993) 16 Cal.App.4th 492, 500-501; *Travelers Casualty & Surety Co. v. Employers Ins. of Wausau* (2005) 130 Cal.App.4th 99, 113, 114 & fn. 6.) The advance reporting endorsements serve as a limitation on liability for *in-progress* premises operations in the form of fireworks displays, in contrast to *completed* operations. If property damage or bodily injury occurs *during* a fireworks display or exhibition, and not *after* such operation is completed, the applicable liability coverage is Premises—Operations coverage, not Completed Operations coverage, and such Premises—Operations coverage is available under the policy only if the applicable advance reporting requirement is satisfied. Because the policy's separate coverage for Completed Operations does not apply to claims for damage or injury that occurred during a fireworks display, it does not render meaningless the advance reporting requirements applicable to Premises—Operations coverage for fireworks displays and exhibitions.

We conclude that the claims against the trust in the Rialto action are potentially covered under the policy's Completed Operations provisions.

IV

Products Coverage

We agree with the trust that the claims against them in the Rialto action also are potentially covered under the policy's Products hazard. Like Completed Operations, Products is a distinct General Liability Hazard for which the policy provides coverage. The policy states that the "'products hazard' includes . . . property damage arising out of the named insured's products . . . , but only if the . . . property damage occurs away from premises owned by or rented to the named insured and after physical possession of such products has been relinquished to others." Thus, the policy's Products coverage applies to a claim that property damage arising out of Zambelli's products occurred away from the premises rented to Zambelli, after Zambelli relinquished physical possession of the products to others.

Balboa contends the policy provides no Products coverage for the claims in the Rialto action because those claims are operations claims rather than products claims. Balboa appears to argue that the policy's Products coverage applies only to property damage or injury arising from fireworks used in exhibitions at the locations specified in Endorsement No. 2, although its respondent's brief is somewhat unclear on this point.[11]

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11 Balboa states: "The trial court also agreed with Balboa that the Policy's 'products hazard' is tied to Zambelli's operations. The allegations of the *Rialto* Action do not allege property damage arising from the *use* of Zambelli's product, *i.e.* firework exhibition." Balboa later states that "[t]he trial court . . . did not err in tying the products hazard to the operations coverage for the premises identified in Endorsement No. 2." The trial court's order granting Balboa's motion for summary judgment states: "The 'Products' coverage

In any event, Balboa contends the Rialto complaint does not trigger Products coverage because it does not allege property damage arising from Zambelli's products that occurred away from the premises rented to Zambelli and after Zambelli relinquished physical possession of the products. We disagree.

The Rialto complaint alleges that Zambelli "manufactured, distributed, stored and sold wholesale on and from [the Rialto] site fireworks products containing perchlorate[;] accepted . . . return shipments of defective, unpackaged and unused perchlorate-containing fireworks products from its customers [and] released perchlorate and hazardous substances/wastes into the environment through its . . . maintenance, and other activities on the site." These allegations effectively claim that property damage in the form of environmental contamination arose from Zambelli's activities on the Rialto site in connection with the manufacture, distribution, and sale of perchlorate-containing fireworks, along with its activities in connection with returned unpackaged and unused perchlorate-containing fireworks.

As we discussed above, the Rialto complaint alleges that the property damage (environmental contamination) caused by Zambelli's activities on the Rialto site occurred away from the premises. The Products coverage requirement that the damage arising out of Zambelli's products must have occurred after Zambelli relinquished physical possession of the products to others is satisfied in two ways by the Rialto complaint. First, it necessarily follows from the allegation that Zambelli "accepted . . . return

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applies to bodily injury or property damage resulting from the use of Zambelli Class B Fireworks in 'Fireworks Exhibitions.'"

shipments of defective, unpackaged and unused perchlorate-containing fireworks products from its customers" that Zambelli had previously relinquished physical possession of the returned products to others.

Second, in the same paragraph containing the allegation that Zambelli accepted return shipments of defective, perchlorate-containing fireworks products, the Rialto complaint alleges that Zambelli "arranged to have its perchlorate-contaminated and hazardous wastes disposed of at [defendant San Bernardino County's] Mid-Valley Sanitary Landfill and/or with other waste handlers and processors doing business on the RASP Site." Read in the context of the entire paragraph, the reference to "perchlorate-contaminated and hazardous wastes" that Zambelli allegedly relinquished to waste handlers for disposal reasonably can be construed as including "defective, . . . perchlorate-containing fireworks products" that were returned to Zambelli. Accordingly, the Rialto complaint effectively alleges that property damage arose out of Zambelli's defective products after Zambelli relinquished physical possession of them.

We do not share Balboa and the trial court's view that the policy's Products coverage applies only to bodily injury or property damage resulting from the use of Zambelli Class B Fireworks in fireworks exhibitions. Liability for property damage resulting from the use of Zambelli Class B Fireworks in fireworks exhibitions is clearly covered under the *Premises—Operations* hazard, which expressly includes coverage for Fireworks Exhibitions Named Insured Only and Fireworks Exhibitions other than Named Insured but furnished by Named Insured, in addition to premises liability coverage for the locations specified in Endorsement No. 2. The policy on form L6394a lists the Products

hazard as a separate and distinct General Liability Hazard for which the policy provides coverage.

Balboa refers in passing to the policy's "RESTRICTED COVERAGE ENDORSEMENT" (Endorsement No. 8), which provides: "It is understood and agreed that such insurance as is afforded under this policy applies only to claims arising out of the operations of the named insured in connection with the use of CLASS B FIREWORKS." Balboa states that Endorsement No. 8 limits "coverage to claims arising in connection with Zambelli's Class B Fireworks." The trial court went much further in its interpretation of Endorsement No. 8, ruling that "by its express language, [Endorsement No. 8] limits the coverage afforded to the locations identified and to 'Fireworks Exhibitions' where Class B Fireworks are used — as opposed to locations or 'Fireworks Exhibitions' where other classes of fireworks are used, or where no fireworks are used."

Endorsement No. 8 is not nearly as restrictive as the court construed it. Nothing in its express language limits coverage to any particular location or ties it in any way to Endorsement No. 2, which limits only *Premise Liability* coverage to certain locations. Nor does any language in Endorsement No. 8 restrict coverage to the use of Zambelli's products in fireworks displays. By its express terms, Endorsement No. 8 rather liberally allows coverage for any claim (not excluded elsewhere in the policy) *arising out of the operations of the Named Insured in connection with the use of Class B Fireworks*. The claims against the trust in the Rialto action allege property damage that *arose out of* Zambelli's *operations* on the Rialto site, and the alleged operations (manufacturing,

assembling, testing, and storing pyrotechnic devices containing perchlorate) clearly were *connected with* the use of fireworks, some of which presumably were Class B Fireworks.[12] Endorsement No. 8 does not exclude coverage under the policy for the claims against the trust in the Rialto action. We conclude those claims potentially fall within the policy's Products hazard coverage.[13]

V

Named Insured Endorsement

Because the trial court ruled there is no coverage for the claims against the trust in the Rialto action, it did not reach the issue of whether the trust qualifies as an insured under the policy. As noted, the policy's Endorsement No. 1 states: "It is hereby agreed that the Named Insured is to read as follows, effective 1-1-85: [¶] Zambelli International

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12 If Balboa were to prove that none of Zambelli's operations on the Rialto site were connected to the use of Class B Fireworks, Endorsement No. 8 would eliminate any potential for coverage under the policy for the claims against the trust in the Rialto action.

13 At oral argument Balboa's counsel argued that if every pollution migration automatically falls under Products coverage, the policy's qualified pollution exclusion would be superfluous, although counsel acknowledged that Balboa had not raised the qualified pollution exclusion and that "sudden and accidental" pollution is an exception to the exclusion. Counsel's point is somewhat unclear, but her reference to the qualified pollution exclusion suggests she was arguing that if coverage for a pollution claim arising from the insured's operations on its premises is excluded under the qualified pollution exclusion, the exclusion should also apply to a claim under Completed Operations or Products coverage for pollution that has migrated off the premises. The argument has merit, as far as it goes, because the policy's qualified pollution exclusion applies broadly to "this insurance" — i.e., the entire policy. Accordingly, unless the pollution release is "sudden and accidental," the qualified exclusion bars coverage under *any* of the policy's covered hazards. The point is academic, however, because neither Balboa nor the trust has addressed the applicability of the qualified pollution exclusion to the claims against the trust in the Rialto complaint.

Fireworks Manufacturing Company, Inc. and Sponsors, *property owners* or Municipalities and Additional Insureds." (Italics added.) The policy does not define the term "property owners."

The trust argues that read in context of the policy, and Endorsement No. 8 in particular, the term "property owner" in Endorsement No. 1 is reasonably construed as referring to owners of properties where Zambelli conducted its operations in connection with Class B Fireworks. We agree that this construction is reasonable.

Balboa argues that a Named Insured under the policy must be directly involved with fireworks exhibitions either by providing the display, by furnishing the display, or conducting operations involving fireworks. Balboa's construction of Named Insured is based on the "Description of Hazards" language under form L6394a's Premises—Operations hazard, which includes references to Fireworks Exhibitions Named Insured Only and Fireworks Exhibitions other than Named Insured but furnished by Named Insured.

Balboa's reliance on form L6394a's references to Named Insured is misplaced because those references merely distinguish between two types of fireworks exhibitions that are covered under the Premises—Operations hazard — i.e., exhibitions by the "Named Insured Only" and exhibitions "furnished by Named Insured." Form L6394a does not define Named Insured and does not contain any language limiting coverage to entities providing or furnishing fireworks displays.

Balboa does not directly offer a construction of the term "property owner" in Endorsement No. 1. Rather, Balboa notes that an ambiguity in a policy can arise only

where there is more than one *reasonable* interpretation of a policy provision, and contends that the trust's construction of the term "property owner" is unreasonable. In supporting that contention, Balboa incorrectly asserts that the trust's construction would entitle every property owner, municipality and sponsor to property damage and bodily injury coverage regardless of whether the injury or damage arises from fireworks. Nothing in Endorsement No. 1 affects Endorsement No. 8's restriction of coverage to claims arising out of the operations of the Named Insured in connection with the use of Class B Fireworks. Any property owner, municipality or sponsor seeking coverage under the policy as a Named Insured under Endorsement No. 1 would be entitled to coverage only for claims *arising out of* the *operations* of the Named Insured (i.e., Zambelli) *in connection with* the use of Class B Fireworks.

Balboa's intent in expanding the policy's specification of Named Insured to include "Sponsors, property owners or Municipalities and Additional Insureds" may have been to provide coverage to such entities in connection with fireworks displays under the Premises—Operations hazard only, but the policy contains no language limiting coverage in such fashion. Because the policy provides coverage for hazards other than Premises—Operations, and contains no language limiting the type of coverage available to any category of Named Insured listed in Endorsement No. 1, it is more reasonable to construe Endorsement No. 1 as extending coverage for any insured hazard to any of the entities it identifies as a Named Insured.

At best, the policy is ambiguous as to the coverage available to Named Insured entities under Endorsement No. 1 other than Zambelli and the meaning of the term

"property owners," and the ambiguity is not eliminated by the language and context of the policy. "'If an . . . ambiguity is not eliminated by the language and context of the policy, courts then invoke the principle that ambiguities are generally construed against the party who caused the uncertainty to exist (i.e., the insurer) in order to protect the insured's reasonable expectation of coverage.'" (*Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, 868.) Accordingly, we construe the term "property owners" in Endorsement No. 1 to include owners of any properties in the policy territory where Zambelli conducted its operations in connection with Class B Fireworks, and we construe the policy as providing Completed Operations and Products coverage to such property owners.[14] Accordingly, the trust qualifies as a Named Insured entitled to Completed Operations and Products coverage under the policy.

VI

Trust Beneficiary Plaintiffs

Balboa contends that the only plaintiff who could be entitled to a defense as a property owner in the Rialto action is Edward Stout, because as trustee of the E. F. Schulz Trust, he alone held legal title to the subject property during the policy period. The trust responds that Balboa's duty to defend extends to the other plaintiffs as well because they held equitable title to the property as beneficiaries of the trust. The trust further notes that all of the plaintiffs were sued (and referred to collectively as the

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14 The policy's definition of "policy territory" includes "the United States of America, its territories or possessions."

"Schulz Trust Defendants") in the Rialto action, and the Rialto complaint alleges they all "own and/or owned" the subject property.[15]

The trust's arguments have merit. Creation of a trust results in divided ownership of the trust property, the trustee having legal title and the beneficiaries having equitable title. (*Gonsalves v. Hodgson* (1951) 38 Cal.2d 91, 98; *Allen v. Sutter County Bd. of Equalization* (1983) 139 Cal.App.3d 887, 890.) "'The interest of the beneficiary of a trust is an equitable estate. [Fn. omitted.] Although the trustee holds legal title to the property to carry out the terms of the trust, the rights of the beneficiary are recognized and protected by the courts of equity, *and the beneficiary is considered to be the real owner of the property*. [Fn. Omitted.] '"(*Beyer v. Tahoe Sands Resort* (2005) 129 Cal.App.4th 1458, 1475, italics added; *City of Palm Springs v. Living Desert Reserve* (1999) 70 Cal.App.4th 613, 621 [legal title of the corpus of any trust is held by the trustee, but the beneficiaries own the equitable estate or beneficial interest]; accord, *Herrick v. State of California* (1983) 149 Cal.App.3d 156, 161.) Accordingly, all of the plaintiffs are entitled to a defense.

Moreover, because the Rialto complaint seeks to hold all of the plaintiffs liable for environmental contamination as owners of the trust's Rialto property, they are all appropriately defended as alleged property owners. If there is a valid argument that the only plaintiff properly named as a defendant in the Rialto action is the trustee as legal

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15 Like the trust's second amended complaint in this action, the Rialto complaint identifies John Callagy and Linda Fredericksen as trustees of the E. F. Schulz Trust in addition to Edward Stout.

title holder of the property, it can be raised in the Rialto action. We will reverse the judgment as to all of the plaintiffs as owners of either legal or equitable interests in the subject property.

CONCLUSION

Based on our determination that the claims against the trust in the Rialto action are potentially covered by the policy, we reverse the judgment in favor of Balboa. However, the issue of the policy's authenticity precludes us from directing the court to vacate its order denying the trust's cross-motion for summary adjudication and enter a different order granting that motion. Although the court's ruling on Balboa's summary judgment motion, and accordingly the judgment, was based entirely on the court's construction of the policy, Balboa challenged the authenticity of the policy below and obtained summary judgment based on its language without conceding its authenticity. As noted, the court's denial of the trust's cross-motion for summary adjudication of its cause of action for breach of the duty to defend was based in part on the trust's failure to authenticate the policy. We do not review the court's ruling on the authentication issue, because the trust has not raised or addressed it in this appeal other than to incorrectly assert in a footnote in its reply brief that the court did *not* deny their summary adjudication motion on the ground it failed to authenticate the policy, with a supporting citation to the order granting *Balboa's* motion for summary judgment. The authenticity of the policy is a factual issue that remains to be decided.

DISPOSITION

The judgment is reversed. Appellants are awarded costs on appeal.

IRION, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.