

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2689

MESHINSKY & ASSOCIATES, LLC; PHILIP T. MESHINSKY
Appellants

v.

CONTINENTAL CASUALTY COMPANY;
RENAISSANCE SCHOOL SERVICES, LLC

No. 24-2764

MESHINSKY & ASSOCIATES, LLC; PHILIP T. MESHINSKY

v.

CONTINENTAL CASUALTY COMPANY;
RENAISSANCE SCHOOL SERVICES, LLC

RENAISSANCE SCHOOL SERVICES, LLC,
Appellant

Appeals from the United States District Court
for the District of New Jersey
(D.C. No. 3:22-cv-04350)
District Judge: Robert Kirsch

Submitted Pursuant to Third Circuit L.A.R. 34.1(a) on Jan. 20, 2026

Before: RESTREPO, FREEMAN, and MASCOTT, *Circuit Judges*

(Filed: August 18, 2026)

OPINION*

RESTREPO, *Circuit Judge*

Appellants in Appeal No. 24-2689, Meshinsky & Associates, LLC (“Meshinsky LLC”), and Philip T. Meshinsky¹ (collectively, “Meshinsky”), and appellant in Appeal No. 24-2764, Renaissance School Services, LLC (“RSS”), appeal the District Court’s Order granting the motion of Continental Insurance Company (incorrectly sued as Continental Casualty Company) (“Continental”) for summary judgment and denying Meshinsky’s cross-motion for summary judgment in this insurance coverage dispute. Continental was the insurer for Meshinsky.

Meshinsky brought this declaratory judgment action seeking an Order stating that Continental was required to defend and indemnify Meshinsky in a separate lawsuit filed by RSS in the Superior Court of New Jersey (“RSS Lawsuit”). In addition to naming Continental as defendant in the declaratory judgment action, Meshinsky named RSS as an interested party. The District Court held that Meshinsky was not entitled to a defense and indemnification by Continental. For the reasons that follow, we affirm.

* This disposition is not an Opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

¹ In its Opinion granting Continental’s summary judgment motion, the District Court explained that on April 30, 2024, Meshinsky’s counsel wrote to the Court advising that Mr. Meshinsky had passed away. Meshinsky’s counsel stated that Mr. Meshinsky’s passing did not have a bearing upon the legal outcome of this case, and no party objected to this position.

Continental issued an Accountants Professional Liability Policy (“Policy”) to Meshinsky LLC, an accounting firm, for claims made and reported during the period of March 1, 2021 to March 1, 2022 (“Policy Period”). On or about February 22, 2019, RSS obtained an arbitration award against the Kingdom Charter School of Leadership (“Kingdom Charter” or “Charter School”) in the amount of \$995,713, which was entered as a Judgment on or about May 9, 2019.

On June 21, 2019, Kingdom Charter engaged Meshinsky LLC as Independent Trustee for the closing and liquidation of the Charter School effective June 30, 2019, since Kingdom Charter’s Board of Trustees decided to surrender the school’s charter. Mr. Meshinsky, a certified public accountant, was the managing member of Meshinsky LLC and acted on its behalf.

On or about February 4, 2020, Meshinsky LLC, in its capacity as Trustee for Kingdom Charter, received a letter (the “OPRA Letter”) from an attorney for RSS, demanding the production of public records, pursuant to common law and the New Jersey Open Public Records Act (“OPRA”), N.J. Stat. Ann. § 47:1A-1, et seq., in light of the aforementioned Judgment awarded in favor of RSS against the Charter School. The OPRA Letter emphasized RSS’s interest in services and payments due by Meshinsky as the Trustee of the Charter School.

² Because we write solely for the parties, the Court assumes familiarity with the facts.

By correspondence also dated February 4, 2020, counsel for Meshinsky made a proposal to settle the dispute over RSS's claims to collect upon its judgment. By email dated February 8, 2020, counsel for RSS sent an email to Meshinsky's counsel with a counter-offer to settle the dispute over RSS's claims regarding Kingdom Charter's assets.

After sending a reply email to Meshinsky with a counter-offer, in March 2020 RSS sent a letter to the New Jersey Commissioner of Education, copying Meshinsky's counsel, about alleged deficiencies in Meshinsky's performance in the form of acts and omissions as Trustee overseeing the dissolution of the Charter School. RSS's letter indicated, among other things, that RSS had been requesting information from Meshinsky, via a formal request for documents and records under OPRA, regarding the Charter School over a period of months, which request Meshinsky had allegedly improperly denied. Per RSS, Meshinsky's actions and inactions "forced [RSS] to file a claim with the [New Jersey] Government Records Council ("GRC") to obtain the requested documents and records." App. 440 (parenthetical added).

On March 17, 2020, RSS filed a Denial of Access Complaint with the GRC. On or about June 4, 2020, Meshinsky signed an agreement with RSS entitled Settlement Agreement and Partial Satisfaction of Judgment which partially resolved the ongoing dispute with RSS. There remained an ongoing dispute between RSS and Meshinsky, including whether cash assets should be transferred to RSS, and RSS expressly reserved its rights and refused to waive any claims it might have against Meshinsky.

On July 28, 2020, the GRC issued an Interim Order ("First Interim Order") on RSS's Denial of Access Complaint finding that Meshinsky failed to provide a completed

Statement of Information to the GRC in violation of OPRA. This First Interim Order directed that Meshinsky comply with the specifications set forth within five days from receipt of the Order.

By letter to the Executive Director of the GRC dated December 8, 2020, counsel for Meshinsky, among other things, acknowledged awareness of RSS's demands and complaints regarding Meshinsky's performance. Meshinsky's counsel also expressed a willingness to mediate the dispute.

On December 8, 2020, the GRC's Executive Director made Supplemental Conclusions and Recommendations, which included the finding that Meshinsky failed to comply with the First Interim Order which was deemed as a denial of access and enforceable in the Superior Court if RSS chose to exercise that option. The Supplemental Conclusions and Recommendations also found that RSS was entitled to related attorney fees from Meshinsky.

At the December 15, 2020 public meeting, the GRC adopted the entirety of the aforementioned Supplemental Conclusions and Recommendations as reflected in a subsequent Interim Order ("Second Interim Order"). With regard to RSS's Denial of Access Complaint, the GRC's findings included that Meshinsky failed to comply with the requests in the OPRA letter and the GRC's First Interim Order, and RSS was entitled to reasonable attorney fees. On December 31, 2020, Meshinsky submitted a request for reconsideration to the GRC.

In June 2021, RSS filed a Complaint in the Superior Court of New Jersey and asserted allegations regarding the aforementioned deficiencies in Meshinsky's

performance in the form of acts and omissions as Trustee overseeing the liquidation of the Charter School. RSS's claims included claims for judicial intervention in the dissolution of Kingdom Charter, specifically referring to Meshinsky's allegedly improper acts and omissions complained of over the previous two years, and for summary proceeding, as well as related attorney fees and costs.

On or about August 10, 2021, Meshinsky notified Continental of the RSS Lawsuit, and Continental then contacted Meshinsky requesting further documentation. Continental issued a Declination Letter to Meshinsky on November 5, 2021, identifying multiple bases for the denial, including that Meshinsky had a basis to believe, prior to the inception of the policy, that acts or omissions that had already occurred could give rise to a claim, and that a claim was made against Meshinsky prior to the inception of the Policy Period. Counsel for Meshinsky challenged the denial on February 25, 2022, and Meshinsky then submitted an internal appeal to Continental on April 19, 2022 asking for reconsideration. On May 2nd, Continental reaffirmed its decision denying any duty to defend or indemnify Meshinsky in the RSS Lawsuit.

Meshinsky filed in the Superior Court of New Jersey the Complaint for Declaratory Judgment against Continental on May 25, 2022 seeking a declaration of Meshinsky's entitlement to a defense and indemnification against the Complaint filed by RSS in June 2021. Continental and RSS, as an interested party, were named as defendants to Meshinsky's coverage action. On June 30, 2022, Continental filed a Notice of Removal of the Declaratory Judgment Complaint to the District Court.

Continental and Meshinsky filed cross-motions for summary judgment, accompanying briefs, and response and reply briefs. As Continental points out in its brief on appeal, at no time during the briefing of the cross-motions for summary judgment or their pendency did RSS file a substantive or even a “me too” brief or other submission joining in the arguments of Meshinsky against Continental.

On August 8, 2024, the District Court granted summary judgment in favor of Continental and against Meshinsky, finding that Meshinsky was not entitled to a defense or indemnification from Continental in the RSS Lawsuit both because the claims at issue were not first made during the Policy Period and because the Prior Knowledge Provision of the Policy applied to preclude coverage. Meshinsky then filed this appeal, and RSS subsequently filed its own separate appeal.

II

The Policy states that it was written “on a ‘claims-made’ basis. It provides coverage for those claims which are both first made against [Meshinsky] and reported to [Continental] in writing during the policy period.” App. 144 (emph. omitted). The Policy further provides in relevant part that Continental

will pay on [Meshinsky’s] behalf all sums in excess of the deductible, up to [Continental’s] limits of liability, that [Meshinsky] become[s] legally obligated to pay as damages and claim expenses because of a claim that is both *first made against [Meshinsky]* and reported in writing to [Continental] *during the policy period* by reason of an act or omission in the performance of professional services by [Meshinsky] or by any person for whom [Meshinsky is] legally liable *provided that: . . .*

2. *prior to the effective date of this Policy, none of you had a **basis** to believe that any such act or omission, or*

interrelated act or omission, might reasonably be expected to be the basis of a claim[.]

App. 151 (emph. added) (citation modified).³ On appeal, Continental and Meshinsky agree that, for purposes of this case, the Continental Policy defines a “claim” to mean “a demand received by [Meshinsky] for money or services naming [Meshinsky] and alleging an act or omission . . . in the rendering of professional services.” App. 144 (emph. omitted); *see* Meshinsky Br. 5 (citing App. 144); Meshinsky Reply Br. 4 (same); Continental Br. 4 (citing App. 144).

III⁴

The parties agree that the Policy was a “claims made” policy and that the policy incepted on March 1, 2021. As explained above, under the Policy, Continental was only obligated to provide a defense and indemnification for Meshinsky for claims made in the RSS Lawsuit: (1) if they were *first* made by RSS against Meshinsky during the effective period of the Policy – on or after March 1, 2021; and (2) for which, *prior to the Policy Period*, there was *no basis* for Meshinsky to believe the acts or omissions complained of

³ Subsection 2 of the Policy is referred to herein as the “Prior Knowledge Provision.”

⁴ The District Court had jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441(b), and we have appellate jurisdiction under 28 U.S.C. § 1291. “We review the District Court’s grant of summary judgment *de novo*,” applying “the same standards and presumptions as the District Court.” *Sapa Extrusions, Inc. v. Liberty Mut. Ins. Co.*, 939 F.3d 243, 249 (3d Cir. 2019). Under this standard, we view the facts in the light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor. *Razak v. Uber Techs., Inc.*, 951 F.3d 137, 144 (3d Cir. 2020). “Unsupported assertions, conclusory allegations, or mere suspicions are insufficient to overcome a motion for summary judgment.” *Betts v. New Castle Youth Dev. Ctr.*, 621 F.3d 249, 252 (3d Cir. 2010).

by RSS, or interrelated actions or omissions thereof, might reasonably be expected to be the basis of a claim.

Under New Jersey law, which the parties agree applies to this diversity jurisdiction case, an insurance policy should be “interpreted according to its plain and ordinary meaning.” *Voorhees v. Preferred Mut. Ins. Co.*, 607 A.2d 1255, 1260 (N.J. 1992). Moreover, “[i]f the plain language of the policy is unambiguous, [courts] will not ‘engage in a strained construction to support the imposition of liability’ or write a better policy for the insured than the one purchased.” *Templo Fuente De Vida Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh*, 224 N.J. 189, 200 (2016) (quoting *Progressive Cas. Ins. Co. v. Hurley*, 765 A.2d 195, 202 (N.J. 2001)) (citation modified). If the policy is ambiguous, it is construed in favor of the insured. *Nav-Its, Inc. v. Selective Ins. Co. of Am.*, 869 A.2d 929, 933 (N.J. 2005).

Exclusions in an insurance policy should be construed narrowly, and the insurer has the burden of bringing the claim within the exclusion. *Colliers Lanard & Axilbund v. Lloyds of London*, 458 F.3d 231, 236 (3d Cir. 2006) (“*Colliers I*”) (citing *Princeton Ins. Co. v. Chunmuang*, 698 A.2d 9, 16-17 (N.J. 1997)). Nonetheless, “exclusions are presumptively valid and will be given effect if specific, plain, clear, prominent, and not contrary to public policy.” *Id.* (quoting *Princeton Ins.*, 698 A.2d at 17) (internal quotation marks omitted).

Here, the language of the Prior Knowledge Provision is unambiguous, and the events and communications that occurred, especially collectively, clearly provided “a basis [for Meshinsky] to believe that [the alleged] act[s] or omission[s], or interrelated

act[s] or omission[s], might reasonably be expected to be the bases of a claim.”⁵ App. 151 (citation modified). The District Court properly concluded that the Prior Knowledge Provision precluded coverage here, and Continental did not have a duty to defend and indemnify Meshinsky.

Finally, Continental argues that RSS forfeited or waived the issues it raises on appeal in support of its request for a reversal of the District Court’s grant of summary judgment. RSS responds that as a party to this action affected by the District Court’s Judgment, RSS has *standing* to file an appeal.⁶

⁵ Meshinsky argues that in *Liebling v. Garden State Indemnity*, 767 A.2d 515, 524 (N.J. App. Div. 2001), the New Jersey Appellate Division held that the “reasonably could have foreseen” exclusion in that insurance coverage case was deemed to mean that coverage may be denied only if the insured knew or believed that there had been a deviation from the professional standards and that it was likely that a malpractice claim would be made. Initially, we note Meshinsky appears to acknowledge that the relevant policy provision in *Liebling* is distinguishable from the Prior Knowledge Provision in this case, and Meshinsky concedes that the New Jersey courts have not discussed the specific provision found in Continental’s Policy. Further, as Meshinsky seems to also concede on appeal, our Court in *Colliers I* held that *Liebling* was *not* controlling in construing the “prior knowledge provision” involved in *Colliers I*, and we similarly find *Liebling* not controlling in construing the Prior Knowledge Provision here. Similarly to *Colliers I*, we find the Prior Knowledge Provision here should be applied according to its plain language. *Colliers I*, 458 F.3d at 241-44. Moreover, as *Colliers Lanard & Axilbund v. Lloyds of London*, 337 F. Appx. 195 (3d Cir. 2009) (“*Colliers II*”), pointed out, New Jersey cases decided subsequently to *Colliers I* are “entirely consistent with” *Colliers I*. *Id.* at 199-200 (noting that *Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A.*, 916 A.2d 440, 444 (N.J. 2007), “is entirely consistent” with *Colliers I*).

⁶ RSS points out that a motions panel of this Court denied Continental’s motion to dismiss RSS’s appeal prior to the parties briefing the merits of the appeal. Initially, we note that a summary order of a motions panel denying a preliminary motion to dismiss prior to a full briefing of the issues and merits on appeal does not foreclose a merits panel from reviewing and deciding the issues on appeal. See *Lambert v. Blackwell*, 134 F.3d 506, 512 n.17 (3d Cir. 1997); see also *United States v. Houser*, 804 F.2d 565, 568 (9th Cir. 1986) (citing *United States v. Humphries*, 636 F.2d 1172, 1174 n.2 (9th Cir. 1980))

“[A]bsent exceptional circumstances, issues not raised before the district court are [forfeited] on appeal.” *Fletcher-Harlee Corp. v. Pote Concrete Contractor, Inc.*, 482 F.3d 247, 253 (3d Cir. 2007); *see also Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136, 147 (3d Cir. 2017) (explaining that although forfeiture and waiver are often used interchangeably by jurists and litigants, forfeiture is the “failure to make a timely assertion of a right” while waiver is the “intentional relinquishment or abandonment of a known right” (citations omitted)).

Here, RSS points out that it “was named an ‘interested,’ nominal party in the Coverage Action by Meshinsky” in the District Court. RSS Reply Br. 3 (citing App. 5). RSS does not appear to dispute, however, that it failed to raise any issues related to either of the cross-motions for summary judgment filed in the District Court at any time during the briefing or pendency of those motions, let alone any claims in opposition to Continental’s summary judgment motion.

In any event, to the extent RSS now raises issues also raised by Meshinsky on appeal, as explained above, those arguments are without merit. To the extent RSS raises

(“[W]e do not consider [the motions panel’s] denial of [appellee’s] motion to dismiss the appeal to have foreclosed our ultimate reconsideration and disposition.”). In any event, the motions panel’s Order here denied Continental’s preliminary request to dismiss RSS’s appeal outright where RSS argued it had *standing* to at least file an appeal as a party adversely effected by the District Court’s Judgment. The motions panel’s summary order denying the request for outright dismissal of RSS’s appeal preliminarily did not foreclose a decision by this merits panel that issues raised by RSS in briefing the merits of the appeal were forfeited.

new issues on appeal that it did not raise in the District Court, those claims are forfeited, and in light of the lack of extraordinary circumstances, we decline to review them.

*

*

*

For reasons explained above, the Prior Knowledge Provision of the Policy precludes coverage.⁷ Accordingly, Continental did not have a duty to provide a defense and indemnity to Meshinsky in the RSS Lawsuit under the Policy, summary judgment was properly granted in Continental's favor, and we affirm.

⁷ Since we affirm on the ground that the Prior Knowledge Provision precludes coverage, it is unnecessary to address Continental's argument that coverage is also precluded here because the claims which Meshinsky asserts are entitled to coverage under the Policy were first made prior to the Policy Period.