UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1668

CHURCH MUTUAL INSURANCE COMPANY,

Plaintiff − Appellant,

v.

LAKE POINTE ASSISTED LIVING, INC.; TONY BIGLER; EDITH BIGLER; LAURA WISE, Administrator for the Estate of Martha A. Reinert; BARBARA FOX PARKER; JERRY SINGLETARY,

Defendants – Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Richard E. Myers, II, District Judge. (4:20-cv-00055-M)

Argued: March 8, 2022 Decided: July 12, 2022

Before MOTZ and DIAZ, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished opinion. Judge Diaz wrote the opinion in which Judge Motz and Senior Judge Keenan joined.

ARGUED: Christian Andrew Preus, BASSFORD REMELE, P.A., Minneapolis, Minnesota, for Appellant. David Stebbins Coats, BAILEY & DIXON, Raleigh, North Carolina, for Appellees. **ON BRIEF:** Walter E. Brock, Jr., YOUNG, MOORE & HENDERSON, P.A., Raleigh, North Carolina, for Appellant. J.T. Crook, BAILEY & DIXON, LLP, Raleigh, North Carolina, for Appellees Lake Pointe Assisted Living, Inc., Tony Bigler, and Edith Bigler. J. David Stradley, WHITE & STRADLEY, LLP, Raleigh, North Carolina, for Appellees Laura Wise, Administration for the Estate of Martha A.

Reinert, Barbara Fox Parker and Jerry Singletary.

Unpublished opinions are not binding precedent in this circuit.

DIAZ, Circuit Judge:

Lake Pointe Assisted Living, Inc. operates an adult care home. The home's residents sued Lake Pointe and two of its officers in North Carolina state court, alleging that they failed to provide adequate meals and activities, in violation of North Carolina's administrative code.

Lake Pointe's insurer—Church Mutual Insurance Company—sought a declaratory judgment in federal court that it needn't defend Lake Pointe or its officers in the state-court action. The district court held that Lake Pointe's insurance policy obligated Church Mutual to tender a defense. The court entered a final judgment on that issue, certifying it for our review.

Because the policy requires Church Mutual to defend Lake Pointe when a "professional health care incident" causes residents' injuries, we affirm.

I.

Church Mutual issued Lake Pointe a Primary Policy and an Umbrella Policy that covered Lake Pointe from May 2018 to January 2019. Among other things, the policies insured against damages caused by a "professional health care incident." J.A. 49, 59. The policies define "professional health care incident" (in part) as the "[f]ailure to comply with any right of a resident under any state or federal law regulating [Lake Pointe] as a resident health care facility." J.A. 55, 59.

In November 2018, Lake Pointe residents filed a class action in North Carolina state court against Lake Pointe and its officers—Tony and Edith Bigler. The complaint (as

amended) asserts two claims against Lake Pointe—breach of contract and a violation of the North Carolina Unfair and Deceptive Trade Practices Act under N.C. Gen. Stat. § 75-1.1. It also alleges that the Biglers negligently managed the adult care home. The residents claim that Lake Pointe and the Biglers caused them "solely economic damages" by failing to provide them with nutritious meals, assistance with day-to-day activities, and adequate programming, as required by North Carolina law. J.A. 227.

Church Mutual later sued Lake Pointe, the Biglers, and the residents in federal court, seeking a declaration that it needn't defend or indemnify its insureds.[1] Lake Pointe, the Biglers, and the residents all counterclaimed for declaratory judgment and unfair trade practices. Lake Pointe and the Biglers also alleged breach-of-contract and duty-of-good-faith claims.

Church Mutual moved for judgment on the pleadings on all claims. The district court granted the motion as to the residents' counterclaim alleging unfair trade practices. *Church Mut. Ins. Co. v. Lake Pointe Assisted Living Inc.*, 517 F. Supp. 3d 467, 484 (E.D.N.C. 2021). But it otherwise denied the motion, holding that Church Mutual has a "duty to defend on all claims asserted against the Lake Pointe Defendants in the Underlying Lawsuit." *Id.* at 482–84.

[1] The policies don't list the Biglers as insureds. But the complaint says they are Lake Pointe's "corporate officers." J.A. 219. And the Primary Policy provides that "executive officers and directors" are insureds "with respect to their duties as [Lake Pointe's] officers." J.A. 51. In any event, Church Mutual waived any argument it might have asserted on this point by not raising it in its opening brief. *See Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017).

The district court found that the Primary Policy covered: (1) an injury, (2) caused by (3) a professional health care incident. *Id.* at 476. The court said that the residents' alleged economic losses constituted injuries. *Id.* at 481–82. And it found that the residents adequately pleaded causation because Lake Pointe's actions produced their injuries. *Id.* at 482.

The district court also found that a "professional health care incident" caused the residents' injuries. The Primary Policy defined a "professional health care incident" (in part) as a "failure to comply with any right of a resident under any state or federal law regulating [Lake Pointe] as a resident health care facility." *Id.* at 476. The court noted that neither the policy nor North Carolina law defined "resident health care facility." *Id.* at 480. But North Carolina law did define "health care facility" and included within that definition "adult care homes." *Id.* Because the complaint alleged that Lake Pointe is an adult care home, the court applied the corresponding regulations. *Id.*

Examining those regulations, the court found detailed requirements for meals and group activities. *Id.* at 480–81. It then compared those requirements to the amended complaint's allegations that Lake Pointe and the Biglers "failed to ensure that the facility materially and routinely complied with the applicable laws, rules[,] and regulations related to the operation of a licensed adult care home." *Id.* at 481 (cleaned up). The amended complaint, the district court said, sufficiently alleged violations of the regulations. And those violations, if proven, would amount to "a professional health care incident" under the policies. *Id.*

Thus, the court found that Church Mutual had a duty to defend Lake Pointe and the Biglers. *Id.* at 482. Then, because several counterclaims remained live, Church Mutual moved to certify the duty-to-defend order as a final, appealable judgment under Federal Rule of Civil Procedure 54(b). The district court granted Church Mutual's motion, reasoning that it had issued a final judgment on that claim and resolving the issue would propel the matter forward. *Church Mut. Ins. Co. v. Lake Pointe Assisted Living Inc.*, No. 20-CV-00055, 2021 WL 2136419, at *1–*2 (E.D.N.C. May 26, 2021).

This appeal followed.

II.

"Ordinarily, we do not possess appellate jurisdiction over interlocutory orders—such as the denial of a . . . Rule 12(c) motion for judgment on the pleadings." *Occupy Columbia v. Haley*, 738 F.3d 107, 115 (4th Cir. 2013). But we may review an otherwise interlocutory order under Rule 54(b) when it finally adjudicates a claim and there is no just reason for delay. *See Kinsale Ins. Co. v. JDBC Holdings, Inc.*, 31 F.4th 870, 873 (4th Cir. 2022). Because the district court's Rule 54(b) ruling implicates our jurisdiction, we have an independent obligation to verify the basis for the district court's certification. *See Williamson v. Stirling*, 912 F.3d 154, 168 (4th Cir. 2018).

Here, the district court issued a final order on the declaratory-judgment claims. The court found that Church Mutual has a "duty to defend on all claims asserted against [Lake Pointe and the Biglers] in the [North Carolina action]." *Church Mut.*, 517 F. Supp. 3d at 482; *see also Church Mut.*, 2021 WL 2136419, at *2 ("[T]he judgment is final as to the

claim that [Church Mutual] has a duty to defend [Lake Pointe and the Biglers] in the [North Carolina action]."). Because that claim has reached its "ultimate disposition," it is final. *Kinsale*, 31 F.4th at 873 (cleaned up).

Nor is there any just reason for delay. Our decision will inform the district court's opinion on the remaining counterclaims. The district court has suggested that, if we were to reverse, our opinion would moot those counterclaims. *Church Mut.*, 2021 WL 2136419, at *2. We have treated comparable findings as sufficient for Rule 54(b) certification. *Compare Res. Bankshares Corp. v. St. Paul Mercury Ins. Co.*, 407 F.3d 631, 635 (4th Cir. 2005), *with Res. Bankshares Corp. v. St. Paul Mercury Ins. Co.*, 323 F. Supp. 2d 709, 723 (E.D. Va. 2004). And we do so again here.

III.

Turning to the merits, we review a district court's ruling on a motion for judgment on the pleadings de novo. *Conner v. Cleveland Cnty., N.C.*, 22 F.4th 412, 419–20 (4th Cir. 2022). Judgment on the pleadings is appropriate where no set of facts would entitle the nonmovant to relief. *See Drager v. PLIVA USA, Inc.*, 741 F.3d 470, 474 (4th Cir. 2014).

The parties agree that North Carolina law governs their dispute. North Carolina uses a "comparison test" to define an insurance policy's scope. *Waste Mgmt. of Carolinas, Inc. v. Peerless Ins. Co.*, 340 S.E.2d 374, 378 (N.C. 1986). Courts conduct the comparison test by "reading the policies and the complaint side-by-side to determine whether the events as alleged are covered or excluded." *Harleysville Mut. Ins. Co. v. Buzz Off Insect Shield, L.L.C.*, 692 S.E.2d 605, 610 (N.C. 2010) (cleaned up).

"In determining whether an insurer has a duty to defend, the facts as alleged in the complaint are to be taken as true and compared to the language of the insurance policy." *Id.* at 611. "If the insurance policy provides coverage for the facts as alleged, then the insurer has a duty to defend." *Id.* Since we are examining a provision that extends coverage, we must construe it "liberally so as to afford coverage whenever possible by reasonable construction." *N.C. Farm Bureau Mut. Ins. Co. v. Stox*, 412 S.E.2d 318, 321 (N.C. 1992).

IV.

The Primary Policy compels Church Mutual to defend Lake Pointe against any suit seeking a sum that Church Mutual must pay. But Church Mutual needn't defend Lake Pointe against suits "to which [its] insurance does not apply." J.A. 49. So Church Mutual's duty to defend turns on whether the residents allege damages for which Church Mutual insured Lake Pointe. *See Harleysville*, 692 S.E.2d at 611.

The insurance policy's plain language controls its scope. *N.C. Farm Bureau Mut. Ins. Co. v. Martin*, 851 S.E.2d 891, 895 (N.C. 2020). Church Mutual's policy insured Lake Pointe against (1) an "injury"; (2) "caused by"; (3) a "'professional health care incident.'" J.A. 49. So we agree with the district court that the residents' complaint must allege those three requirements to impose a duty to defend on Church Mutual.

A.

We begin with the injury requirement. The district court considered economic injuries within the policy's scope. *Church Mut.*, 517 F. Supp. 3d at 481–42. We agree.

The policies don't define "injury." So we give the word its ordinary meaning. *Woods v. Nationwide Mut. Ins. Co.*, 246 S.E.2d 773, 777 (N.C. 1978). Injury's ordinary meaning covers a wide swath of harms. *See Injury*, Black's Law Dictionary (11th ed. 2019) ("a wrong or injustice . . . [a]ny harm or damage"); *Injury*, The Merriam-Webster Dictionary (2019) ("hurt, damage, or loss sustained"); *Injury*, The American Heritage Dictionary of the English Language (5th ed. 2018) ("Damage or harm done to or suffered by a person or thing"). Thus, "injury" is broad enough to encompass economic harms. And even if we doubted the term's breadth, North Carolina law instructs us to resolve that doubt in favor of extending coverage. *See Barker v. Iowa Mut. Ins. Co.*, 85 S.E.2d 305, 307 (N.C. 1955) ("[I]n case of doubt or ambiguity as to its meaning, [we] construe the [term] strictly against the insurer and liberally in favor of the insured.").

The complaint alleges that the residents suffered economic damages. So it alleges an injury under the ordinary sense of the word. Church Mutual doesn't meaningfully challenge this conclusion. Thus, the district court correctly determined that purely economic damages are an "injury" under the policies.

B.

We next consider whether the residents' injuries were "caused by" a professional health care incident. Again, the policy doesn't define "caused by," so we look to its ordinary meaning. *Woods*, 246 S.E.2d at 777. To "cause" is "[t]o bring about or effect." *Cause*, Black's Law Dictionary (11th ed. 2019).

The residents claim that Lake Pointe failed to provide nutritious meals and adequate programming. And they say that the Biglers neglected to ensure such compliance. The

residents assert that their economic damages were, at minimum, the "result of" Lake Pointe's and the Biglers' shortcomings. J.A. 227; *c.f.* J.A. 231 ("[Lake Pointe's] unfair trade practices have directly and proximately caused [the residents'] economic damages."); J.A. 233 ("As a proximate result of [the Biglers'] . . . negligence, [the residents] suffered economic damages."). So the injuries alleged were "caused by" Lake Pointe's and the Biglers' actions under the ordinary sense of the term.

Church Mutual challenges this conclusion, arguing that the residents' injuries may have *arisen out of* a professional health care incident, but they weren't "caused by" one. Appellant's Br. at 21. It asserts that *Affinity Living Group, LLC v. StarStone Specialty Insurance Co.*, 959 F.3d 634 (4th Cir. 2020), supports that conclusion. Not so.

In *Affinity*, a qui-tam plaintiff sued an adult-care-home operator, seeking "damages for submitting false Medicaid reimbursement claims for resident services." *Id.* at 640. The operator had an insurance policy that covered "damages resulting from a claim *arising out* of a medical incident." *Id.* (cleaned up) (emphasis added). The policy defined a medical incident as an "act, error[,] or omission in [the operator's] rendering or failure to render medical professional services." *Id.* (cleaned up)

The operator sought coverage under the policy, which the insurer denied, arguing that submitting a false reimbursement claim wasn't a "medical incident" covered by the policy. *Id.* The operator then sued in federal court, requesting a declaration that the policy covered its damages. The district court found for the insurer.

We vacated and remanded, agreeing with the operator that North Carolina law gives the term "arising out of" a "liberal construction." *Id.* at 641 (cleaned up). It "require[s]

only some 'causal connection' between the conduct defined in the policy and the injury for which the coverage is sought." *Id.* at 642 (cleaned up). So we held that the policy covered the operator's damages. *Id.* at 642–43.

Church Mutual's reliance on *Affinity* misses the mark. True, *Affinity* explained that the term "arising out of" in an insurance policy affords broader coverage to an insured than the term "caused by." *Id.* at 642 n.12. The district court acknowledged as much. *Church Mut.*, 517 F. Supp. 3d at 482. But it still found that the residents' injuries were in fact caused by a professional health care incident. And *Affinity* does little to explain why the district court's causation analysis is wrong in this case.[2]

Thus, the district court correctly found causation.

C.

We turn finally to the policies' third requirement: that "a professional health care incident" caused the injury. Professional health care incidents under the policies include "[f]ailure[s] to comply with any right of a resident under any state or federal law regulating [Lake Pointe] as a resident health care facility." J.A. 55.

North Carolina doesn't regulate Lake Pointe as a "resident health care facility" because state law doesn't use that term. But the amended complaint alleges that North Carolina regulates Lake Pointe as an adult-care-home operator.

[2] Church Mutual's other authorities are unavailing for the same reason. *See, e.g.*, *State Cap. Ins. Co. v. Nationwide Mut. Ins. Co.*, 350 S.E.2d 66 (N.C. 1986); *Zurich Am. Ins. Co. v. O'Hara Reg'l Ctr. for Rehab.*, 529 F.3d 916 (10th Cir. 2008).

In North Carolina, "[a]dult [c]are [h]omes" are one type of "health care facilit[y]." N.C. Gen. Stat. § 131E-256(b)(1). So adult care homes and "resident health care facilit[ies]" are both subcategories of health care facilities. And both serve residents. *See id.* § 131D-2.1(3) (defining an adult care home as "[a]n assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents"). So the district court was correct to find that "a professional health care incident" includes failures to comply with any right of a resident under North Carolina law regulating Lake Pointe as an adult care home.

Adult care home residents have the right "[t]o receive care and services which are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations." *Id.* § 131D-21(2). North Carolina regulates the quality of food adult care homes serve and the amount of activities they provide. *See* 10A N.C. Admin. Code 13F.0904(d)(1) ("Each resident shall be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours between the breakfast and evening meals."); *id.* 13F.0904(d)(3) (listing the amounts of milk, fruit, vegetable, eggs, protein, cereals, fats, and water that adult care homes must provide); *id.* 13F.0905(d) ("There shall be a minimum of 14 hours of a variety of planned group activities per week.").

Church Mutual contends that the administrative requirements for food and activities don't apply for three reasons. First, it says that the complaint doesn't seek damages for Lake Pointe's violations of the administrative code. Rather, Church Mutual alleges that

the claims for breach of contract, unfair trade practices, and negligence caused the residents' injuries.[3]

This argument is meritless. The residents allege that Lake Pointe and the Biglers violated adult-care-home regulations. Those violations provide the basis for the residents' claims and therefore their injuries. And the policies don't restrict recovery to a particular cause of action.

Second, Church Mutual says that North Carolina's administrative code doesn't establish the "right[s] of [] resident[s] under any state or federal law." J.A. 55. It argues that the only relevant rights are those in the separate Declaration of Residents' Rights found in N.C. Gen. Stat. § 131D-21. As support, Church Mutual points to an administrative-code provision mandating that adult care homes "assure [] the rights of all residents" in the Declaration of Residents' Rights. 10A N.C. Admin. Code 13F.0909.

This argument is doubly flawed. To start, North Carolina's administrative code never states that the Declaration of Residents' Rights is an exhaustive list. *See id.* Nor does the Declaration itself. *See* N.C. Gen. Stat. § 131D-21 ("Every resident shall have the following rights"). And even if the Declaration were exhaustive, it lists the right "[t]o receive care and services which are adequate, appropriate, and *in compliance with relevant*

[3] The Primary Policy doesn't cover injuries for "which the insured is obligated to pay damages by reason of the assumption of liability in a contract." J.A. 49. But Church Mutual has forfeited reliance on that exclusion. Reply Br. at 12 ("Church Mutual has not argued that [the assumption-of-liability] exclusion applies.").

federal and *State* laws and rules and *regulations*." *Id.* § 131D-21(2) (emphasis added). So the Declaration incorporates the administrative code by its own terms.

Next, Church Mutual says that the residents have no private cause of action for the administrative provisions on which they now rely. We question whether that's true. After all, the Declaration of Residents' Rights incorporates the administrative code. *Id.* And residents have a private right of action to enforce the Declaration. *Id.* § 131D-28. It follows that residents may enforce the regulations through the Declaration.

But we needn't decide that question. For even if adult-care-home residents can't enforce the administrative code, Church Mutual's argument fails. As the district court aptly noted, "the duty to defend is broader than the duty to indemnify in the sense that an unsubstantiated allegation requires an insurer to defend against it so long as the allegation is of a covered injury." *Church Mut.*, 517 F. Supp. 3d at 474–75 (quoting *Harleysville*, 692 S.E.2d at 610–11) (cleaned up).

Here, the policies apply to all suits seeking damages that Church Mutual is bound to pay. And Church Mutual doesn't point to any provision limiting coverage to situations in which plaintiffs have a private right of action against the insured. Indeed, such a limitation would make little sense because if no such right exists, the insurer's logical recourse is to move to dismiss on that basis. What it can't do is refuse to defend the suit.

All that remains is to determine whether the residents sufficiently allege that Lake Pointe violated the administrative-code provisions concerning meals and programming. They have.

In their breach-of-contract claim against Lake Pointe, the residents assert that Lake Pointe "failed to serve nutritious meals," citing 10A N.C. Admin. Code 13F.0904. J.A. 227. The residents also allege that Lake Pointe violated 10A N.C. Admin. Code 13F.0905 by failing to provide the required number of group activities. They make similar allegations in their unfair-trade-practices and negligence claims.

Because the residents allege that Lake Pointe and the Biglers violated state law regulating Lake Pointe as a resident health care facility, they have alleged a professional health care incident.

* * *

Reading the policies and the amended complaint together, we conclude that the residents have pleaded an injury caused by a professional health care incident. Thus, the district court correctly held that Church Mutual had a duty to defend the Lake Pointe defendants in the state court litigation.

AFFIRMED