

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 15 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

CONTINENTAL CASUALTY  
COMPANY, an Illinois  
Corporation; VALLEY FORGE  
INSURANCE COMPANY, a Pennsylvania  
Corporation,

Plaintiff-ctr-defendants -  
Appellees,

v.

NANCY CULVER, an individual; JILL  
HANSEN, AKA Jill Gentry-Hansen, an  
individual; DEBBIE BEAUGUEZ, an  
individual; TANYA CARUSO, an  
individual; NANCY COOPER, an  
individual; LEE ANN DRUDING, an  
individual; AGNES HANSEN, an  
individual; TROY HARP, an  
individual; GWEN TIMMERMAN, an  
individual,

Defendant-ctr-claimants -  
Appellants,

and

GWENDOLYN ALOIA, an individual,

No. 24-3491

D.C. No.  
2:21-cv-01251-DLR

MEMORANDUM\*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Defendant.

CONTINENTAL CASUALTY  
COMPANY; VALLEY FORGE  
INSURANCE COMPANY,

Plaintiff-ctr-defendants -

Appellees,

v.

GWENDOLYN ALOIA, an individual,

Defendant-ctr-claimant -

Appellant,

and

NANCY CULVER, JILL HANSEN, AKA  
Jill Gentry-Hansen, DEBBIE  
BEAUGUEZ, TANYA CARUSO, NANCY  
COOPER, LEE ANN DRUDING, AGNES  
HANSEN, TROY HARP, GWEN  
TIMMERMAN,

Defendants.

No. 24-3493

D.C. No.

2:21-cv-01251-DLR

Appeal from the United States District Court  
for the District of Arizona  
Douglas L. Rayes, District Judge, Presiding

Argued and Submitted May 13, 2025  
Pasadena, California

Before: R. NELSON, LEE, and SUNG, Circuit Judges.

As assignees of the rights of Stephen Gore, Defendants Nancy Culver, Jill Hansen, Debbie Beaugez, Tanya Caruso, Nancy Cooper, Lee Ann Druding, Agnes Hansen, Troy Harp, Gwen Timmerman, and Gwendolyn Aloia (“Claimants”) filed counterclaims for bad faith and breach of contract against Plaintiffs Continental Casualty Company and Valley Forge Insurance Company (collectively, “Continental”). Claimants appeal the district court’s grant of summary judgment on their counterclaims in favor of Continental. We have jurisdiction under 28 U.S.C. § 1291 and review the district court’s summary judgment ruling de novo. *See Lee v. ING Groep, N.V.*, 829 F.3d 1158, 1160 (9th Cir. 2016). We vacate in part, affirm in part, and remand.

The district court correctly applied collateral estoppel in holding Claimants could not relitigate the issue of whether Gore qualified as an insured under an insurance policy issued by Continental (“Policy”). In a memorandum disposition for a related appeal (No. 21-16948) filed concurrently with this memorandum disposition, we affirm a district court’s prior ruling that Gore was not an insured under the Policy. *See Cont’l Cas. Co. v. Platinum Training LLC*, No. CV-19-05163-PHX-DJH, 2021 WL 3491948, at \*6-9 (D. Ariz. Aug. 9, 2021). “To foreclose relitigation of an issue under collateral estoppel: (1) the issue at stake must be identical to the one alleged in the prior litigation; (2) the issue must have been actually litigated in the prior litigation; and (3) the determination of the issue

in the prior litigation must have been a critical and necessary part of the judgment in the earlier action.” *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1320 (9th Cir. 1992).

All three federal collateral estoppel factors are met here. First, the relevant issue of Gore’s insured status is “identical.” *Id.* Second, this issue was “actually litigated” by Claimants and Continental in the prior litigation. *Id.* That Continental did not pursue summary judgment against Gore himself in the prior litigation is immaterial because Claimants litigated Gore’s insured status after obtaining Gore’s assignment of rights. Finally, the determination of Gore’s insured status was necessary to the judgment in the prior litigation. *Id.*

However, the district court erred in holding Claimants were not entitled to relief on their bad faith counterclaim because of this application of collateral estoppel. Continental was required to deal with Gore fairly and in good faith for all of the claims against Gore, even claims later determined to be outside the scope of the Policy’s coverage. *See Lloyd v. State Farm Mut. Auto. Ins. Co.*, 943 P.2d 729, 737 (Ariz. Ct. App. 1996) (“The covenant of good faith and fair dealing can be breached even if the policy does not provide coverage.”). Thus, we vacate the ruling on the bad faith counterclaim and remand so that the district court can address the merits of this counterclaim in the first instance. *See Bluetooth SIG Inc. v. FCA US LLC*, 30 F.4th 870, 874 (9th Cir. 2022) (per curiam).

The district court correctly held Claimants were not entitled to relief on their breach of contract counterclaims. Claimants assert breach of contract counterclaims based on Continental's duties to defend and indemnify Gore, but Claimants are collaterally estopped from relitigating Gore's coverage under the Policy. Because Gore was not insured under the Policy, Continental had no duty to defend or indemnify Gore. *See Navajo Freight Lines, Inc. v. Liberty Mut. Ins. Co.*, 471 P.2d 309, 315 (Ariz. Ct. App. 1970) ("A [s]ine qua non to the existence of any obligation to defend, or pay, whether the suit be groundless or otherwise, is the pre-existing relationship of insurer-insured.").

**VACATED in part, AFFIRMED in part, and REMANDED.**

The parties shall bear their own costs and fees on appeal.