IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 24-183

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WESTLAKE CHLOR-VINYLS CORPORATION, formerly known as AXIALL CORPORATION, and WESTLAKE NATRIUM LLC, formerly known as EAGLE NATRIUM LLC,
Petitioners,

v.

IPI, INC., and MATTHEW JOSEPH TAYLOR,
Respondents.

Appeal from the Intermediate Court of Appeals
No. 22-ICA-164
(Circuit Court of Marshall County, Civil Action No. 18-C-14)

AFFIRMED, IN PART, REVERSED, IN PART, AND REMANDED

Submitted: October 13, 2026
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Amy Smith, Esq.
Steptoe & Johnson PLLC
Bridgeport, West Virginia

William D. Wilmoth, Esq.
Steptoe & Johnson PLLC
Wheeling, West Virginia

John R. Callcott, Esq.
Steptoe & Johnson PLLC
Morgantown, West Virginia

Counsel for Petitioners

Zachary J. Rosencrance, Esq.
Peter G. Markham, Esq.
J. Tyler Barton, Esq.
Bowles Rice LLP
Charleston, West Virginia

Counsel for Respondents

CHIEF JUSTICE BUNN delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. "On appeal of a decision from the Intermediate Court of Appeals of West Virginia, the Supreme Court of Appeals of West Virginia applies a de novo standard of appellate review to a circuit court's entry of summary judgment." Syllabus Point 1, *Moorhead v. W. Va. Army Nat'l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025).

BUNN, Chief Justice:

Petitioners Westlake Chlor-Vinyls Corporation and Westlake Natrium, LLC (collectively, "Westlake") appeal the January 30, 2024 opinion of the Intermediate Court of Appeals ("ICA") vacating, in part, and remanding the order of the Circuit Court of Marshall County, that had entered summary judgment on their behalf. Specifically, the circuit court, applying Pennsylvania law, found that Respondent IPI, Inc., ("IPI") (1) had breached interrelated indemnity agreements with Westlake when it filed and pursued suit against Westlake for property damages to its equipment sustained on Westlake's property as a result of a chlorine gas release; and (2) had a duty to indemnify Westlake against Respondent Matthew Joseph Taylor's personal injuries stemming from the same incident. The circuit court granted summary judgment concluding that the parties had agreed that IPI would indemnify Westlake against the types of claims raised in the respondents' lawsuit even where the damages were alleged to be attributable, in part, to Westlake's own negligence. In reviewing the parties' agreements de novo, the ICA concluded that the entry of summary judgment was improper and remanded the matter for further proceedings.

We first conclude that the ICA erred in reviewing one indemnification provision to the exclusion of the other but find the error of little practical consequence insofar as they articulate the same scope of indemnity. We next affirm the ICA's conclusion that the indemnity provisions are sufficiently unequivocal under Pennsylvania

law in requiring IPI to indemnify Westlake against its own negligence, generally. While we agree with the ICA that there are factual issues remaining such that remand to the circuit court is appropriate, we limit the issues to development regarding any parol evidence that would assist in analyzing the ambiguities presented by the indemnity agreements.

I. FACTUAL AND PROCEDURAL HISTORY

The legal dispute before us arises from the service agreements between the parties and personal injuries resulting from a 2016 chemical leak while IPI workers, including IPI's president, Mr. Taylor, were on site at Westlake's chemical plant in New Martinsville, West Virginia, (hereinafter the "Natrium plant") performing power washing and industrial painting services pursuant to those service agreements.[1]

Working under a master services agreement—the Agreement for Onsite Services ("AOS")—and a project-specific agreement—the Purchase Order ("PO")—IPI

[1] Westlake Chlor-Vinyl Corporation/Westlake Natrium, LLC are successors to the service agreements with IPI at issue in this appeal. The service agreements were initially executed in 2007 between IPI and PPG Industries, Inc. In 2013, Axiall Corporation and Eagle Natrium, LLC acquired the plant and IPI signed a consent to transfer. Axiall Corporation, the parent corporation to Eagle Natrium, owned the plant at the time of the chemical leak at issue and executed the purchase order then in effect. The complaint alleges that Westlake Chlor-Vinyl Corporation and Westlake Natrium, LLC acquired the plant from Axiall and Eagle Natrium in 2016 shortly after the chemical leak. No party contends before this Court that the agreements are not binding on them. While we acknowledge that Axiall Corporation/Eagle Natrium owned the plant at the time of the alleged injuries and not Westlake, we nonetheless use "Westlake" to avoid confusion.

workers and Mr. Taylor were painting and power washing a large chemical storage tank at the Natrium plant on August 27, 2016. That day, in a different area of the plant, a railcar that had recently been returned to service ruptured and released toxic chlorine gas throughout the plant (hereinafter "the Railcar Release"). Mr. Taylor testified in his deposition that he visually observed the cloud of green gas while working atop a manlift and put his escape respirator on, removing it long enough to alert the other workers onsite to do the same. He further contended that there was no siren or other warning alerting them to the danger and that, when trying to exit the area for their safety, they were met with a locked gate, prolonging their exposure. Mr. Taylor asserts he "struggled" to get to the onsite medical clinic, was then transported by ambulance to Reynolds Memorial Hospital,[2] and ultimately airlifted to Ruby Memorial Hospital in Morgantown, West Virginia, for treatment of chlorine gas poisoning. IPI contends its equipment oxidized as a result of the gas exposure, which ruined and/or significantly diminished its use expectancy.

On January 29, 2018, IPI and Mr. Taylor instituted the underlying action against Westlake for, among other things, personal injuries and property damages resulting from oxidization of equipment arising from the August 27, 2016 chlorine gas

[2] Mr. Taylor further alleges that over an hour passed before an ambulance was called to transport him.

leak.[3] Westlake counterclaimed for breach of contract and express indemnity, contending, in relevant part, that under the provisions of the AOS and the terms and conditions of the PO, IPI had a duty to indemnify Westlake for Mr. Taylor's claims and had breached the AOS and PO agreements by filing and pursuing the lawsuit. Westlake's counterclaim similarly alleges that it did not do, or fail to do, anything that caused the chlorine gas release.

The indemnity clause of the AOS provides in pertinent part:

> [IPI] assumes the risk of all damages, losses, costs and expenses, and agrees to indemnity, defend and hold harmless [Westlake], their directors, officers, agents, and employees from and against any and all claims, liability, damage, loss, penalties, fines, cost and expense of any kind whatsoever which may accrue to or be sustained by [Westlake], their directors, officers, agents or employees, arising out of this Agreement and/or the Services, including, without limitation, for the death of or injury to persons or destruction of property involving [IPI], its employees, agents and representatives, sustained in connection with performance of the Services, arising from any cause whatsoever (including, without limitation, injuries resulting from failure of or defect in any equipment, instrument or device supplied by [Westlake] or their employees to [IPI], its employees, agents or representatives at the request of [IPI], its employees, agents or representatives), except to the extent arising out of the sole negligence or willful misconduct of [Westlake] or its employees acting within the scope of employment.

A second indemnity clause is incorporated into the August 2016 PO through associated

[3] The complaint also references a second gas leak occurring on October 8, 2016 that is not at issue on appeal.

Terms and Conditions and into the AOS[4] (hereinafter "T&C") which provides:

> [IPI] assumes the risk of all damage, loss, costs and expense, and agrees to indemnify, defend and hold harmless [Westlake], its officers, employees and representatives, from and against any and all damages, claims, demands, expenses (including reasonable attorneys' fees), losses or liabilities of any nature whatsoever, and whether involving injury or damage to any person (including employees of [IPI] and [Westlake]) or property, and any and all suits, causes of action and proceedings thereon arising or allegedly arising from or related to the subject matter of this Purchase Order, except where such injury or damage was caused by the sole negligence of [Westlake]. This indemnity shall survive the termination or cancellation of this Purchase Order, or any part hereof.

Westlake filed a motion for partial summary judgment on its counterclaims for express indemnity and breach of contract. First observing that the parties' agreement contained a valid and enforceable choice of law clause, the circuit court concluded that Pennsylvania law applied to its interpretation of the contracts' indemnification provisions. The circuit court next determined that the indemnity provisions at issue satisfied Pennsylvania law which requires any indemnification against a party's own negligence to be clear and unequivocal. It then summarily concluded that IPI and Mr.

[4] The August 2016 PO contains a clause incorporating by reference a document including terms and conditions for all purchase orders, and the AOS contains a clause incorporating each PO into the AOS "and is made a part hereof with the same force and effect as though set forth in full above the signatures affixed hereto." No party raises before this Court that the T&C was improperly incorporated into the PO, that each PO is improperly incorporated by reference into the broader AOS, or that they are not otherwise subject to these terms.

Taylor's claims against Westlake fell within the scope of the indemnity provisions of both the AOS and T&C because 1) the damages arose out of the services being performed by IPI and Mr. Taylor under the AOS and the August 2016 PO, and 2) the Railcar Release constituted "a failure of or defect in equipment" under the AOS language. Accordingly, by order dated September 12, 2022, the circuit court granted Westlake's motion for partial summary judgment on its counterclaims for express indemnity and breach of contract, with the associated damages in defending the claims to be determined at a later hearing. The circuit court certified that its decision was a final judgment, that there was no just cause for delay, and that the order was immediately appealable for purposes of Rule 54(b) of the West Virginia Rules of Civil Procedure.[5]

IPI appealed that order to the ICA. The ICA affirmed the circuit court's determination that Pennsylvania law applied to the interpretation of the indemnity agreements. However, the ICA concluded that the two indemnity provisions were in conflict and that, as a result, the circuit court erred in not referring to the priorities clause of the AOS which indicates that the AOS controls in the event of a conflict:

[5] No party challenges the propriety of the circuit court's Rule 54(b) certification. Observing that damages relating to the expenses associated with defending the lawsuit remain outstanding but are ministerial in nature under these circumstances, we see no indication that the circuit court's certification was "clearly unreasonable." *See Hopkins v. Sutphin*, 253 W. Va. 372, 931 S.E.2d 772, 783 (2026) ("[T]he circuit court's certification is entitled to substantial deference, disrupted only when 'clearly unreasonable.'" (quoting Syl. Pt. 1, in part, *Province v. Province*, 196 W. Va. 473, 473 S.E.2d 894 (1996))).

> If there are any terms or conditions in [a PO] which are inconsistent with or in conflict with [the AOS], the terms and conditions of the various documents constituting [the AOS] shall control in the following priority and order: the front of the [PO]; [the AOS]; and, then the reverse side terms and conditions of the [PO].

Applying only the AOS's indemnity clause, the ICA then concluded that the circuit court was correct in determining that the AOS clearly and unequivocally demonstrated an intent to indemnify Westlake even against its own negligence, at least to some degree. However, it found that the circuit court had failed to adequately explain how the claims related to the Railcar Release fell within the scope of the indemnity provisions and remanded for the circuit court to develop its analysis. The ICA noted that the circuit court's reliance on the "failure of or defect in any equipment" language to find the claims fell within the indemnity agreement appeared erroneous without additional findings because the circuit court had taken that language out of its context in the AOS indemnity provision.

The ICA decision further directed the circuit court, if it concluded that the claims fell within the scope of the AOS indemnity provision, to then consider whether genuine issues of material fact existed relative to the stated exceptions to its application including Westlake's sole negligence and willful misconduct, and to likewise consider

whether gross negligence would undercut IPI's duty to indemnify Westlake.[6]

II.

STANDARD OF REVIEW

"On appeal of a decision from the Intermediate Court of Appeals of West Virginia, the Supreme Court of Appeals of West Virginia applies a de novo standard of appellate review to a circuit court's entry of summary judgment." Syl. Pt. 1, *Moorhead v. W. Va. Army Nat'l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025). From an appellate standpoint, we apply the same summary judgment standards as the circuit court under Rule 56 of the West Virginia Rules of Civil Procedure. *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 58, 459 S.E.2d 329, 335 (1995). That is, we review de novo whether "there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. Pt. 3, in part, *Aetna Cas. & Sur. Co. v. Fed. Ins. Co.*, 148 W. Va. 160, 133 S.E.2d 770 (1963). We draw all inferences in favor of the nonmoving party in evaluating a motion for summary judgment, cognizant that the court's "function at the summary judgment stage is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for

[6] Though not relevant to our analysis, the ICA also directed the circuit court to evaluate the competency of the evidence submitted by IPI in support of its response to the motion for partial summary judgment, to consider the possible effect, if any, of the West Virginia comparative fault statute to the analysis, and to be mindful that, under Pennsylvania law, the party seeking indemnification (Westlake) bears the burden of proof relative to the scope of indemnity, while IPI would bear the burden of proving any exception to its application, akin to an affirmative defense.

trial.'" *Precision Coil*, 194 W. Va. at 59, 915 S.E.2d at 336 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

III.

DISCUSSION

Westlake appeals from the decision of the ICA to the extent it applied the AOS to the exclusion of the T&C and remanded for additional development of the scope of the duty to indemnify and its exceptions, both of which it contends are unnecessary because Westlake is entitled to summary judgment on its express indemnity and breach of contract counterclaims under the plain language of the AOS and T&C indemnity provisions.

No party contests that Pennsylvania law applies to the interpretation of this contract, nor does any party contest that the indemnity provisions clearly and unequivocally provide for IPI to indemnify Westlake against some degree of Westlake's own negligence. Both the circuit court and the ICA made the same determination on these points, and we do not disturb them on appeal. Instead, Westlake assigns error to the ICA's analysis in resorting to the priorities provision to find the AOS's indemnity provision applicable to the exclusion of the T&C indemnity provision and secondarily assigns error to the ICA's conclusion that the circuit court's order failed to articulate its reasons for finding the claims asserted fell within the scope of the AOS's indemnity provision.

Upon review, the circuit court was correct to read the two indemnity provisions as complementary, and the ICA erred insofar as it identified a conflict between the two.[7] We conclude that the scope of the duty to indemnify under both indemnity provisions hinges on whether the provisions contemplate IPI's mere presence on site as sufficient to trigger the duty; and whether the parties intended, through the purchase of insurance or otherwise, to encompass claims where the harm is incidental to IPI's presence alone and not a result of IPI's own negligence.

We generally agree with the ICA's conclusion that the circuit court's order insufficiently analyzes the nuances of the indemnity provisions and the claims for which Westlake seeks indemnity from IPI. However, while the ICA remanded the matter for an order sufficient for appellate review of the circuit court's legal interpretation, we instead remand for the circuit court to allow development of parol evidence to clarify the parties' intent. Remand for these factual findings is necessary because the scope of the duty to indemnify, and the applicability of any exceptions, is ambiguous as applied to the claims at issue. Accordingly, we affirm the ICA's remand to the circuit court as modified by the directions of this Court.

A. The AOS and T&C are intended to be read together and are not inconsistent or in conflict as applied to these claims.

[7] As explained below, the error has no real impact on the overall analysis of the duty to indemnify and the exceptions thereto, a fact conceded by both parties at oral argument.

The circuit court appears to have applied the AOS and T&C together to form the scope of indemnification, positing its conclusion that these claims fell within its ambit because IPI was required to indemnify Westlake under *either or both* the AOS or the T&C. Notably, the circuit court never undertook a conflict analysis of the two indemnity provisions because the parties never asked it to. Neither the motion for partial summary judgment nor the response thereto contends that there was a conflict between the AOS and the T&C as applied to these claims or the indemnity at issue. Rather, Westlake argued that both provisions contemplated indemnity arising from damages sustained "in connection with their performance of services under the agreements" while IPI contended only that the damages sustained do *not* arise from the services performed. The circuit court summarily concluded that "all such damages [from the Railcar Release] arose out of the service being performed or otherwise being provided by IPI and Mr. Taylor pursuant to [the PO]" but then later made the finding that "[t]he crack in 1702 leading to the Railcar Release, constitutes a 'failure of or defect in any equipment instrument, or device . . .' under the AOS." The equipment defect language appears only in the AOS, not the T&C, which seemingly prompted the conflict argument before the ICA. Irrespective of what prompted the ICA to undertake the conflicts analysis, we ultimately conclude that it is inconsequential to the issues on appeal. As the parties conceded at oral argument, whether the AOS or the T&C applies has no real effect on the analysis relative to whether the claims arise from or are related to the performance of IPI's services for Westlake or, relatedly, result from Westlake's negligence to the exclusion of IPI's. However, to better define the scope of our refined remand to the

circuit court, we find it necessary to address the "conflicts" the ICA erroneously identified in the two indemnity provisions.

The AOS expressly incorporates the PO and its T&C. Westlake correctly observes that under Pennsylvania law, the contracts should be read as a whole and consistent with one another, if possible. "Where several instruments are made as part of one transaction they will be read together, and each will be construed with reference to the other; and this is so although the instruments may have been executed at different times and do not in terms refer to each other[.]" *Neville v. Scott*, 127 A.2d 755, 757 (Pa. Super. Ct. 1956); *see also Commonwealth ex rel. Kane v. UPMC*, 129 A.3d 441, 463 (Pa. 2015) (explaining a contract should be read as a whole to effectuate its purpose and in such a manner as to give effect to each provision rather than interpreted to nullify another). The priorities provision substantially reflects that rule before triggering the priority application:

> If there are any terms or conditions in [a PO] *which are inconsistent with or in conflict* with [the AOS], the terms and conditions of the various documents constituting [the AOS] shall control in the following priority and order: the front of the [PO]; [the AOS]; and, then the reverse side terms and conditions of the [PO].

(Emphasis added).

Practically, the potential for conflict is much higher when there is an indemnity clause in two different documents, that, while ostensibly intended to be read

together, are not verbatim. The ICA identified several of these distinctions but failed to explain why they were *conflicts* for purposes of deploying the AOS indemnity provision to the exclusion of the T&C. Application of Pennsylvania law to these provisions in view of the actual dispute raised by the parties, demonstrates that these provisions do not provide a different scope of indemnity depending on which indemnity provision applies; the provisions can and should be read together. Accordingly, the ICA erred in applying the AOS's indemnity provision to the exclusion of the T&C's indemnity provision.

i. Application of Pennsylvania law demonstrates the AOS and T&C are consistent for purposes of attorney fees and the exceptions to the duty to indemnify.

Two relevant distinctions identified by the ICA are resolved by application of Pennsylvania law. First, the ICA determined that the provisions were inconsistent because attorneys' fees are explicitly covered by one provision through operation of an "including" addendum to "expenses," while the other only generally provides for "expenses." Second, one provision provides exceptions to the duty to indemnify if Westlake was solely negligent *or* acted willfully, but the other provides an exception only for sole negligence. To the first, Pennsylvania law provides for attorney fees to indemnitees for the costs of the claim indemnified against as a matter of course unless explicitly *excluded* from the indemnification provision. *Lehman v. Smith*, No. 295-MDA-2021, 2021 WL 5826723, at *6 (Pa. Super. Ct. December 8, 2021) ("As a general rule, an indemnitee is entitled to recover, as part of his or her damages, reasonable attorneys' fees." (citing *Boiler Eng'g & Supply Co., Inc. v. Gen. Controls, Inc.*, 277 A.2d 812 (Pa.

1971))).

Thus, the inclusion of attorney fees as a recoverable "expense" in indemnity cases is implied by Pennsylvania law, consistent with the nature of the claim itself:

> "Indemnity obligations, whether imposed by contract or by law, require the indemnitor to hold the indemnitee harmless from costs in connection with a particular class of claims. Legal fees and expenses incurred in defending an indemnified claim are one such cost and thus fall squarely within the obligation to indemnify. Consequently, attorney's fees incurred in defending against liability claims are included as part of an indemnity obligation implied by law . . . and reimbursement of such fees is presumed to have been the intent of the draftsman unless the agreement explicitly says otherwise . . . . As stated by the Fifth Circuit, '[t]his rule simply gives effect to the very nature of indemnity, which is to make the party whole.'"

Lehman, 2021 WL 5826723, at *7 (quoting *Peter Fabrics, Inc. v. S.S. Hermes*, 765 F.2d 306, 316 (2d Cir. 1985)). Accordingly, the AOS and T&C are not in conflict as they relate to recoverable attorneys' fees.

Similarly, there is no *legal* difference between the AOS's exceptions to the duty to indemnify drawn for both sole negligence and willful misconduct, and the T&C's exception only for sole negligence. Pennsylvania public policy precludes parties from indemnifying against liability for their own willful conduct. *See Wilson v. Md. Cas. Co.*, 105 A.2d 304, 305 n.1 (Pa. 1954) ("Of course a person could not contract for indemnity against liability for damage or injury caused by his own wil[l]ful act, much less an assault

and battery committed by him. A contract to insure against such liability would obviously be void as being in violation of public policy."). The AOS explicitly contains the public-policy-enforced exception, but the T&C contains that same exception by operation of law.[8]

ii. Performance of services is the crux of the dispute and is the same under both the AOS and the T&C.

All remaining distinctions between the two indemnity provisions identified by the ICA are resolved by an analysis of the parties' contentions and the observation that the provisions are intended to be read as complementary to one another, not tortured for "arguable" inconsistencies or conflicts based on hypothetical scenarios. The crux of the parties' dispute is the services themselves: whether the scope of the indemnity provision can be read to apply to injuries and property damage suffered while IPI was on site at the Natrium plant to perform services for Westlake, but were otherwise unrelated to the work itself, and did not result from any negligence on IPI's part.

The parties' dispute thus centers on the scope of the *work*, which is substantially the same for purposes of this indemnity analysis. Under the AOS: "from and

[8] Insofar as the ICA decision directed the circuit court to explore whether exceptions to the duty to indemnify cover gross negligence as opposed to simple negligence under the "sole negligence" exception, we additionally note that Pennsylvania law nullifies "pre-injury exculpatory contracts purporting to protect a party from liability arising from recklessness" as violative of public policy and likewise views insulation from one's own "gross negligence" as equally repugnant to public policy. *See Feleccia v. Lackawanna College*, 215 A.3d 3, 19-21 (Pa. 2019).

against any and all claims . . . of any kind whatsoever . . . arising out of this Agreement and/or the Services . . . sustained in connection with performance of the Services" and under the T&C: "from and against any and all . . . claims . . . of any nature whatsoever . . . arising or allegedly arising from or related to the subject matter of this [PO]." "Services" under the AOS refers to "certain on-site services (the "Services") to be performed by [IPI]" and cross-references the PO: "all as shall be specified and described in a[] "[PO][.]" There can be no meaningful distinction between services that arise or relate to the subject matter of the PO that do not *also* arise out of the AOS where the AOS expressly incorporates the PO and where the PO is fundamentally premised on the AOS as its master services agreement. For those reasons, we conclude that the indemnity provision in the AOS may be read together with the indemnity provision of the T&C.

B. The scope of the duty to indemnify and its exceptions are ambiguous and require development of parol evidence.

Having concluded that the two provisions may be read together, we turn to analyze the scope of the duty to indemnify and its exceptions as reflected by the indemnity provisions. We find that the tension here is not in the language differences between the two indemnity provisions, but in the ambiguity common to *both* as applied to the circumstances before us: namely, circumstances where, by mere presence at the Natrium plant, IPI and Mr. Taylor were injured through no fault of IPI.

We first observe that the circuit court summarily concluded that the scope

of the work covered by the AOS and the PO encompassed these unique circumstances, and that the ICA correctly concluded that that conclusion required more nuanced analysis and development. However, we take the additional step of concluding that the indemnity provisions are ambiguous as applied to these circumstances. First, there is ambiguity as to whether mere presence on site was intended by the parties to constitute a service performed by IPI under the AOS and T&C. Second, the parties' intentions are necessary to clarify their agreement exempting circumstances resulting from Westlake's "sole negligence" from the duty to indemnify. Because Pennsylvania law instructs that parol evidence should be admitted to discern the parties' intent in the face of ambiguous provisions, remand for further proceedings is appropriate.[9]

Like West Virginia law, analysis of indemnity agreements under Pennsylvania law is focused on effectuating the intent of the parties. "The fundamental rule in interpreting the meaning of a contract is to ascertain and give effect to the intent of the contracting parties." *Murphy v. Duquesne Univ. of the Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001) (citation omitted). "In interpreting the scope of an indemnification clause, the court must consider the four corners of the document and its surrounding circumstances." *Widmer Eng'g, Inc. v. Dufalla,* 837 A.2d 459, 472 (Pa. Super. Ct. 2003) (citations and quotation marks omitted). Indemnity agreements in particular, "are to be narrowly

[9] We agree with the ICA's ultimate decision to remand for additional development, but as discussed more fully below, we refine its scope and the factual development to be undertaken by the circuit court.

interpreted in light of the parties' intentions as evidenced by the entire contract." *Consol. Rail Corp. v. Del. River Port Auth.,* 880 A.2d 628, 632 (Pa. Super. Ct. 2005).

Here, there are critical and yet unknown facts surrounding the parties' intent. In the face of the ambiguity in the scope of the indemnity agreement as applied to the facts before us, more factual development is necessary to determine whether the duty to indemnify was triggered, or if any of the exceptions thereto would apply. "It is the function of the court to decide, as a matter of law, whether the contract terms are clear or ambiguous." *Tuthill v. Tuthill*, 763 A.2d 417, 420 (Pa. Super. Ct. 2000) (citations omitted). A court may find a provision ambiguous if it is "reasonably susceptible of different constructions and capable of being understood in more than one sense." *Hutchison v. Sunbeam Coal Corp.*, 519 A.2d 385, 390 (Pa. 1986). But those constructions must, obviously, be logical ones. "The 'reasonably' qualifier is important: there is no ambiguity if one of the two proffered meanings is unreasonable." *Trizechahn Gateway LLC v. Titus*, 976 A.2d 474, 483 (Pa. 2009). "This question is not to be resolved in a vacuum. Rather, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts." *RESPA of Pa.*, *Inc. v. Skillman,* 768 A.2d 335, 340 (Pa. Super. Ct. 2001) (internal citations and quotation marks omitted).

The scope of the duty to indemnify here does not change depending on which indemnity provision applies. Instead, it turns on what the parties intended to

encompass when agreeing to indemnity for certain services on a worksite. Notably, the worksite at issue—a chemical plant—had the potential for danger and volatility by the very nature of the business. More specifically, the scope of IPI's agreement to indemnify Westlake is ambiguous in this circumstance as it turns on unresolved factual issues, such as: (1) what injuries or property damage the parties were contemplating when entering into the indemnity agreements based on "on site services"; (2) whether IPI was compensated for assuming the risk of working on such a worksite; and (3) the parties' intent behind requiring IPI to maintain insurance as a condition of payment. The indemnity provisions could support a duty to indemnify insofar as they contemplate "performing" a service—which has the practical connotation of an activity—and an injury arising therefrom. However, the provisions also contemplate that the nature of the work required the *location* of performance to be on site at a chemical plant and a condition of the parties' contracts required IPI to maintain certain insurance coverage. The record is insufficiently developed for this Court to resolve the ambiguity and determine what the parties intended the scope of the work to include and, consequently, whether an injury suffered from mere presence on the worksite falls within the agreement's bounds.

We also conclude that the provisions present a similar, common ambiguity as to the exception for Westlake's sole negligence. Westlake argues that it cannot be found solely negligent for the Railcar Release because (1) a Pennsylvania jury attributed fault to other third-parties and (2) IPI did not know which party or parties caused the

Railcar Release, so it cannot have met its burden to prove the sole negligence exception to the duty to indemnify. IPI argues that Westlake's shared negligence with third parties is irrelevant and instead focuses on the fact that IPI itself was not negligent at all.[10] We find that based on the circumstances presented, the "sole negligence" exception in the contract is also ambiguous because it is capable of both interpretations: that "sole negligence" contemplates an assessment of blame as between the parties to the agreement (Westlake and IPI) *or* shared negligence as between Westlake and any other third party.

Presented with such ambiguities in an indemnification agreement as applied to the factual circumstances at issue, we conclude that Pennsylvania law directs a remand for consideration of parol evidence on these issues. Indemnity agreements are strictly construed, particularly where the indemnitee is also the drafter. *See Ratti v. Wheeling Pittsburgh Steel Corp.*, 758 A.2d 695, 702 (2000) ("[I]ndemnity clauses are construed

[10] The parties dispute the effect of the *Perry-Ruzzi* line of cases dealing with the requirement that, if a party is indemnifying against its own negligence, it must do so clearly and unequivocally to make it enforceable. *Ruzzi v. Butler Petroleum Co.*, 588 A.2d 1, 4 (Pa. 1991). The ICA concluded that the "sole negligence" inclusion was sufficiently clear and unambiguous to create an indemnification obligation for at least some degree of Westlake's own negligence. We conclude that finding is consistent with Pennsylvania precedent explaining that the inclusion of "sole" negligence language draws the negative inference that there is a duty to indemnify when Westlake is not *solely* negligent. *See, e.g.*, *Sunoco (R&M), LLC v. Pa. Nat'l Mut. Cas. Ins. Co.*, 322 A.3d 930, 954-55 (Pa. Super. Ct. 2024). However, we have not been directed to any case applying the *Perry-Ruzzi* rule that definitively resolves—as a matter of law—an analysis of a "sole negligence" provision in view of the negligence of the indemnitee and third parties to the *exclusion* of the indemnitor as opposed to shared, concurrent negligence among parties to the indemnity agreement.

most strictly against the party who drafts them especially when that party is the indemnitee."). But rigid application of this rule of construction is not a first resort:

> the rule [that a provision be construed against the drafter] is not intended as a talismanic solution to the construction of ambiguous language. Rules of construction serve the legitimate purpose of aiding courts in their quest to ascertain and give effect to the intention of parties to an instrument. They are not meant to be applied as a substitute for that quest. Where a document is found to be ambiguous, inquiry should always be made into the circumstances surrounding the execution of the document in an effort to clarify the meaning that the parties sought to express in the language which they chose. . . . It is only when such an inquiry fails to clarify the ambiguity that the rule of construction . . . should be used to conclude the matter against that party responsible for the ambiguity, the drafter of the document.

Burns Mfg. Co. v. Boehm, 356 A.2d 763, 766 n.3 (Pa. 1976) (citations omitted). "'[P]arol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances." *Miller v. Poole*, 45 A.3d 1143, 1146 (Pa. Super. Ct. 2012) (quoting *Ins. Adjustment Bureau, Inc. v. Allstate Ins. Co.*, 905 A.2d 462, 468 (Pa. 2006)). Accordingly, we remand to the circuit court for the development of parol evidence relevant to resolve the identified ambiguities in the indemnification provisions.

IV.

CONCLUSION

For the foregoing reasons, we reverse the opinion of the ICA insofar as it directed the circuit court to apply the AOS to the exclusion of the T&C on remand. We

affirm the portion of the ICA's opinion that affirmed, in part, vacated, in part, and remanded the Circuit Court of Marshall County's September 12, 2022 order that entered summary judgment in favor of Westlake on its counterclaims for express indemnity and breach of contract, with directions as modified by this Opinion.

Affirmed, in part, reversed, in part, and remanded with directions.