NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EVANSTON INSURANCE COMPANY, an Illinois corporation, Plaintiff-ctr-defendant - Appellee, v. ROMAN CATHOLIC BISHOP OF ORANGE, Defendant-ctr-claimant - Appellant.	No. 25-3165 D.C. No. 8:23-cv-02446-MRA-ADS MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Monica Ramirez Almadani, District Judge, Presiding

Submitted April 14, 2026[**]
Pasadena, California

Before: PAEZ, CALLAHAN, and BUMATAY, Circuit Judges.

The Roman Catholic Bishop of Orange ("the Diocese") appeals from the

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

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court's entry of judgment on the pleadings granting Evanston Insurance Company's ("Evanston") first claim and denying the Diocese's first counterclaim and its motion for leave to amend the counterclaim. Both Evanston's claim and the Diocese's counterclaim sought a declaratory judgment establishing the meaning of a liability insurance agreement (the "Associated Policy") between the Diocese and Evanston's predecessor-in-interest, Associated International Insurance Company. The motion for leave to amend sought to add allegations pertinent to the first counterclaim.

The district court granted Evanston's motion to dismiss the Diocese's first counterclaim, holding that California case law rendered the disputed language in the Associated Policy unambiguous as a matter of law and contrary to the Diocese's preferred interpretation. And because the contract language was unambiguous, any amendments to the Diocese's pleadings related to extrinsic evidence were denied as futile. At the parties' request, the district court granted judgment on the pleadings and entry of final judgment under Federal Rule of Civil Procedure 54(b) on the same grounds. But during the pendency of this appeal, this court published contrary case law. *See County of San Bernardino v. Ins. Co. of the State of Pennsylvania*, No. 24-6986, 2026 WL 1099254 (9th Cir. Apr. 23, 2026). Accordingly, we vacate the district court's order and remand for further consideration.

This court has jurisdiction under 28 U.S.C. § 1291. We review the district

court's entry of judgment on the pleadings de novo. *Webb v. Trader Joe's Co.*, 999 F.3d 1196, 1201 (9th Cir. 2021). A district court's denial of a motion for leave to amend is reviewed for abuse of discretion. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992).

The Associated Policy is a "second-layer excess umbrella policy," meaning it sits "above" a separate plan providing initial excess liability coverage and covers a prescribed amount of excess or otherwise uncovered liability. The Associated Policy contains both per-occurrence liability limits (limiting the total liability arising out of each "occurrence," as defined in the policy) and aggregate limits (providing per-year limits to liability). The aggregate limits provision provides limits of $4 million "in the aggregate for each annual period during the currency of this Policy, separately in respect of Products Liability and separately in respect of Personal Injury (fatal or non-fatal) by Occupational Disease sustained by any employees of the Assured."

In the Diocese's view, this language establishes annual aggregate limits only for products liability claims (up to $4 million) and occupational injury claims (up to a separate $4 million). Evanston, however, reads this same language to establish *three* annual aggregate limits of $4 million each: one for products liability claims, a second for occupational injury claims, and a third for all other claims. The district court agreed with Evanston, concluding that the meaning of the aggregate limits provision was rendered unambiguous as a matter of law by *Garamendi v. Mission*

Ins. Co., 31 Cal. Rptr. 3d 395 (Cal. Ct. App. 2005)—wherein the California Court of Appeal interpreted a similar contract provision to include a general aggregate limit in addition to the limits for the specified claim categories.

This court's recent decision in *San Bernardino*, however, requires reconsideration of the district court's ruling. In *San Bernardino*, we considered whether a similar policy provision was unambiguous as a matter of law and thus did not require consideration of extrinsic evidence under California interpretive principles. *See San Bernardino*, slip op. at 16–17. We determined that both parties raised plausible interpretations and that, under California law, the court was required to consider extrinsic evidence in adducing the provision's meaning. *Id.* at 18–19, 27. California requires consideration of extrinsic evidence whenever that "evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 644 (Cal. 1968); *see also Morey v. Vannucci*, 75 Cal. Rptr. 2d 573, 578 (Cal. Ct. App. 1998).

Garamendi does not eliminate this requirement. Generally, "[w]here a policy term has been judicially construed, it is not ambiguous." *McMillin Homes Constr. Inc. v. Nat'l Fire & Marine Ins. Co.*, 247 Cal. Rptr. 3d 825, 833 (Cal. Ct. App. 2019) (citation omitted). But only "as to those policies entered into after the decision." *San Bernardino*, slip op. at 24; *see also London Mkt. Insurers v. Superior Ct.*, 53

Cal. Rptr. 3d 154, 167–68 (Cal. Ct. App. 2007). Here, the publication of *Garamendi* in 2005 significantly post-dates the drafting of the Associated Policy in the late 1970s. Therefore, *Garamendi*'s construal of the provision's language cannot render the language unambiguous as a matter of law. *Cf. San Bernardino*, slip op. at 24.

Because the district court found the insurance policy language unambiguous, we vacate and remand to reconsider the insurance policy in light of *San Bernardino*.

VACATED AND REMANDED.