IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

THOMAS A. PITTA, as TRUSTEE OF RAD SUB-TRUST A,	)	
Plaintiff,	)	
v.	)	C.A. No. N25C-12-075 SKR CCLD
WALGREENS BOOTS ALLIANCE, INC. and WALGREEN CO.,	)	
Defendants.	)	

Submitted: May 20, 2026
Decided: August 14, 2026

MEMORANDUM OPINION AND ORDER

Upon Consideration of
Defendants' Motion to Dismiss: **DENIED**

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Rennie, J.

I. INTRODUCTION

This matter involves a straightforward contract interpretation dispute arising from an asset purchase. Defendant acquired certain assets from plaintiff, including various retail locations, and committed to indemnify plaintiff for litigation arising out of the operation of those stores. The governing agreement limits defendant's indemnification obligation to apply only to the extent a given claim implicates store-level operations. Consequently, defendant is not obligated to indemnify the plaintiff to the extent a claim arises on independent grounds, such as plaintiff's corporate-level policies. Anticipating that a single action might involve only partially assumed liabilities, the agreement expressly establishes a mechanism for the parties to apportion responsibility among themselves.

Against this contractual backdrop, defendant moves to dismiss, arguing that it has no obligation to indemnify unless the underlying claim arises solely from store-level operations. In doing so, defendant attempts to invoke a binary, all or nothing indemnification rule where the plain language of the agreement contemplates indemnification by degree. Alternatively, defendant contends that Delaware's notice pleading standard requires plaintiff to fully delineate every potential liability on an asset-by-asset basis at the pleading stage. This argument is equally unavailing. Plaintiff has sufficiently alleged a claim for breach of contract to survive a motion to dismiss. For these reasons, set forth in more detail below, the Motion to Dismiss is **DENIED**.

II. BACKGROUND[1]

A. The Parties

Plaintiff Thomas A. Pitta (the "Trustee") is the trustee of RAD Sub-Trust A (the "Trust"), a Delaware trust created under the bankruptcy plan of Rite Aid Corporation ("Rite Aid") and its affiliated debtors-in-possession (collectively, with Rite Aid, the "Debtors").[2] Under the operative bankruptcy plan, the Trust succeeded to the Debtors' claims and causes of action, including the claims asserted in this action.[3]

Defendant Walgreens Boots Alliance, Inc. ("WBA") is a Delaware corporation with its principal place of business in Illinois.[4] WBA is the parent company of Defendant Walgreen Co., an Illinois corporation also headquartered in Illinois.[5] Walgreen Co. operates as a wholly owned subsidiary of WBA.[6] The Court refers to WBA and Walgreen Co. collectively as "Walgreens."

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[1] The facts are drawn from the well-pled allegations in the Complaint (Docket Item ("D.I.") 1) [hereinafter "Compl."] and the parties' Asset Purchase Agreement (D.I. 1 Ex. A) [hereinafter "APA § __"].

[2] Compl. ¶ 10.

[3] *Id.*

[4] *Id.* at ¶ 11.

[5] *Id.* at ¶ 12.

[6] *Id.* at ¶ 12.

B. The Opioid Lawsuits

Between 2017 and 2023, hundreds of lawsuits were filed nationwide, naming Rite Aid, Walgreens, and various other pharmaceutical industry participants as defendants (the "Opioid Lawsuits").[7] The underlying complaints generally alleged that, beginning in the mid-1990s, retail pharmacists engaged in systemic misconduct relating to the dispensing of prescription opioids, including routinely filling suspicious prescriptions and failing to report them to regulatory authorities.[8] In connection with this litigation, Rite Aid has allegedly paid approximately $17 million in settlement payouts and incurred roughly $50 million in defense-related legal fees and expenses.[9]

C. The Asset Purchase Agreement

On September 18, 2017, Rite Aid and Walgreens executed an asset purchase agreement (the "APA") under which Rite Aid agreed to sell, and Walgreens agreed to purchase, 1,932 retail stores along with certain other specified assets (the "Purchased Assets").[10] Four distinct provisions of the APA are relevant here.

- Section 1.3(a)(iii) (the "Assumed Liabilities Provision") provides that Walgreens will assume up to $30 million in liability arising from the

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[7] *Id.* at ¶ 40–42.

[8] *Id.* at ¶ 43.

[9] *Id.* at ¶ 44.

[10] *Id.*

ownership or operation of the Purchased Assets prior to the acquisition (the "Assumed Liabilities").[11]

- Section 1.4(g) (the "Excluded Liabilities Provision") clarifies that Walgreens does not assume any liability arising from the conduct of Rite Aid's corporate business other than the operation of the Purchased Assets.[12]

- Section 1.6 (the "Mixed Liabilities Provision") dictates that when specific liabilities relate to both an Assumed Liability on the one hand and an Excluded Liability or unacquired store on the other (the "Mixed Liabilities"), the parties must "cooperate in good faith to agree upon the portion of such [l]iability" constituting an Assumed Liability.[13]

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[11] *See* APA § 1.3(a)(iii). In fuller detail, the Assumed Liabilities Provision provides that Assumed Liabilities include "any Liabilities . . . arising from, related to, or resulting from the ownership or operation of the Purchased Assets prior to the Closing (or the applicable Subsequent Closing or Distribution Center Closing), . . . solely to the extent (A) relating to the Purchased Assets . . . solely to the extent such Liabilities in the aggregate, do not exceed $30 million."

[12] *See id.* at § 1.4(g). The Excluded Liabilities Provision excludes "any (i) Liabilities arising out of the ownership or operation of the Purchased Assets prior to the Closing . . . or any Proceeding related to or arising out of any occurrence or event happening prior to the Closing . . . in each case other than to the extent included in the Assumed Pre-Closing Liabilities, . . . (iv) other than payments made in respect of the Retention Program in an amount not to exceed $25 million, Liabilities arising from the conduct, whether before, at or after the Closing, of the business of the Company other than the operation of the Acquired Stores, Distribution Centers and the Purchased Assets[.]"

[13] *Id.* at § 1.6.

- Section 9.2 (the "Indemnification Provision") explicitly mandates that Walgreens indemnify Rite Aid for all contractually defined Assumed Liabilities.[14]

D. The Insurance Coverage Disputes

In 2018, Rite Aid's general liability insurers denied coverage for the Opioid Lawsuits, prompting Rite Aid to initiate coverage litigation against them.[15] The litigation continued until January 2022, when the Delaware Supreme Court affirmed the insurers' denial of coverage.[16]

Six months later, in June 2022, Rite Aid notified Walgreens that because the Opioid Lawsuits implicated Assumed Liabilities, the APA's Indemnification Provision obligated Walgreens to contribute to the defense litigation costs.[17] Walgreens responded that the lawsuits arose strictly from Rite Aid's corporate-level conduct, and consequently fell entirely within the scope of the Excluded Liabilities Provision.[18] While the parties thereafter engaged in discussions to resolve the

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[14] *Id.* at § 9.2. Walgreens agreed to indemnify Rite Aid for "all Losses that [Rite Aid] may suffer or incur, or become subject to, as a result of . . . (ii) any Assumed Liability."

[15] Compl. ¶ 46.

[16] *Id.* at ¶ 47.

[17] *Id.* at ¶¶ 48–49.

[18] *Id.* at ¶ 50.

allocation dispute, their correspondence lapsed in September 2022 without an agreement.[19]

E. Bankruptcy and Creation of the Trust

On October 15, 2023, the Debtors filed for bankruptcy.[20] The Bankruptcy Court subsequently confirmed the Debtors' plan of reorganization and created the Trust, allocating to it authority to litigate Rite Aid's claim against Walgreens.[21] On September 15, 2025, the Trustee reiterated Rite Aid's demand, which Walgreens again refused.[22]

F. Procedural History

The Trustee commenced this action by filing the Complaint on December 5, 2025, asserting two causes of action.[23] In Count I, Plaintiff alleges that Walgreens' refusal to indemnify Rite Aid for its allocable portion of the Opioid Lawsuits constitutes a breach of the contract's Indemnification Provision.[24] In Count II, Plaintiff seeks a declaration that Walgreens has breached its obligations under the Indemnification Provision and that the Trust has been damaged as a result.[25]

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[19] *Id.* at ¶ 56.

[20] *Id.* at ¶ 16.

[21] *Id.* at ¶¶ 18–19.

[22] *Id.*

[23] *Id.* at ¶ 1.

[24] *Id.* at ¶¶ 67–68; APA at pp. 7, 9–10.

[25] *Id.* at ¶ 81.

Walgreens filed the instant Motion to Dismiss (the "Motion") on January 9, 2026.[26] Walgreens contends that the Assumed Liabilities Provision encompasses only those claims arising solely out of the localized operation of the Purchased Assets.[27] Because the Opioid Lawsuits address harms allegedly caused at least in part by Rite Aid's corporate-wide strategies—which Walgreens characterizes as Excluded Liabilities—Walgreens asserts that the lawsuits cannot also involve Assumed Liabilities.[28] Alternatively, Walgreens argues that the Complaint fails to satisfy Delaware's notice pleading standard because it does not provide an itemized, asset-by-asset breakdown of the underlying claims.[29]

Following the submission of Plaintiff's Answering Brief (the "Answering Brief"),[30] and Walgreens' Reply Brief (the "Reply Brief"),[31] the Court heard oral argument on May 20, 2026. This decision follows.

III. LEGAL STANDARD

On a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(6), the Court accepts as true all well-pleaded factual allegations in the complaint and draws

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[26] *See* Motion (D.I. 3) [hereinafter "Mot."].

[27] Mot. p. 21.

[28] *Id.*

[29] *Id.* at p. 26.

[30] *See* Answering Brief (D.I. 11) [hereinafter "Ans. Br."].

[31] *See* Reply Brief (D.I. 14) [hereinafter "Reply Br."].

all reasonable inferences in the non-movant's favor.[32] Even vague allegations are well-pleaded if they place the opposing party on notice of the claim.[33] The Court need not, however, accept unsupported conclusory allegations or adopt strained interpretations of the pleadings.[34] Delaware maintains a minimal pleading standard,[35] and dismissal is improper unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.[36]

As a general rule, the Court's review is confined to the closed universe of the complaint.[37] The Court may, however, consider documents outside the pleadings when they are integral to and incorporated into the complaint or when they are not offered for the truth of their contents.[38]

IV. ANALYSIS

The parties' dispute centers on a straightforward issue of contract interpretation: whether the APA requires—as Walgreens contends—that Walgreens has no duty to entertain an indemnification demand unless a given liability or claim

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[32] *Good v. Moyer,* 2012 WL 4857367, at *4 (Del. Super. Oct. 10, 2012).

[33] *Ayana Consult EOOD v. Whitehat Educ. Tech. LLC,* 2023 WL 7823136, at *1 (Del. Super. Nov. 14, 2023).

[34] *Good,* 2012 WL 4857367, at *4; *Intermec IP Corp. v. TransCore, LP,* 2021 WL 3620435, at *7 (Del. Super. Aug. 16, 2021).

[35] *Stein v. Wind Energy Hldgs., Inc.,* 2022 WL 17590862, at *4 (Del. Super. Dec. 13, 2022) (noting that Delaware's pleading standard only asks whether there is a possibility of recovery).

[36] *Id.; Ayana,* 2023 WL 7823136, at *1.

[37] *Nucor Coatings Corp. v. Precoat Metals Corp.,* 2023 WL 6368316, at *3 (Del. Super. Aug. 31, 2023).

[38] *Id.*

arises exclusively from the operation of specific Purchased Assets. As a review of the relevant contractual provision demonstrates, Walgreens' interpretation is contrary to the plain language of the agreement.

A. Principles of Contract Interpretation

Contract interpretation presents a question of law uniquely suited for resolution at the motion to dismiss state when the governing agreement is unambiguous.[39] Under Delaware law, a contract is ambiguous only if its language is reasonably susceptible to two or more interpretations.[40] Ambiguity does not arise merely because the parties disagree about the meaning of a provision.[41]

When contractual language is clear and unambiguous, the Court gives effect to its plain meaning.[42] The Court seeks to ascertain the parties' shared intent from the agreement's four corners, construes the contract as a whole, and gives effect to each provision.[43] It will not use extrinsic evidence to vary or rewrite otherwise unambiguous language.[44]

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[39] *Ayana,* 2023 WL 7823136, at *2.

[40] *Green Plains Renewable Energy Inc. v. Ethanol Hldg. Co., LLC,* 2015 WL 590493, at *2 (Del. Super. Feb. 9, 2025).

[41] *Id.*

[42] *Intermec*, 2021 WL 3620435, at *9.

[43] *Equity Tr. Co. v. Interactive Brokers LLC,* 2018 WL 1216082, at *3 (Del. Super. Mar. 6, 2018).

[44] *Markow v. Synageva Biopharma Corp.,* 2016 WL 1613419, at *5 (Del. Super. Mar. 3, 2016).

If a provision is reasonably susceptible to competing interpretations, the Court cannot choose between those interpretations at the pleadings stage.[45] Dismissal is appropriate only if the movant's construction is the only reasonable interpretation as a matter of law.[46] Otherwise, the Court must decide the contract's language in the non-movant's favor.[47]

B. The Contractual Allocation and Indemnification Framework

Contrary to Walgreens' contention that it cannot be liable for a claim that does not allege exclusively store-level operations, the APA explicitly recognizes that certain third-party actions, such as the Opioid Lawsuits, may present *Mixed* Liabilities.[48] The contract provides a clear mechanism for determining and apportioning the parties' respective obligations when a single liability or claim implicates both assumed and excluded conduct.

1. The Assumed Liabilities Provision

Under Section 1.3(a)(iii), Assumed Liabilities encompass pre-acquisition liabilities "solely to the extent" they "aris[e] from, relate[] to, or result[] from the ownership or operation of the Purchased Assets.[49] The inclusion of the phrase "to the extent" denotes a limitation by degree, rather than the all-or-nothing allocation

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[45] *Id.*

[46] *Intermec*, 2021 WL 3620435, at *9.

[47] *Id.*

[48] *See* APA § 1.6.

[49] APA § 1.3.

of liability Walgreens proposes.[50] Similarly, the modifier "solely" limits Walgreens' obligation strictly to that portion of liability directly connected to the Purchased Assets—rather than requiring that the lawsuit as a whole be entirely free of concurrent corporate-level claims.[51]

Walgreens' interpretation attempts to rewrite the text through ellipsis, converting "solely to the extent . . . relating to the Purchased Assets" into "solely . . . relating . . . to the Purchased Assets."[52] These grammatical structures are fundamentally distinct. The actual contractual text permits allocation based on the degree to which a liability stems from the operational footprint of the acquired stores, whereas Walgreens' preferred construction would demand exclusive causation. Had the parties intended to limit Assumed Liabilities to those entirely isolated from corporate influence, they could have utilized explicit exclusivity language. The Court will not rewrite or rearrange the words the parties deliberately selected.[53]

Further, Walgreens' interpretation would completely eliminate indemnification coverage whenever a corporate policy incidentally contributed to a

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[50] *See Extent*, Merriam-Webster Online Dictionary (2026), https://www.merriam-webster.com/dictionary/extent (link last accessed July 9, 2026).

[51] *See Solely*, Merriam-Webster Online Dictionary (2026), https://www.merriam-webster.com/dictionary/solely (link last accessed July 9, 2026).

[52] Mot. p. 22.

[53] *Intermec*, 2021 WL 3620435, at *9.

localized retail claim. Such a construction gives insufficient effect the phrase "to the extent" and conflicts with the APA's treatment of liabilities attributable to multiple sources.

2. The Excluded Liabilities Provision

The Excluded Liabilities Provision disclaims Walgreens' obligation to indemnify Rite Aid generally for liabilities arising from the Purchased Assets, but it explicitly acknowledges that Walgreens nevertheless retains its obligation to indemnify Plaintiff to the extent a given liability constitutes an Assumed Liability.[54] By incorporating this explicit exception, the contract preserves Walgreens' obligation to cover the assumed portion of a mixed liability even if such a liability also relates to excluded conduct. The symmetrical use of the phrase "to the extent" in both provisions reinforces a unified, non-binary contractual allocation scheme.

The Excluded Liabilities Provision further reinforces this dichotomy by separating liabilities tied to systemic corporate management from those arising from the operation of the Acquired Stores, Distribution Centers, and Purchased Assets. By excluding corporate liabilities generated "other than" through the operation of the acquired retail footprint, the phrase "other than" functions as a traditional

[54] APA § 1.4(g).

carveout.[55] This carveout ensures that the operational liabilities tied directly to the Purchased Assets remain firmly within Walgreens' column.

The Excluded Liabilities Provision therefore does not bar the possibility that a liability may contain an assumed component, even if it is predominantly excluded. Interpreted together, the two provisions form a cohesive, complementary framework: the Assumed Liabilities Provision defines the asset-related operational risk Walgreens assumed, while the Excluded Liabilities Provision protects Walgreens from assuming independent, corporate-level exposures.

3. The Mixed Liabilities Provision

Not only does the Mixed Liabilities Provision explicitly contemplate the existence of Mixed Liabilities—defined as those that Walgreens may have only assumed in part—but it also sets forth an express mechanism requiring the parties to negotiate in good faith to apportion the specific liability attributable to store-level operations.[56] Thus, Section 1.6 confirms that the parties anticipated scenarios involving concurrent corporate-level and store-level conduct, choosing to govern those overlaps via an allocation process rather than implementing an absolute exclusion whenever corporate conduct is present.

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[55] *See Other Than*, Merriam-Webster Online Dictionary (2026), https://www.merriam-webster.com/dictionary/other%20than (link last accessed July 9, 2026).

[56] APA § 1.6.

Walgreens' all-or-nothing interpretation would effectively eviscerate the Mixed Liabilities Provision, depriving it of its negotiated function. If any nexus with Rite Aid's broader corporate policies automatically placed an entire liability within the excluded category, a multi-source liability could never satisfy both definitions, leaving nothing for the parties to apportion. The Court must avoid an interpretation that renders contractual language illusory or superfluous when the provisions can be harmonized.[57] Reading the Mixed Liabilities Provision as a mechanism to allocate cost between a liability's assumed and excluded components gives effect to every relevant provision, within the APA's four corners.

C. Application of the Indemnification Provision

The Indemnification Provision plainly states that Walgreens agreed to indemnify Rite Aid for "all Losses that [Rite Aid] may suffer or incur, or become subject to, as a result of . . . any Assumed Liability."[58] Read in harmony with the provisions analyzed above, Walgreens is contractually obligated to indemnify Plaintiff for losses attributable to the specific portion of any Mixed Liability that satisfies the definition of an Assumed Liability.

D. Sufficiency of the Breach Allegations

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[57] *Equity Tr. Co.*, 2018 WL 1216082, at *3.

[58] APA § 9.2.

The foregoing contractual interpretation would be purely academic if the Complaint failed to adequately allege that the Opioid Lawsuits actually involve Assumed or Mixed Liabilities. At this stage, however, the Trustee has comfortably met his pleading burden. The Complaint alleges that retail pharmacists working at Rite Aid locations directly contributed to the conduct underlying the Opioid Lawsuits by filling prescriptions that "present[ed] known red flags and hallmarks of illegitimate opioid prescriptions . . . contributing to abuse and misuses of opioids."[59]

The Trustee further alleges that Rite Aid sold either all or substantially all of its retail stores to Walgreens across thirteen states where Opioid Lawsuits were actually pending and sold varying percentages of its stores in eleven additional states facing identical litigation.[60]

Taken as true, these factual allegations support a reasonable inference that at least a portion of the aggregate opioid liability arose from the operation of the Purchased Assets. Because the Complaint further alleges that the Trust sustained covered losses and sought contractual relief from Walgreens, and that Walgreens refused to perform, Plaintiff has sufficiently alleged a claim for breach of the Indemnification Provision.

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[59] Compl. ¶ 43.

[60] *Id*. at ¶¶ 58, 59.

E. Compliance with Notice Pleading Standards

Walgreens separately contends that the Complaint be dismissed because it fails to identify the specific policies or operational histories of each individual acquired store that allegedly generated the asserted liability.[61] Delaware's low pleading threshold does not demand such granular evidentiary specificity at the pre-discovery stage.[62] As pled, the Complaint identifies the relevant conduct, the direct nexus between that conduct and store-level pharmacy operations, the specific jurisdictions in which retail assets were transferred to Walgreens, the resulting losses, and Walgreens' subsequent refusal to indemnify.[63] These allegations amply provide Walgreens with fair notice of the claims against it.

The Court need not determine at the pleading stage what precise findings or allegations would render a liability attributable to the operation of the Purchased Assets, whether specific defense expenditures are ultimately recoverable, or how the allocation lines must be drawn under Section 1.6. Resolving the threshold question of whether Walgreens may have some form of obligation—at least under the allegations set forth in the Complaint—provides the parties with a starting point from

[61] *See* Mot. p. 12.

[62] S*tein,* 2022 WL 17590862, at *4.

[63] Compl. ¶¶ 43–44, 49–50, 63–81.

which to develop a factual record and identify the scope of that obligation through their contractually mandated allocation process.[64]

F. Notice Timing and Prejudice Under Section 9.3(a)

Finally, Walgreens' argument that Plaintiff's timing in seeking indemnification completely bars recovery under the APA is unpersuasive.[65] The governing notice provision—Section 9.3(a)—expressly provides that a failure to give timely notice "shall not release the Indemnifying Party from any of its obligations . . . except to the extent the Indemnifying Party is prejudiced by such failure."[66] By its plain terms, late notice does not work a forfeiture of indemnification rights; rather, it merely provides Walgreens with the right to an offset to the extent it can prove actual quantifiable prejudice. Because prejudice is a fact-intensive inquiry that cannot be resolved on the face of the pleadings, it cannot serve as a basis for dismissal under Rule 12(b)(6).

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[64] Both parties cite extensively to *Samuel J. Heyman 1981 Continuing Trust for Lazarus S. Heyman v. Ashland LLC*, wherein the Delaware Supreme Court conducted an extensive close reading of a set of agreements to ascertain which liabilities were "excluded" liabilities. 284 A.3d 714 (Del. 2022). While the line drawing exercise was appropriate there, to replicate such an effort here would require such exegetical assumptions that the result would be little more than juridical augury. The Court concludes that Walgreens' interpretation is incorrect, and—pursuant to the Mixed Liabilities Provision—leaves it to the parties to divine the correct cost allocation.

[65] *See* Mot. p. 7.

[66] APA § 9.3(a).

V. CONCLUSION

For the reasons set forth above, Defendants' Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

Sheldon K. Rennie, Judge