IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

SYNGENTA CROP PROTECTION, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N21C-05-143 SKR CCLD
	)	
TRAVELERS CASUALTY AND SURETY COMPANY (f/k/a Aetna Casualty and Surety Company), et al.,	)	
	)	
Defendants.	)	

Submitted: October 16, 2025
Decided: January 30, 2026

Upon Consideration of Syngenta's Motion for Partial Summary Judgment on Defendant Travelers Casualty & Surety Company's Defense Obligation:
GRANTED.

Upon Consideration of Defendant Traveler Casualty and Surety Company's Cross-Motion for Partial Summary Judgment:
GRANTED in part and DENIED in part.

MEMORANDUM OPINION AND ORDER

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Rennie, J.

I. INTRODUCTION

This case addresses insurance coverage for personal injury lawsuits arising from exposure to the herbicide paraquat. Plaintiff Syngenta Crop Protection, LLC ("Syngenta"), successor to various paraquat manufacturers and distributors, seeks coverage under primary insurance policies issued by Defendant Travelers Casualty and Surety Company ("Travelers"). The underlying litigation involves claims by individuals alleging that paraquat exposure caused them to develop Parkinson's disease and kidney failure. After initially defending these suits independently, Syngenta sought a defense from Travelers under the certain "duty to defend" provisions. Travelers denied coverage, prompting this action. Following a stipulation confirming Syngenta's successor status, both parties moved for partial summary judgment regarding Travelers' defense obligations. For the reasons set forth below, Syngenta's motion is granted, and Travelers' motion is granted-in-part and denied-in-part.

II. BACKGROUND[1]

A. The Parties

Plaintiff Syngenta Crop Protection, LLC is a Delaware limited liability company with a principal place of business in North Carolina.[2] Syngenta is a manufacturer of, among other things, agrochemicals.[3] By stipulation of the parties, Syngenta is the successor in interest to "ICI Americas Inc (f/k/a/ ICI United States Inc., f/k/a/ ICI America Inc., f/k/a Atlas Chemical Industries, Inc.)" for purposes of the insurance policies at issue.[4]

Defendant[5] Travelers Casualty and Surety Company (f/k/a Aetna Casualty and Surety Company) is a Connecticut corporation with a principal place of business in Delaware.[6] Travelers provided the primary insurance policies at issue in this case.[7]

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[1] The facts are drawn from the Third Amended Complaint (D.I. 712) (hereinafter "Third Am. Compl.") and the documents incorporated there. Additional facts are drawn from the parties' briefing. *See* D.I.s 460–61 ("Pl.'s Mot."), 537 ("Def.'s Opp'n"), 634 ("Pl.'s Reply"), 574 ("Def.'s Mot."), 635 ("Pl.'s Opp'n"), 664 ("Def.'s Reply"). Throughout this Complaint, the Court refers to the exhibits attached to the Blosveren Affidavit, submitted alongside Syngenta's motion for partial summary judgment, as "Pl.'s Mot., Ex. #." Likewise, the Court refers to the exhibits attached to the Vobornik Affidavit, submitted alongside Travelers' motion, as "Def.'s Mot., Ex. #."

[2] "Third Am. Compl ¶ 1.

[3] *Id.*

[4] *Id.* at ¶ 2.

[5] Although there many other insurers involved in this case, the present motions only ask the Court to interpret the Travelers primary policies. Thus, in the interest of brevity, the Court limits its discussion of the parties.

[6] *Id.* at ¶ 5.

[7] Def.'s Mot., Exs. 1–6.

B. Procedural History

Syngenta initiated this action on May 17, 2021.[8] Since then, this case has been heavily litigated. The parties entered into a Stipulation Regarding Corporate Successorship on November 24, 2024, acknowledging—for purposes of this action only—that Syngenta is the successor entity to the original manufacturers and distributors.[9] This stipulation prompted the current round of dispositive motions by allowing Syngenta to pursue coverage under policies issued to its predecessors.[10] Syngenta filed its motion for partial summary judgment on May 27, 2025.[11] Travelers subsequently filed both an opposition[12] and a cross-motion for partial summary judgment in its favor on July 18, 2025.[13] Syngenta filed its reply[14] and opposition to cross-motion[15] on September 3, 2025, and Travelers concluded the briefing by filing its reply on September 18, 2025.[16]

The Court heard oral argument on October 16, 2025 and took the matter under advisement.

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[8] D.I. 1. The Third Amended Complaint was filed on December 11, 2025.
[9] D.I. 382.
[10] Pl.'s Mot. 1 n.1.
[11] Pl.'s Mot.
[12] Def.'s Opp'n.
[13] Pl.'s Reply.
[14] Def.'s Mot.
[15] Pl.'s Opp'n.
[16] Def.'s Reply.

C. Nature of the Case

Broadly, this case is about the scope of insurance coverage for more than 10,000 personal injury lawsuits[17] alleging bodily harm—primarily Parkinson's disease and kidney damage—resulting from exposure to the herbicide paraquat (collectively the "Paraquat Actions").[18] The central legal dispute hinges on the interpretation of specific coverage exclusion within six primary insurance policies issued by Travelers to Syngenta's predecessors.[19] For the purpose of the current motions, these policies are categorized into two distinct groups. The first group includes three policies ("Policy Nos. 1–3") which were in effect from September 1974 to 1977[20] and contain a clause limiting Travelers' liability for bodily injuries caused by pollution (the "Pollution Exclusion").[21] The second group of policies ("Policy Nos. 4–6" and together with Policy Nos. 1–3, the "Policies") ran from September 1977 to September 1980[22] and did not contain the Pollution Exclusion.[23] However, Travelers argues that specific language in these latter polices requires

[17] Although this number is what was reflected in the parties' briefing, the Court has been told that the number of cases is only increasing. *Compare* Pl.'s Mot. 13 (identifying more than 8,000 lawsuits) *with* Pl.'s Reply 22 (identifying more than 10,000 lawsuits).
[18] *See* Pl.'s Mot. 1.
[19] *See id.* at 4 (identifying Policy Nos. 04AL243515SRA, 04AL243562SRA, 04AL243562SRA, 04PK19SCA, 04PK2ISCA, 04PK25SCA).
[20] *See* Def.'s Mot., Exs. 1–3. Because the language at issue in each of these policies is identical, the Court cites only to Exhibit 1 in its discussion of these policies.
[21] Def.'s Mot. 4–5.
[22] *See* Def.'s Mot., Ex. 4–6. Because the language at issue in each of these policies is identical, the Court cites only to Exhibit 5 in its discussion of these policies.
[23] Pl.'s Mot. 4.

defense costs to the erode limits of liability, effectively capping its total financial obligation of the general policy limits. [24]

Through its motion for partial summary judgment, Syngenta seeks a determination that Travelers has a duty to defend it in six designated "Exemplar Actions."[25] Travelers' cross-motion asks the Court to find that it has no duty to defend or indemnify Syngenta for the Paraquat Actions under Policy Nos. 1–3 due to the Pollution Exclusion and to rule that defense costs under Policy Nos. 4–6 must reduce the overall policy limits.[26]

III. STANDARD OF REVIEW

Summary judgment is appropriate if the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a

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[24] *Id.*

[25] *Id.* at 6 (identifying: "(1) *Shea, et al. v. Syngenta Crop Protection, LLC, et al.*, Case No. 3:21-CV-00439 (S.D. Ill.) (the "Shea Action"), filed by DiCello Levitt Gutzler LLC, Saltz Mongeluzzi & Bendesky, P.C., and Searcey Denney Scarola Barnhart and Shipley, PA; (2) *Negrete, et al. v. Syngenta Crop Protection, LLC, et al.*, Case No. CGC-22-598034 (Cal. Sup. Ct.) (the "Negrete Action"), filed by Simon Greenstone Panatier, P.C.; (3) *Haire vs. Syngenta Crop Protection, LLC, et al.*, Case No. C20-02453 (Cal. Sup. Ct.) (the "Haire Action"), filed by Walkup, Melodia, Kelly & Schoenberger and Korein Tillery, LLC; (4) *Laughlin v. Syngenta Crop Protection, LLC, et al.*, Civil Action No. 3:23-PQ-01917-NJR (S.D. Ill.) (the "Laughlin Action"), filed by the Johnson Law Group; (5) *LeBlanc v. Syngenta Crop Protection, LLC*, Civil Action No. 3:21-PQ-01744-NJR (S.D. Ill.) (the "LeBlanc Action"), filed by the Wagstaff Law Firm; and (6) *Perry v. Syngenta Crop Protection, LLC, et al.*, Case ID 241103210 (Pa. Ct. Cm. Pl. Phila. Cty.) (the "Perry Action"), filed by The Miller Firm, LLC."). The Court acknowledges that these actions may not actually be exemplary of the Paraquat Actions more broadly, but it elects to use the term as a convenient shorthand to distinguish them from the more than 10,000 other lawsuits implicated in this action.

[26] Def.'s Mot. 3.

judgment as a matter of law."[27] The movant has the burden to show that its motion is supported by the undisputed facts.[28] If successful, "the burden shifts to the non-movant to demonstrate that a genuine issue for trial still exists."[29] The Court "views the facts and draws all reasonable inferences in the light most favorable to the non-movant."[30] On a motion for summary judgment, "[t]he Court only determines whether genuine issues of material fact exist, and does not decide such issues."[31] Summary judgment "is particularly appropriate in matters of insurance contract interpretation because interpretation of an insurance policy is a question of law for the court."[32]

The Court may refuse to grant summary judgment, or order a continuance to permit greater discovery, if "it appear[s] from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition."[33]

IV. ANALYSIS

The Court begins its analysis by determining whether Syngenta has demonstrated that the complaints in the Exemplar Actions "show a potential that

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[27] *Nat'l Amusements, Inc. v. Endurance Am. Specialty Ins. Co.*, 2025 WL 720455, at *5 (Del. Super. Feb. 17, 2025)(quoting Del. Super. Ct. R. 56(c)).
[28] *Id.*
[29] *Id*.
[30] *Id*.
[31] *Id*.
[32] *Id*.
[33] *Nat'l Amusements,* 2025 WL 720455, at *5 (quoting Del. Super. Ct. R. 56(c)).

liability within coverage will be established."[34] After addressing this threshold issue, the Court turns to the notice requirements, followed by an examination of the Pollution Exclusion in Policy Nos. 1–3 and the specific interpretation of the term "Expenses" as utilized in Policy Nos. 4–6.

A. Travelers' Duty to Defend

At the outset, the Court notes that its evaluation of Travelers' duty to defend the Exemplar Actions does not automatically extend to every Paraquat Action.[35] Indeed, Syngenta did not request such a blanket ruling.[36] Consequently, this duty to defend analysis is limited to the six Exemplar Actions specifically presented for summary judgment.

1. Use of Extrinsic Evidence to Determine Duty to Defend

The Court must first define the scope of its review. It is well settled under Delaware law that the duty to defend is broader than the duty to indemnify.[37] Typically, in this determination the Court looks exclusively at two documents: the insurance policy and the underlying pleadings.[38]

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[34] *CXP Ref., LP v. XL Specialty Ins. Co.*, 2021 WL 5492671, at *9 (Del. Super. Nov. 23, 2021) (quoting *Nat'l Union Fire Ins. Co. of Pittsburgh, PA. v. Rhone-Poulenc Basic Chems. Co.*, 1992 WL 22690, at *7 (Del. Super. Jan. 16, 1992), *aff'd sub nom. Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192 (Del. 1992)).
[35] *See* Def.'s Opp'n 13–20 (noting that Syngenta may seek to ratchet this decision into a ruling in the thousands of other pending lawsuits).
[36] Pl.'s Mot. 20; Pl.'s Reply 1.
[37] *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Rhone-Poulenc Basic Chems. Co.*, 1992 WL 22690, at *5 (Del. Super. Jan. 16, 1992).
[38] *Zurich Am. Ins. Co. v. Syngenta Crop Prot., LLC*, 2020 WL 5237318, at *5 (Del. Super. Aug. 3, 2020), *aff'd*, 314 A.3d 665 (Del. 2024).

Travelers argues for a departure from this rule, urging the Court to consider extrinsic evidence, including the record of this coverage action and the discovery from the underlying cases.[39] Travelers justifies this request by pointing to Syngenta's delay in providing notice, Syngenta's initial self-defense, and the potential settlement of four of the six Exemplar actions. [40]

To support this, Travelers relies on *American Insurance Group v. Risk Enterprise Management Limited*,[41] where the Delaware Supreme Court found an "unusual situation" that permitted looking beyond the pleadings because the insured waited until after the close of discovery—three years into the litigation—to demand a defense.[42]

However, subsequent Superior Court decisions have clarified that this is a narrow exception adhering to the rule excluding extrinsic evidence where discovery in the underlying action remains ongoing.[43] Notably, the Delaware Supreme Court recently declined to examine extrinsic evidence to determine if there was a duty to defend even when the underlying litigation had already settled. [44]

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[39] Def.'s Opp'n 20-23.
[40] *Id.*
[41] *Am. Ins. Gp. v. Risk Enter. Mgmt., Ltd.*, 761 A.2d 826, 829–30 (Del. 2000).
[42] *Id.* at 829.
[43] *See, e.g. Premcor Ref. Gp., Inc. v. Matrix Serv. Indus. Contractors, Inc.*, 2009 WL 960567, at *6 (Del. Super. Mar. 19, 2009) (refusing extrinsic evidence and limiting *Risk Enterprise* to its "unique set of facts[,]" because it had a complete discovery record and "the underlying case had already been developed.").
[44] *See ACE Am. Ins. Co. v. Rite Aid Co.*, 270 A.3d 239, 246–47 (Del. 2022) (examining only the policy and underlying complaints despite the fact that the underlying cases had settled). *See also*

The discovery record in the Exemplar Actions is not complete. Nevertheless, Travelers proposes that the Court consider both the record in those cases and the record in the coverage action to determine coverage.[45] Travelers' bases for this request are that Syngenta lacked urgency in giving notice, Syngenta hired its own counsel before giving notice, and "four of the six [Exemplar Actions] are potentially part of a settlement that [Syngenta] is finalizing[.]"[46] The Court concludes that, on the whole, these circumstances merit following *Rite-Aid*'s example and considering the terms of the policy and substance of the allegations without extrinsic evidence.[47]

2. Application to Travelers' Policies

To determine the existence of a duty to defend, the test is whether the underlying complaint, "read as a whole, alleges a risk within the coverage of the policy."[48] An insurer's obligation to defend is triggered whenever the allegations

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In re AmerisourceBergen Corp. (n/k/a Cencora) Del. Ins. Litig., 2024 WL 5203047, at *9 n.112 (acknowledging "[*Risk Enterprise*] was decided over 21 years before *Rite Aid*, in which the Supreme Court of Delaware limited its analysis to the allegations in the . . . complaints[,]" and limiting "its duty to defend analysis to the allegations in the relevant complaints as directed by *Rite Aid*.").

[45] *See* Def.'s Opp'n 21–23.

[46] Def.'s Opp'n 22.

[47] Having forsworn extrinsic evidence, the Court does not reach arguments about the contested facts involving the timing of Syngenta's specific involvement in the paraquat industry during the period covered by Policy Nos. 1–3.

[48] *ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 72 (Del. 2011) (quoting *Pacific Ins. Co. v. Liberty Mut. Ins. Co.*, 956 A.2d 1246, 1254 (Del. 2008)).

against the insured may potentially fall within the policy's coverage, even if those allegations are groundless.[49] Three principles guide this analysis:

> (1) "where there is some doubt as to whether the complaint against the insured alleges a risk insured against, that doubt should be resolved in favor of the insured," (2) "any ambiguity in the pleadings should be resolved against the carrier," and (3) "if even one count or theory alleged in the complaint lies within the policy coverage, the duty to defend arises."[50]

Beginning this analysis, the Court looks to the core coverage provision in the Policies. It provides that Travelers:

> will pay on behalf of [Syngenta] all sums which [Syngenta] shall become legally obliged to pay as damages because of
>
> **bodily injury** or
>
> **property damage**
>
> to which this insurance applies, caused by an **occurrence**, and [Travelers] shall have the right and duty to defend any suit against [Syngenta] seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient . . . .[51]

An "Occurrence" is defined as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury . . . neither expected nor intended from the standpoint of the insured."[52] The Policies provide that Travelers will defend Syngenta in any suit seeking damages on account of "Bodily Injury,"

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[49] *Rite Aid*, 270 A.3d at 246 (Del. 2022) (quoting *Heffernan & Co. v. Hartford Ins. Co. of Am.*, 614 A.2d 295, 298 (Pa. Super. 1992)).
[50] *ConAgra Foods*, 21 A.3d at 72 (quoting *Pac. Ins. Co. v. Liberty Mut. Ins. Co.*, 956 A.2d 1246, 1255 (Del. 2008)).
[51] Def.'s Mot., Ex. 1 at TRAV0000013.
[52] Def.'s Mot., Ex. 1 at TRAV0000015; Def.'s Mot., Ex. 5 at TRAVELERS0000819.

which the Policies define as "bodily injury, sickness or disease sustained by any person which occurs during the policy period[.]"[53]

Each of the complaints in the Exemplar Actions allege that Syngenta acted, either alone or in concert, in the design, manufacture, formulation, registration, distribution, and sale of paraquat products in the United States.[54] They each allege exposure to paraquat during the coverage periods as a result of Syngenta and its predecessors' actions.[55] They each allege exposure resulting from the handling and use of paraquat.[56] They each allege that this exposure has caused them bodily injury.[57]

Syngenta has demonstrated that these core allegations fall within the initial grant of coverage provided by the Policies.[58] Therefore, under the Policies and the liberal standard for the duty to defend, Travelers owes a duty to Syngenta in regard

[53] Def.'s Mot., Ex. 1 at TRAV0000015; Def.'s Mot., Ex. 5 at TRAVELERS0000819.
[54] Pl.'s Mot., Ex. 7 at ¶ 2, Pl.'s Mot., Ex. 8 at ¶ 3, Pl.'s Mot., Ex. 9 at ¶ 2, Pl.'s Mot., Ex. 10 at ¶ 2, Pl.'s Mot., Ex. 11 at ¶¶ 15–16, 19–20, Pl.'s Mot., Ex. 12 at ¶ 6.
[55] Pl.'s Mot., Ex. 7 at ¶ 228, Pl.'s Mot., Ex. 8 at ¶¶ 13–15, Pl.'s Mot., Ex. 9 at ¶ 129, Pl.'s Mot., Ex. 10 at ¶ 242, Pl.'s Mot., Ex. 11 at ¶ 116, Pl.'s Mot., Ex. 12 at ¶ 24.
[56] Pl.'s Mot., Ex. 7 at ¶ 229, Pl.'s Mot., Ex. 8 at ¶¶ 14–15, Pl.'s Mot., Ex. 9 at ¶ 129, Pl.'s Mot., Ex. 10 at ¶¶ 239, 242, Pl.'s Mot., Ex. 11 at ¶ 117, Pl.'s Mot., Ex. 12 at ¶¶ 164–65.
[57] Pl.'s Mot., Ex. 7 at ¶¶ 184, 226, Pl.'s Mot., Ex. 8 at ¶ 16, Pl.'s Mot., Ex. 9 at ¶¶ 130, 174, Pl.'s Mot., Ex. 10 at ¶¶ 190, Pl.'s Mot., Ex. 11 at ¶¶ 39, 119, Pl.'s Mot., Ex. 12 at ¶¶ 24, 116.
[58] The Court does not reach the issue of whether the "continuous trigger" theory applies, given that the duty to defend, as negotiated in the Policies, still arises even if the lawsuits "are groundless, false or fraudulent[.]" Def. Mot., Ex. 5 at TRAVELERS0000813. As it stands, there is an open question of fact as to the mechanism of bodily injury associated with paraquat. While this may create questions for indemnification, it does not create a factual or legal certainty that the Exemplar Actions are not covered. Thus, the duty to defend is still active.

to these six Exemplar Actions, and Syngenta's motion for partial summary judgment on this issue is granted.[59]

3. Notice

Having determined that Travelers has a duty to defend, that duty may only be excused "if it can be determined as a matter of law that there is no possible factual or legal basis upon which the insurer might eventually be obligated to indemnify the insured."[60]

Travelers argues that it is excused from this duty because Syngenta breached policy provisions requiring notice of an "occurrence" as soon as practicable and notice of "claims" or "suits" immediately.[61] Alternatively, Travelers requests that the Court delay summary judgment to allow for additional discovery regarding whether Travelers was prejudiced by the timing of the notice.[62]

Under Delaware law, an insured's failure to provide timely[63] notice only relieves the insurer of liability if the insurer can demonstrate[64] that it has been

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[59] This decision does not address the issue of indemnification, which is not currently before the Court.
[60] *Smith v. Liberty Mut. Ins. Co.*, 201 A.3d 555, 561 (Del. Super. 2019).
[61] Def.'s Opp'n 33 (referencing Def.'s Mot., Ex. 1 at TRAV0000017 (requiring written notice "in the event of an occurrence" as soon as practicable and immediate forwarding of any claim or suit) and Def.'s Mot., Ex. 5 at TRAVELERS0000817, 821 (requiring notice of an occurrence as soon as practicable and immediate forwarding of any claim or suit)).
[62] *Id.* at 26.
[63] This refers to "whether notice was given within a reasonable time in view of the facts and circumstances of the particular case." *Falcon Steel Co., Inc. v. Maryland Cas. Co.*, 366 A.2d 512, 514 (Del. Super. Sep. 14, 1976).
[64] *See State Farm Mut. Auto Ins. Co. v. Johnson*, 320 A.2d 345, 347 (Del. 1974) (placing the burden of proving prejudice on the insurer).

prejudiced.[65] The mere passage of time, alone, is insufficient to "create[] the kind of prejudice which bars recovery[.]"[66] Instead, the insurer must show that prompt notice would have allowed for the development of evidence that is no longer available, or that a resolution of the claim could have been reached that is no longer possible.[67]

The notice analysis in this case is informed by the fact that Travelers had already denied coverage for a related group of paraquat cases. In April 2019, Syngenta notified Travelers of several such actions[68] and Syngenta initiated this litigation to compel coverage on May 17, 2021. On December 14, 2021, Travelers formally denied coverage.[69] This Court has previously ruled, in a case involving Travelers but applying Wisconsin law, that an insurer's prior denial of coverage in closely related cases limits its ability to claim prejudice from a lack of notice in subsequent, similar actions.[70]

Here, four of the Exemplar Actions were filed after Travelers had already clearly expressed its position that paraquat-related injuries were not covered.[71]

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[65] *Id.*
[66] *Falcon Steel*, 366 A.2d at 518.
[67] *Id.*
[68] Pl.'s Mot., Ex. 13, Def.'s Mot., Ex. 24.
[69] Pl.'s Mot., Ex. 13.
[70] *CNH Indus. Am. LLC v. Am. Cas. Co. of Reading*, 2016 WL 4440477, at *7 (Del. Super. Aug. 19, 2016).
[71] Pl.'s Mot., Ex. 7 (Feb. 7, 2022), Pl.'s Mot., Ex. 9 (Jan. 10, 2022), Pl.'s Mot., Ex. 10 (Jun. 2, 2023), and Pl.'s Mot., Ex.12 (Nov. 26, 2024).

Because additional notice would have almost certainly resulted in a perfunctory denial, Travelers has not borne its burden of showing that it is a legal certainty that it will not be obligated to indemnify Syngenta.

Regarding the remaining two actions, the Court finds that Travelers has not borne its burden of showing that it is a legal certainty that it will be excused from its indemnity obligations. These actions were filed well after Syngenta's initial coverage request but before Travelers had issued its formal coverage position.[72] Under Delaware's liberal duty to defend standard, an insurer's primary obligation is to provide a defense whenever a potential for coverage exists.[73] If an insurer is uncertain of its obligations, it may protect its interests by providing a defense under a reservation of rights. Because Travelers maintained the ability to fund the defense while reserving its right to later contest indemnity, any delay in specific notice for these overlapping suits did not deprive Travelers of its ability to manage its risk.

Furthermore, Travelers' own protracted delay in clarifying its coverage position, undermines its claim of prejudice. Waiting for a coverage position in this context, before providing notice on these overlapping suits, served both parties by avoiding the administration expense of processing redundant claims. While the

[72] Pl.'s Mot., Exs. 8 (Apr. 30, 2021) and Pl.'s Mot., Ex., 11 (Dec. 16, 2020). The oldest Exemplar Action was filed more than a year and a half after Syngenta requested coverage from Travelers.
[73] *CXP Ref., LP v. XL Specialty Ins. Co.*, 2021 WL 5492671, at *9 (Del. Super. Nov. 23, 2021) (quoting *Nat'l Union Fire Ins. Co. of Pittsburgh, PA. v. Rhone-Poulenc Basic Chems. Co.*, 1992 WL 22690, at *7 (Del. Super. Jan. 16, 1992), *aff'd sub nom. Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192 (Del. 1992)).

Court acknowledges that complex agrochemical claims require substantial investigation, Travelers' lackadaisical approach to its initial coverage position makes its current claim of prejudice untenable. Given Travelers' ability to defend under a reservation of rights, there is no reasonable basis for further discovery. Therefore, Travelers is not excused from its duty to defend based on late notice. [74]

B. Pollution Exclusion

Travelers seeks to establish that "there is no possible factual or legal basis upon which [it] might eventually be obligated to indemnify [Syngenta][,]"[75] by asserting that a coverage exclusion applies. As the insurer, Travelers bears the burden "to establish that a claim is specifically excluded."[76] Where interpretation is needed, "[c]ourts 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.'"[77]

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[74] The Court notes that the vast majority of cases analyzing notice-based defenses do so in the context of the duty to indemnify, rather than the duty to defend.

[75] *Liberty Mut. Ins. Co.*, 201 A.3d at 561.

[76] *RSUI Indem. Co. v. Murdock*, 248 A.3d 887, 906 (Del. 2021) (quoting *AT & T Corp. v. Clarendon Am. Ins. Co.*, 2006 WL 1382268, at *9 (Del. Super. Ct. Apr. 13, 2006), *rev'd in part on other grounds*, *AT & T Corp. v. Faraday Capital Ltd.*, 918 A.2d 1104, 1108 (Del. 2007)).

[77] *Id*. (quoting *AT & T Corp. v. Clarendon Am. Ins. Co.*, 2006 WL 1382268, at *9 (Del. Super. Ct. Apr. 13, 2006), *rev'd in part on other grounds*, *AT & T Corp. v. Faraday Capital Ltd.*, 918 A.2d 1104, 1108 (Del. 2007)).

Policy Nos. 1–3 contain a Pollution Exclusion, which Travelers argues would show that the Exemplar Actions, and the Paraquat Actions more broadly, could never come within the scope of coverage.[78] The Pollution Exclusion excludes coverage for:

> **bodily injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental[.][79]

While the parties agree that, paraquat is a "toxic chemical" and the Exemplar Actions allege bodily injury,[80] they dispute whether the Pollution Exclusion applies to the intended use of the product or is limited to more "traditional" environmental pollution.

Syngenta argues that the Pollution Exclusion does not apply to the "legal and intended use of end products."[81] The plain language of the Pollution Exclusion does

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[78] Def.'s Mot. 4.
[79] Def.'s Mot., Ex. 1 at TRAV0000013.
[80] Def.'s Mot. 10. *see generally* Pl.'s Opp'n (not contesting Travelers' characterization of paraquat as toxic).
[81] Pl.'s Opp'n 11. To get to this point, Syngenta distinguishes the Pollution Exclusion in this case, which it refers to as a "standard" pollution exclusion, and a "total" pollution exclusion. Although Syngenta provides the Court an interesting history of pollution exclusions, Syngenta does not argue that the Pollution Exclusion in this case is ambiguous. Nor does the Court, in its review, find that the Pollution Exclusion is ambiguous. Therefore, the Court will disregard this history in its analysis and will give the terms in the contract their "plain, ordinary meaning." *Zurich Am. Ins. Co. v. Syngenta Crop Protection, LLC*, 2020 WL 5237318, at *4 (Del. Super. Aug. 3, 2020). Only where there is ambiguity may the Court consider "business custom and usage in the industry[,]" or "trade usage[.]" *PJT Hldgs, LLc v. Costanzo*, 339 A.3d 1231, 1247–

not contain an express clause limiting it to traditional pollution. However, giving full effect to the portion of the exclusion that discusses the movement of pollutants "into or upon land, the atmosphere or any water course or body of water" requires an interpretation of the policy that limits the exclusion to traditional pollution.

The Delaware Supreme Court has not yet had directly addressed the scope of this specific exclusion.[82] However, existing Superior Court decisions provide a roadmap. In *E.I. du Pont de Nemours & Co. v. Admiral Insurance Co.,* the Court applied a nearly identical exclusion[83] to industrial waste disposal that caused soil and groundwater contamination—the hallmark of traditional environmental pollution.[84]

E.I. du Pont illustrates that a pollution exclusion can exclude coverage for harms associated with traditional pollution. Conversely, in a more recent case, *Farm Family Casualty Co. v. Cumberland Insurance Co.*, the Court noted that language

48 (Del. Ch. 2025). *See also Texas Pac. Land Corp. v. Horizon Kinetics LLC*, 306 A.3d 530, 565–66 (Del. Ch. 2023) (looking to trade usage only after finding ambiguity); *R.T. Vanderbilt Co., Inc. v. Hartford Accident and Indem. Co.*, 156 A.3d 539, 627–643 (Conn. App. Ct. 2017), *aff'd*, 216 A.3d 629 (Conn. 2019) (finding ambiguity before considering industry usage of the "standard" pollution exclusion).

[82] *See Farm Family Cas. Co. v. Cumberland Ins. Co., Inc.*, 2013 WL 5569214, at *8 (Del. Super. Oct. 2, 2013).

[83] *See E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, 711 A.2d 45, 52 (Del. Super. Aug. 23, 1995) (examining language substantial similar to the Pollution Exclusion, but not containing the additional phrase "or any water course of body of water.").

[84] *Id.* at 57. The Court found that the pollution exclusion in that case precluded coverage, although its discussion of the exclusion focused on the "sudden and accidental" clause. *Id*. The Court also found that the term "sudden" was unambiguous (*id.* at 58–62) and that the spills and leaks associated with this routine disposal were also not "unexpected" or "accidental." *Id.* at 68.

requiring pollutants to be discharged "into or upon land, [or] the atmosphere" [85] typically requires pollution to occur in "an outdoor or environmental setting."[86] Without such a clause, the Court declined to limit the pollution exclusion in that policy to traditional pollution.[87]

Similarly, in *APX Operating Co., LLC v. HDI Global Industries. Co.*, the Court declined to limit an exclusion to traditional pollution where the insured sought coverage related to SARS-CoV-2 exposure.[88] However, that exclusion both specifically defined "pollution or contamination" to include viruses, and did not contain the "into or upon land, the atmosphere or any water course or body of water" language at issue here.[89] Therefore, it is of limited use in resolving the scope of the Pollution Exclusion.

Reading the policy as a whole and applying the plain, ordinary meaning of its terms, the Court finds that the Pollution Exclusion is properly construed to exclude only coverage from traditional environmental pollution. A reasonable, objective third party would not interpret a provision regarding "discharge" or "dispersal" of pollutants into the "atmosphere" as an exclusion for the legal, intended, end use of

[85] *Farm Family*, 2013 WL 5569214, at *2.
[86] *Id.* at *8.
[87] *Id.* The Farm Family court noted that courts are split on interpretation of pollution exclusions generally. *Id*.
[88] *APX Operating Co., LLC v. HDI Glob. Ins. Co.*, 2021 WL 5370062, at *7–8 (Del. Super. Nov. 18, 2021).
[89] *Id*.

an agrochemical product. The suggestion that paraquat traveling inches from a spray nozzle to a user's body is excluded simply because it briefly traversed the "atmosphere" is inconsistent with a reading of this provision as a whole. [90]

Consequently, if a plaintiff alleges exposure to paraquat solely through a theory of traditional environmental contamination (e.g. leaching into a water table), the Pollution Exclusion will apply. However, where plaintiffs allege exposure via the ordinary application or handling of the product, the Pollution Exclusion will not apply. Travelers' motion on this point is therefore denied.

[90] Travelers' counsel speculated at oral argument that the only way this exclusion would not apply to use of paraquat is if someone drank it. However, as pointed out by Syngenta's counsel, even this would involve some movement through the atmosphere.

C. Cost Erosion

In contrast to Policy Nos. 1–3, Policy Nos. 4–6 do not contain the Pollution Exclusion.[91] Instead, Travelers seeks a declaration from this Court that, pursuant to specific policy language, the payment of defense costs erodes the limits of liability.[92] Travelers argues that its reimbursement of Syngenta's defense costs reduces the total funds under the policies, ultimately exhausting those limits and terminating its duty to defend.[93] For the reasons set forth below, the Court agrees and grants this portion of Travelers' motion.

1. Policy Terms

Travelers' duty to defend Syngenta is established in Section I of the coverage form, and reads, in relevant part:

> [Travelers] shall have the right and duty to defend any suit against [Syngenta] seeking damages on account of such bodily injury or property damage even if any of the allegations of the suit are groundless, false or fraudulent . . . but [Travelers] shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of [Travelers'] liability has been exhausted by payment of judgments or settlements.[94]

Syngenta anchors its argument on the final clause of this provision, suggesting that a plain reading indicates that only judgments or settlements, not defense costs, can exhaust the limits of liability. This initial conclusion is seemingly supported by the

[91] Def.'s Mot. 5.
[92] Def.'s Mot. 5.
[93] Def.'s Reply 12.
[94] Def. Mot., Ex. 5 at TRAVELERS0000813.

original supplementary payments provision, which specifies that Travelers will pay certain items, including "all expenses incurred by [Travelers] *in addition to* the applicable limits of liability."[95] However, this language explicitly was amended by Section VIII of the coverage form, titled "Amendment to Supplementary Payments Provision."[96] That provision reads:

> Any payments made by [Travelers] under the supplementary payments provision (exclusive of salaries of [Travelers'] employees) shall not be in addition to the limits of liability stated in declarations, but shall, for the purpose of determining such limits of liability, be a part thereof."[97]

Further, the "Limits of Liability" provision was also written to incorporate this change, defining the limits as the total liability for "all damages and for all expenses incurred under the supplementary payments provisions" (excluding employees' salaries). [98] This language clearly shifts the policy structure from a "defense outside limits" to a "defense-within-limits" model. [99]

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[95] *Id.* at TRAVELERS0000820 (emphasis added). The relevant parts of the initial supplemental payments provision state that:

> [Travelers] will pay, in addition to the applicable limit of liability:
>
> > (a) all expenses incurred by [Travelers], all costs taxed against [Syngenta] in any suit defended by [Travelers] and all interest on the entire amount of any judgment therein which accrues after the entry of the judgment and before [Travelers] has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of [Travelers'] liability thereon[.]"

Id.

[96] *Id.* at TRAVELERS0000816.

[97] *Id.*

[98] *Id.* at TRAVELERS0000815–16.

[99] *Id.*

2. The Policy Terms are Not Ambiguous

Syngenta argues that these policies are ambiguous, relying on drafting history, case law from other states, and the use of the term "supplemental payments" in unamended headers.[100] The Court disagrees. Delaware Courts will not find ambiguity simply because the parties disagree on the construction.[101] A contract is ambiguous only when its provisions are reasonably susceptible to different interpretations.[102]

Section I establishes that Traveler's duty to defend is not released until "after the *applicable limit* of [Travelers'] liability has been exhausted by payment of judgments or settlements."[103] Section IV, which defines the *applicable* limits of liability, incorporates the amended supplemental payments provision.[104] The amended[105] supplemental payments provision shifts, among other things, all expenses paid by Travelers, other than payment of salaries of its employees, inside of the limits of liability. [106] Therefore, the clear terms of these policies allow payment of defense costs to erode the applicable limits of liability.

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[100] Pl.'s Opp'n 25–31.
[101] *RSUI Indem*, 248 A.3d at 905 (Del. 2021).
[102] *Id.* at 906.
[103] Def. Mot., Ex. 5 at TRAVELERS0000813 (emphasis added).
[104] *Id.* at TRAVELERS0000815–16.
[105] The Court rejects Syngenta's argument that the fact that there was no endorsement involved renders creates a conflict. *See* Pl.'s Opp'n 24–25. The reading adopted by the Court gives full meaning to each of the relevant provisions in the policy. Therefore, there is no need to address concerns about expectations or whether specific language governs the general.
[106] Def. Mot., Ex. 5 at TRAVELERS0000816.

Further, the undefined term "expenses" when read in the context of the amended supplementary payments provision, unambiguously includes defense costs.[107] Syngenta raises four reasons that the Court should find this reading unreasonable. Syngenta's first argument that this reading renders the "judgments or settlements" language in Section I superfluous is incorrect; Travelers must defend, and it must do so until the applicable limits of liability (which now include defense costs) have been exhausted.

Syngenta's second argument for ambiguity relies on the drafting history of the policy, which is extrinsic evidence the Court cannot reach without a finding of ambiguity.[108]

Third, Syngenta argues it is equally reasonable to interpret the term "supplementary" in the header to mean "something *additional* and not already in the main agreement."[109] While the "supplementary payments" header suggests additional payments, contract headings are not controlling evidence of the substantive provisions.[110] The clear, substantive text of Section VIII explicitly

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[107] *See Amerisure Mut. Ins. Co. v. Arch Specialty Ins. Co.*, 784 F.3d 270, 275 (5th Cir. 2015) ("Giving its ordinary meaning, when an insurer pays costs of defense, including attorneys' fees, that is an 'expense' to the insurer. Absent some indication that a different meaning is intended, we see no reason to deviate from this ordinary meaning of the term."). Although Syngenta challenges the applicability of this case, as the Fifth Circuit separately examined the use of "expenses" under Texas law, it did not rely on Texas precedent and instead gave the word its ordinary meaning.

[108] *See* Pl.'s Opp'n 26.

[109] *Id.* at 27.

[110] *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 581 n.35 (Del. Ch. 1998).

superseded the implications of the header. Hence, the Court does not find an ambiguity due to an unamended header.

Delaware law does not create a presumption against "defense within limits" policies. The Court finds that the plain language of Policy Nos. 4–6 provides that defense costs erode policy limits.

3. Travelers will Incur Defense Costs Upon Payment

Syngenta raises a final argument asserting that Travelers has not "incurred" any defense costs because it is not actively conducting the defense."[111] Syngenta contends that, under the policy language, costs must be incurred "in a suit defended by [Travelers]" to erode the limits.[112] The Court finds this interpretation unpersuasive. The relevant provision includes: "(a) all expenses incurred by [Travelers], all costs taxed against [Syngenta] in any suit defended by [Travelers] and all interest on the entire amount of any judgment . . . ."[113] Applying the rules of grammatical construction, the phrase "in any suit" modifies the clause addressing "costs taxed against Syngenta," not the preceding segment regarding "expenses incurred" by the insurer. Consequently, the expenses Travelers pays do not need to arise from its own active defense of Syngenta to qualify for erosion. Under the plain and ordinary meaning of the term, a party "incurs" an expense when it becomes

[111] Pl.'s Opp'n. 31.
[112] *See* Def. Mot., Ex. 5 at TRAVELERS0000820
[113] Def. Mot., Ex. 5 at TRAVELERS0000820.

subject to or liable for that cost.[114] Once the defense costs for each Exemplar Action are established, Travelers becomes liable for their reimbursement. At that moment, Travelers has "incurred" the expenses. Therefore, the payment of Syngenta's defense cost will erode the applicable liability limits of Policy Nos. 4–6. Travelers' motion is granted on these grounds.

V. CONCLUSION

For these reasons, the Court **GRANTS** Syngenta's Motion for Partial Summary Judgment and **GRANTS in part** and **DENIES in part** Travelers' Motion for Partial Summary Judgment.

IT IS SO ORDERED.

Sheldon K. Rennie, Judge

[114] "'Incur' means to 'become liable or subject to.'" *Bejger v. Shreeve*, 1997 WL 524064, at *2 n. 16 (Del. Super. May 7, 1997) (quoting Webster's Third New Int'l Dictionary 1146 (1993)).