

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

CRAIG T. GOLDBLATT
JUDGE

824 N. MARKET STREET
WILMINGTON, DELAWARE
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May 5, 2026

VIA CM/ECF

Re: *Lighthouse Resources Inc. v. Atlantic Specialty Ins. Co.*
Adv. Proc. No. 24-50144

The plan of reorganization in the bankruptcy case of *Lighthouse Resources Inc.*, which was confirmed in 2021, provided for the creation of a sinking fund that would pay the reclamation costs associated with the debtor's mining activities, including the activities at the East Decker mine. In this adversary proceeding, the debtor alleges that defendant Atlantic Specialty Insurance Company failed to pay its pro rata share for 2024 and 2025, as the sinking fund agreement required.¹

The plan incorporates an interlocking series of agreements. In broad strokes, under the operative agreements, Lighthouse Resources was to conduct the reclamation efforts, with funding to be provided by various sureties, including Atlantic Specialty. Lighthouse Resources contends in its complaint that Atlantic

¹ Lighthouse Resources Inc. is referred to as "Lighthouse Resources." Atlantic Specialty Insurance Company is referred to as "Atlantic Specialty."

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Specialty failed to release the collateral into the sinking fund in violation of the requirements of the operative agreements.

For the convenience of a potential reviewing court, the Court will undertake to summarize the history of the case – from the initial bankruptcy proceedings through the numerous motions and orders that have been issued – before ultimately addressing Lighthouse Resources’ motion for partial summary judgment as to liability in this adversary proceeding. For the reasons described below, the Court will grant partial summary judgment for Lighthouse Resources on the issue of liability.

Factual and Procedural Background

1. The bankruptcy plan and underlying agreements

Lighthouse Resources is involved in the oil and gas business, including coal mining. A necessary part of the operations of such a business is the reclamation of the mine after closure. State and federal regulations require the mining company to post a bond at the time of undertaking such operations to ensure the company will honor its reclamation obligations. Lighthouse Resources obtained such surety bonds from various sureties, including Atlantic Specialty. Lighthouse Resources posted collateral to secure the bonds.

In 2020, Lighthouse Resources and various affiliates filed chapter 11 bankruptcy cases. This Court confirmed a plan of reorganization in 2021. Relevant here, the plan incorporated a series of operative agreements governing how the required reclamation work would be performed. The operative agreements include

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the reclamation trust agreement, the sinking fund agreement, the bonding agreement, and the tolling agreement. A preexisting general indemnity agreement was also incorporated into the operative agreements.

The reclamation trust agreement governs Lighthouse Resources' post-bankruptcy reclamation efforts, setting the obligations of Lighthouse Resources as the trustee, or reclamation trust entity representative, and Atlantic Specialty as a surety.² Under the trust agreement, the reclamation work shall be conducted by Lighthouse Resources, with funding provided by the Sureties (a defined term referring collectively to Zurich, Atlantic Specialty, and Westchester) through the periodic release into the sinking funds of the collateral that had been posted in connection with the issuance of the bonds.³

The trust agreement mandates that the sureties will distribute these funds into the sinking fund on the approval of a yearly budget.⁴ To that end, § 6.3(a) of the trust agreement expressly states that “[t]he Sureties shall fund the Reclamation Sinking Fund with all remaining bond collateral ... at such times and at such intervals as contemplated ... in the Reclamation Trust Entity Budget.”⁵ The

² D.I. 136-3.

³ *Id.* at §§ 1.7(b), 6.3. Zurich American Insurance Company is referred to as “Zurich.” Westchester Fire Insurance Company is referred to as “Westchester.” “Sureties” is a defined term (referring to the group of Westchester, Zurich, and Atlantic Specialty) under the operative agreements, and any such references to the defined term herein will use the capitalized term.

⁴ *Id.* at §§ 1.7(b), 6.3.

⁵ *Id.* at § 6.3(a).

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reclamation trust entity budget, as explained in § 1.7 of the trust agreement, is an annual budget approved by the reclamation trust entity board that provides for the collection and expenditure of funds in pursuit of the reclamation efforts.⁶ The trust agreement dictates that an annual budget cannot be approved without the consent of Member Two.⁷ Member Two, a defined term under the trust agreement, refers to the “member appointed by the Sureties.”⁸

The reclamation trust entity board – mandated with, among other responsibilities, approving the annual budget – consists of five members: one appointed by the senior secured lenders, one appointed by the Sureties, one appointed by the general unsecured creditors, and two independent directors.⁹ Under the trust agreement, should the member appointed by the Sureties on the board resign or become unable to perform that member’s duties, the replacement board member is to be selected in the “sole discretion” of the Sureties.¹⁰ Consistent with this, when the

⁶ *Id.* at § 1.7(b).

⁷ *Id.* at § 3.3(m), (q) (stating that the approval of the “Reclamation Trust Entity Budget for any calendar year period” “shall require the consent of Member Two [the member appointed by the Sureties]”).

⁸ *Id.* at § 3.1.

⁹ *Id.*

¹⁰ *Id.* (explaining that the replacement of Member Two would be selected by the Sureties “in their sole discretion”).

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Sureties' initial appointee, Danny Hall, resigned, his replacement as the Sureties' appointee, Michael Ricci, was appointed at the direction of the Sureties.¹¹

Taken together, §§ 1.7(b) and 6.3(a) of the trust agreement require the Sureties to distribute amounts into the sinking fund, up to the total amount of collateral held, on the approval of an annual budget, in amounts mandated by such budget. Under the trust agreement, the only condition necessary to trigger the requirement for a surety to distribute funds is a budget, approved by the board with the consent of Member Two, requiring such a distribution.

This mandate is reiterated in the sinking fund agreement, which states that “the Sureties shall release collateral held by them into the Reclamation Sinking Fund in an amount that correlates to the amount of the budgeted expenses set forth in the Reclamation Trust Entity Budget.”¹² This is repeated as it relates to the specific responsibilities of Atlantic Specialty and Zurich (the other surety responsible for distributing funds for the East Decker project) to fund the East Decker project. Section 2.3(a) of the sinking fund agreement specifies that “Zurich and Atlantic shall release an amount equal to their respective Pro Rata Share of the budgeted expenses for the reclamation of East Decker in advance for the upcoming Funding Year.”¹³

¹¹ D.I. 136-6 (“[T]he sureties, Zurich, Intact [parent of Atlantic Specialty,] and Chubb [parent of Westchester], collectively propose that Mike Ricci of RESPEC replace Mr. Hall on the Board.”).

¹² D.I. 136-21 at § 2.3.

¹³ *Id.* at § 2.3(a).

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Under the sinking fund agreement, in the event either Atlantic Specialty or Zurich has released all of the collateral held, the pro rata share of the other increases to 100% until all collateral has been exhausted.¹⁴ The mandate to release collateral and distribute funds in advance for the upcoming year is conditioned only on the board's approval, with the consent of Member Two, of an annual budget.

The general indemnity and bonding agreement are interrelated. Under the general indemnity agreement, executed before the bankruptcy and the other operative agreements, Lighthouse Resources has certain indemnification obligations running to the sureties.¹⁵ Specifically, on the demand of Atlantic Specialty, Lighthouse Resources "shall deliver to [Atlantic Specialty] collateral in the form and amounts acceptable to [Atlantic Specialty] in its sole and absolute discretion."¹⁶ Further, the agreement provided that Atlantic Specialty "shall not have any obligation to release such collateral until it has received a written release and conclusive evidence of its discharge without loss in the form and substance satisfactory to [Atlantic Specialty]."¹⁷ The bonding agreement, executed after the indemnity agreement in connection with the Lighthouse Resources' confirmed plan, ensured the indemnity agreement survived the bankruptcy and remained binding on

¹⁴ *Id.*

¹⁵ D.I. 136-26.

¹⁶ *Id.* at § 3.

¹⁷ *Id.*

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the parties.¹⁸ That being said, the bonding agreement did amend the circumstances in which Atlantic Specialty (as well as the other Sureties) could demand indemnity under any of the existing agreements.

The terms under which such an indemnification obligation could be enforced were expressly modified by the bonding agreement. As a result, after the execution of the bonding agreement, the Sureties agreed to “forbear from enforcing the indemnity obligations of the Reorganized Coal Side Debtors under this Agreement and, as applicable, under the Existing Indemnity Agreements unless and until ... there is a material default, including either an actual or anticipatory default, to be determined in the reasonable, good faith discretion of the Sureties or a default under the Plan or other Definitive Documents.”¹⁹ The bonding agreement thus limited the ability of any surety to invoke rights under any indemnity agreement unless and until there was a material breach (including either an actual or anticipatory default) to be determined in the reasonable good faith of the Sureties. The bonding agreement provided the same limitation on the ability of the Sureties to enforce an indemnity obligation against Black Butte, which is a non-debtor affiliate of Lighthouse Resources.²⁰

¹⁸ D.I. 136-28 at § 1.2 (“The parties acknowledge that the Existing Indemnity Agreements have been assumed by the Reorganized Coal Side Debtors pursuant to the Plan and Confirmation Order.”).

¹⁹ *Id.* at § 1.5. *See also id.* at § 1.3 (applying the same to Black Butte). Black Butte Coal Company is referred to as “Black Butte.”

²⁰ D.I. 136-28 at § 1.3.

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The final operative agreement, the tolling agreement, ensures that Atlantic Specialty may only seek indemnification under the indemnity agreements if the tolling agreement were to be properly terminated.²¹

2. The disputes and Lighthouse Resources' complaint

Proceeding under these operative agreements, the reclamation work began. In December 2023, the board unanimously approved the 2024 annual budget.²² The unanimous board included Member Two, the Sureties' appointee.²³ Atlantic Specialty, however, did not fund its pro rata share of the budget for 2024.²⁴ Later, in July 2024, Atlantic Specialty issued a termination notice, seeking to terminate the tolling agreement and seeking indemnification under the indemnity agreement. Thereafter, Lighthouse Resources filed its complaint against Atlantic Specialty, contending that Atlantic Specialty breached the operative agreements, namely the trust agreement and sinking fund agreement, in failing to distribute to the sinking fund its pro rata share as required by the approved 2024 budget.²⁵

²¹ D.I. 136-27.

²² D.I. 136-22 (noting the 2024 Decker budget was "approved unanimously").

²³ *Id.*

²⁴ D.I. 28 at 1 ("Atlantic has ceased providing any additional funding for Lighthouse's reclamation.").

²⁵ D.I. 1.

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In December 2024, the board unanimously approved the 2025 annual budget.²⁶ The unanimous board again included Member Two, the Sureties' appointee.²⁷ The complaint was thereafter amended and now contends Atlantic Specialty has failed to release its pro rata share into the sinking fund for both 2024 and 2025.

3. Dismissal of Atlantic Specialty's counterclaim and third-party complaint

In November 2024, Atlantic Specialty filed its answer.²⁸ At the same time, Atlantic Specialty counterclaimed against Lighthouse Resources and asserted a third-party complaint against Black Butte.²⁹ Lighthouse Resources thereafter moved to dismiss the counterclaim and Black Butte moved to dismiss the third-party complaint.³⁰ In July 2025, in a bench ruling, the Court indicated that it would dismiss the counterclaim and third-party complaint for failing to state a claim upon which relief may be granted.³¹ That ruling was reduced to an order that was entered on July 22, 2025.³²

In so ruling, the Court recognized that in a breach of contract claim with unambiguous contract provisions, the role of the Court is to "simply give effect to the

²⁶ D.I. 136-23 (noting the 2025 Decker budget was "approved unanimously").

²⁷ *Id.*

²⁸ D.I. 18.

²⁹ *Id.*; D.I. 19.

³⁰ D.I. 24, 41.

³¹ July 1, 2025 Hr'g Tr. at 4.

³² D.I. 97.

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language of the agreements.”³³ Following this principle, the Court concluded that both claims fail on their merits since “neither ... asserts specific facts that would amount to a breach of contract.”³⁴

In its counterclaim against Lighthouse Resources, Atlantic Specialty asserted three basic theories: (1) that Lighthouse Resources failed to supervise the reclamation efforts at the East Decker site adequately, (2) that it failed to secure sufficient contribution from Black Butte, and (3) that it failed to make adequate progress in accordance with the budget it initially filed.³⁵ Atlantic Specialty contended that these failures either constituted breaches of the operative agreements or induced Atlantic Specialty to release collateral into the reclamation trust prematurely.³⁶

The Court, however, dismissed the counterclaims on the ground that none of the cited provisions “impose[d] an affirmative obligation on Lighthouse to fund the trust, to ensure that certain budget milestones are met before collateral is released, or to secure a funding from Black Butte, nor do the agreements condition the release of collateral on adherence to budget performance.”³⁷ As a result, “in light of the clear language of the documents, [the Court] simply [did not] see how the facts alleged,

³³ July 1, 2025 Hr’g Tr. at 10 (citing *Axiom Inv. Advisors, LLC by and through Gildor Management, LLC v Deutsche Bank AG*, 234 F. Supp. 3d 526, 533 (S.D.N.Y. 2017) (“[I]f the relevant contract provisions are unambiguous and the Plaintiff has no claim under them, then the claim should be dismissed.”)).

³⁴ *Id.*

³⁵ D.I. 18.

³⁶ July 1, 2025 Hr’g Tr. at 10.

³⁷ *Id.* at 11.

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even accepting those facts as true, give rise to a claim of breach of contract in light of the contractual language.”³⁸

In its third-party complaint against Black Butte, Atlantic Specialty asserted that Black Butte breached the indemnity agreement in failing to indemnify and reimburse Atlantic Specialty.³⁹ Atlantic Specialty contended that it was entitled to terminate the tolling agreement and pursue indemnification on account of the alleged material breach of certain operating agreements. Atlantic Specialty’s theory depended on a material breach of an operative agreement, such that it could invoke § 1.3 of the bonding agreement. As explained above, though, Atlantic Specialty made no allegation of a breach by Lighthouse Resources upon which relief could be granted. Nor did the complaint make a sufficient allegation of a breach by Black Butte to assert a claim upon which relief could be granted.

Atlantic Specialty contended that Black Butte breached in not contributing funds to the sinking fund. And while the Court noted that § 2.2(b) of the sinking fund agreement and § 6.3 of the trust agreement do *contemplate* distributions from Black Butte, the Court found that these sections “do not guarantee that a distribution will be made in any given year, nor do they require Black Butte to fund the reclamation sinking fund in the absence of an actual distribution to reorganized [debtor].”⁴⁰

³⁸ *Id.* at 12.

³⁹ D.I. 19.

⁴⁰ July 1, 2025 Hr’g Tr. at 16.

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Instead, they simply regulate how such funds would be distributed, should they be received. And since Atlantic Specialty did not contend that Black Butte made distributions and failed to comply with the requirements, the Court found “no factual allegation that would support a breach of the specific allegations tied to Black Butte’s funding role.”⁴¹ As a result, the Court dismissed the third-party complaint.

4. Atlantic Specialty’s motion for clarification of order dismissing Atlantic Specialty’s counterclaim and third-party complaint

Shortly after the Court dismissed Atlantic Specialty’s counterclaim and third-party complaint, Atlantic Specialty moved for clarification of the Court’s order.⁴² Through the motion, Atlantic Specialty contended that the motion should state whether it was with or without prejudice. Atlantic Specialty asserted that the failure to so specify created ambiguity about whether or not the dismissal precluded it from filing a separate lawsuit in another jurisdiction under an indemnity agreement. The Court issued certain preliminary observations, in which it suggested that the motion proceeded from “several misunderstandings.”⁴³

The Court explained that it is true when entering what would otherwise be a final judgment a court should “provide the plaintiff with a specified period of time within which it may seek to amend the complaint.”⁴⁴ This is due to the fact that

⁴¹ *Id.*

⁴² D.I. 101.

⁴³ D.I. 114 at 2.

⁴⁴ *Id.* at 3.

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“parties ought to know whether, on the one hand, the dismissal order is a final judgment that may be appealed and is entitled to preclusive effect, or on the other, the plaintiff may seek to remedy the defect by filing a motion for leave to file an amended complaint.”⁴⁵ None of that, however, “is necessary when a court enters an interlocutory order that resolves some but not all counts of a complaint.”⁴⁶ In this case, the Court entered just such an interlocutory order. The lawsuit was, and is, still pending before this Court. If Atlantic Specialty wished to seek leave to amend the complaint, it could (and later did) file such a motion. The Court also explained that, since claim preclusion does not attach until a final judgment is rendered, the clarification was not necessary for claim preclusion reasons.⁴⁷ The parties thereafter agreed to a form of order and the Court denied the motion for clarification.⁴⁸

5. Atlantic Specialty’s motion for leave to amend counterclaim and third-party complaint

Atlantic Specialty then moved to amend its counterclaim and third-party complaint.⁴⁹ Atlantic Specialty again alleged breach of contract.⁵⁰ The Court denied the motion for leave to amend as futile, finding that, even when taking all factual allegations in the proposed amended counterclaim as true and viewing them in the

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 4.

⁴⁸ D.I. 125.

⁴⁹ D.I. 123.

⁵⁰ *Id.*

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light most favorable to Atlantic Specialty, the counterclaim and third-party complaint still failed to state a claim upon which relief could be granted.

In a letter ruling accompanying the order, the Court noted that, at bottom, Atlantic Specialty's claims boil down to a complaint that Lighthouse Resources has failed to implement the reclamation plan successfully. But as the Court explained, none of the cited provisions of the operative agreements impose such an obligation on Lighthouse Resources that Atlantic Specialty could enforce.⁵¹ As it related to Black Butte, the Court again found that, while the cited provisions described "how Black Butte might contribute funds and how those funds would subsequently be allocated[,] ... none of the[] provisions impose[d] an obligation on Black Butte to make any distributions at all."⁵² As a result, the motion for leave to amend the counterclaim and third-party complaint was denied as futile. Shortly after the motion for leave was denied, Lighthouse Resources filed the instant motion for partial summary judgment.⁵³

6. Atlantic Specialty's motion for a stay pending appeal of the order dismissing Atlantic Specialty's counterclaim and third-party complaint

Atlantic Specialty then moved for a stay pending the interlocutory appeal of the Court's order dismissing the counterclaim and third-party complaint that it has

⁵¹ D.I. 132.

⁵² *Id.*

⁵³ D.I. 134.

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sought to bring in the district court.⁵⁴ At oral argument on the motion to stay the order, counsel for Atlantic Specialty explained that what Atlantic Specialty sought was “a stay not of the order that [the Court] entered, but of the entire case.”⁵⁵ In Atlantic Specialty’s view, the motion for summary judgment presented what could be a “determining motion about the action,” such that Atlantic Specialty could be prejudiced should the motion for summary judgment be granted while its motion for leave to bring an interlocutory appeal proceeded.⁵⁶

This Court rejected that argument, finding that unless and until its motion for leave to bring an interlocutory appeal were granted, the only prejudice Atlantic Specialty faced was “having to prepare for [the motion for summary judgment] and do the things that are necessary to deal with [the motion].”⁵⁷ The Court noted however, that in the event the district court were to grant the motion for leave to bring an interlocutory appeal, at that point it would be appropriate at least to consider whether to stay the entire case pending that appeal. But in the meantime, Atlantic Specialty faced no irreparable injury such that a stay of the entire case was proper under the law governing preliminary injunctive relief.⁵⁸ Nor did the Court

⁵⁴ D.I. 143. Atlantic Specialty motion before the district court to hear an interlocutory appeal from this Court’s denial of its motion for leave to amend is docketed as *Lighthouse Resources Inc. v. Atlantic Specialty Ins. Co.*, D. Del. No. 1:26-mc-00061 (Feb. 12, 2026). That motion remains pending before the district court.

⁵⁵ Feb. 24, 2026 Hr’g Tr. at 4.

⁵⁶ *Id.* at 5-6.

⁵⁷ *Id.* at 6.

⁵⁸ *Id.* at 6-11.

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believe it appropriate, in the exercise of its ordinary discretion regarding the management of its docket, to stay the ongoing litigation.⁵⁹ As a result, the Court denied Atlantic Specialty's motion for a stay pending appeal.⁶⁰

7. Atlantic Specialty's Rule 56(d) request to defer consideration of the motion for partial summary judgment and request to extend its time to file its response

Lighthouse Resources then moved for partial summary judgment, seeking a determination that Atlantic Specialty was liable for breach of contract.⁶¹ In response to the motion, Atlantic Specialty first requested the Court to defer consideration of the motion for summary judgment under Rule 56(d) and allow Atlantic Specialty to conduct additional discovery.⁶²

The Court denied that request. Under Rule 56(d), when a party believes it has not had an adequate opportunity to obtain discovery, it may request a deferral of the consideration of the summary judgment motion.⁶³ Third Circuit law makes clear that such a request requires a supporting affidavit describing "with specificity 'what particular information is sought; how, if uncovered, it would preclude summary judgment; and why it has not previously been obtained.'"⁶⁴ In undertaking to explain

⁵⁹ *Id.*

⁶⁰ D.I. 154.

⁶¹ D.I. 134.

⁶² D.I. 148.

⁶³ Fed. R. Civ. P. 56(d) (made applicable here by Fed. R. Bankr. P. 7056).

⁶⁴ *Lunderstadt v. Colafella*, 885 F.2d 66, 71 (3d Cir. 1989) (quoting *Dowling v. City of Philadelphia*, 855 F.2d 136, 140 (3d Cir. 1988)).

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why the information has not been previously obtained, the requesting party has “an obligation to provide the court with a record which affirmatively demonstrates, with specificity, diligent efforts on his or her part and unusual circumstances which have frustrated those efforts.”⁶⁵ Failure to comply with these requirements is “fatal to a claim of insufficient discovery,” and there is a “strong presumption” against finding constructive compliance.⁶⁶

In support of its Rule 56(d) request to defer, Atlantic Specialty submitted a declaration.⁶⁷ While that declaration did identify the particular information Atlantic Specialty sought, it offered no explanation as to why it was not previously obtained. The declaration states that “Atlantic has acted diligently in pursuing discovery” and points to purported “unsettled pleadings and [the] absence of a scheduling order” as reasons the now requested discovery was not previously conducted.⁶⁸ That is insufficient.

Atlantic Specialty gave no reason at all why it could not have conducted this discovery over the lengthy course of this case. The basis of the complaint has been largely the same since the beginning. Any purported “unsettled pleadings” thus could not explain the failure to have conducted the discovery now sought. Accordingly, because Atlantic Specialty offered no adequate explanation for why it failed to take

⁶⁵ *Koplove v. Ford Motor Co.*, 795 F.2d 15, 18 (3d Cir. 1986).

⁶⁶ *Bradley v. U.S.*, 299 F.3d 197, 206-207 (3d Cir. 2002) (citations omitted).

⁶⁷ D.I. 148-1.

⁶⁸ *Id.* ¶ 22.

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the discovery it sought over the 17 months since discovery began, the Court denied its request under Rule 56(d) to defer consideration of the motion for partial summary judgment.

In seeking a Rule 56(d) motion to defer, a party may at the same time ask the court for an order extending the time to respond to a summary judgment motion. Absent an order extending time to respond, a party that fails to respond substantively to a motion for summary judgment faces the risk that they may be found to have defaulted.

The Court could have defaulted Atlantic Specialty on that basis. Atlantic Specialty's brief filed in opposition to Lighthouse Resources' partial summary judgment motion (docketed at D.I. 148) sets forth its argument for a Rule 56(d) deferral as outlined above. The filing does not substantively respond to the merits of Lighthouse Resources' motion. But Atlantic Specialty's filing did request, as alternative relief, an extension of 30 days for Atlantic Specialty to file its response to Lighthouse Resources' motion.

Despite Lighthouse Resources' perfectly reasonable argument that the Court ought to have defaulted Atlantic Specialty for failing to offer a timely response on the merits to its motion, in light of the law's general preference for important issues to be decided on the merits rather than on account of procedural defaults, the Court exercised its discretion to grant Atlantic Specialty a modest extension. Atlantic

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Specialty timely filed its response. The Court will accordingly turn to the merits of the partial summary judgment motion.

Analysis

Summary judgment is proper where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”⁶⁹ Where the matter concerns the meaning of a contract, the “initial resort should be to the ‘four corners’ of the agreement itself.”⁷⁰ A court evaluates the agreement for ambiguity, with a document being unambiguous if it is “reasonably capable of only one construction.”⁷¹

In evaluating ambiguity, though, a court “does not just ask whether the language is clear.”⁷² Rather, a judge may “consider the words of the contract, the

⁶⁹ Fed. R. Civ. P. 56(a) (made applicable by Fed. R. Bankr. P. 7056). *See also Antol v. Perry*, 82 F.3d 1291, 1294-1295 (3d Cir. 1996) (“On ... summary judgment, we consider the evidence ... in the light most favorable to the non-moving party to determine whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.”).

⁷⁰ *Washington Hosp. v. White*, 889 F.2d 1294, 1300 (3d Cir. 1989).

⁷¹ *Id.* at 1301 (citations omitted). *See also Landtect Corp. v. State Mut. Life Assur. Co. of America*, 605 F.2d 75, 80 (3d Cir. 1979) (“An ambiguous contract is one capable of being understood in more senses than one; an agreement obscure in meaning through indefiniteness of expression, or having a double meaning.... Before it can be said that no ambiguity exists, it must be concluded that the questioned words or language are capable of (only) one interpretation.”).

⁷² *American Flint Glass Workers Union, AFL-CIO v. Beaumont Glass Co.*, 62 F.3d 574, 581 (3d Cir. 1995) (citations omitted).

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alternative meaning suggested by counsel, and the nature of the objective evidence to be offered in support of that meaning.”⁷³

That being said, a court may not “demote the written word to a reduced status in contract interpretation.”⁷⁴ The “parties remain bound by the appropriate objective definition of the words they use[d]” and “[a] court is not authorized to construe a contract in such a way as to modify the plain meaning of its words, under the guise of interpretation.”⁷⁵ The words are not evaluated in isolation, though, and ambiguity “must be determined from a consideration of the entire instrument.”⁷⁶ The ultimate inquiry, then, is whether, based on the written words of the contract – considering the possible interpretations proffered by the parties – a “reasonable alternative interpretation is suggested.”⁷⁷ If there exist multiple reasonable interpretations of the contract summary judgment is improper.

I. The exhibits on which Lighthouse Resources relies are “capable of being admissible at trial,” and therefore may properly be considered on a motion for summary judgment.

As set forth above, the relevant agreements provide that Atlantic Specialty’s obligation to distribute the collateral it was holding is triggered by the board’s adoption of a budget with the consent of “Member Two.” Lighthouse Resources seeks

⁷³ *Mellon Bank*, 619 F.2d at 1011.

⁷⁴ *Id.* at 1013.

⁷⁵ *Id.* at 1010, 1013.

⁷⁶ *Gerhart v. Henry Disston & Sons, Inc.*, 290 F.2d 778, 784 (3d Cir. 1961).

⁷⁷ *Mellon Bank*, 619 F.2d at 1011.

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to establish that budgets were adopted with Member Two's consent by relying on board minutes that so state.⁷⁸ Atlantic Specialty objects to Lighthouse Resources' use of these minutes on summary judgment on the ground that the exhibits are (1) not authenticatable by the declarant and (2) inadmissible hearsay.

First, Atlantic Specialty asserts that the declarant, one of the lawyers for Lighthouse Resources, cannot authenticate the board minutes as "he was not present at the meetings, did not prepare the minutes, and is not a records custodian of the Reclamation Trust Entity."⁷⁹ The relevant declaration merely describes the documents as true and correct copies of documents produced in discovery.⁸⁰

To be admissible, a document must be authenticated – that is the proponent "must produce evidence sufficient to support a finding that the item is what the proponent claims it is."⁸¹ Under Rule 901(b), a document may be authenticated through the testimony of a witness with knowledge that the item is what it is claimed to be.⁸² Atlantic Specialty contends that, since the declarant does not have the requisite personal knowledge, his declaration cannot serve to authenticate the

⁷⁸ See D.I. 136-22, 136-23.

⁷⁹ D.I. 175 at 11.

⁸⁰ D.I. 136.

⁸¹ Fed. R. Evid. 901(a). Federal Rule of Bankruptcy Procedure 9017 makes the Federal Rules of Evidence applicable in bankruptcy cases.

⁸² Fed. R. Evid. 901(b)(1).

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documents, and as such they are inadmissible and the Court cannot properly consider them in deciding the motion for summary judgment.

Second, Atlantic Specialty asserts that the board minutes are inadmissible hearsay under Rule 801(c). Under Rule 801(c), the board minutes do technically meet the definition of hearsay – an out of court statement offered for the truth of the matter asserted.⁸³ And Atlantic Specialty contends that, since the declarant is not a custodian or other qualified witness, the minutes cannot qualify as a business record and thus fit within an exception to the rule against hearsay.⁸⁴

On a motion for summary judgment, a party objecting to the court's consideration of evidence must show that the evidence to which it objects "cannot be presented in a form that would be admissible in evidence."⁸⁵ As the Third Circuit has explained, "the rule in this circuit is that hearsay statements can be considered on a motion for summary judgment if they are *capable of being admissible at trial*."⁸⁶ In evaluating a motion for summary judgment then, the court need only be satisfied that the proponent *could*, at trial, produce admissible evidence on the fact. Thus, so long

⁸³ Fed. R. Evid. 801(c).

⁸⁴ Fed. R. Evid. 803(6).

⁸⁵ Fed. R. Civ. P. 56(c)(2).

⁸⁶ *Stelwagon Mfg. Co. v. Tarmac Roofing Sys.*, 63 F.3d 1267, 1275 n.17 (3d Cir. 1995) (emphasis added).

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as the proponent can “explain the admissible form that is anticipated,” the court may properly consider the hearsay evidence.⁸⁷

In *Fraternal Order of Police*, the proponent identified the third-party declarants, and nothing suggested that those declarants would be unavailable to testify at trial.⁸⁸ The Third Circuit found such support was “all that was required” for the evidence to be properly considered at the summary judgment stage.⁸⁹ On the other hand, in *Philbin*, the plaintiff sought to rely on hearsay statements at the summary judgment stage but was “unable to identify the person who relayed [the] information to him.”⁹⁰ As a result, the Third Circuit found that, since “the hearsay statement by this unknown individual [was] not capable of being admissible at trial,” it “could not be considered on a motion for summary judgment.”⁹¹

Here, while Atlantic Specialty is correct that the attorney declaration would be insufficient to authenticate the board minutes or to qualify the minutes as a business record and so be excepted from the hearsay rule, Lighthouse Resources subsequently submitted a declaration of its CEO, Tay Tonozzi, who is a member of the Reclamation Trust Entity Board. That declaration, which the Court will exercise

⁸⁷ *Fraternal Order of Police, Lodge 1 v. City of Camden*, 842 F.3d 231, 238 (3d Cir. 2016) (citing Fed. R. Civ. P. 56, advisory committee’s note to 2010 amendment).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Philbin v. Trans Union Corp.*, 101 F.3d 957, 961 n.1 (3d Cir. 1996).

⁹¹ *Id.* (internal quotations and citations omitted).

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its discretion to consider in connection with summary judgment despite its late filing, is sufficient to establish that the documents at issue can be made admissible at trial.⁹² The same analysis applies to the other exhibits (Exhibits 4-20) to which Atlantic Specialty objects. On this basis, the Court will overrule the objection of Atlantic Specialty and allow the challenged exhibits to be considered.

II. The annual budgets require only “the consent of Member Two” to constitute valid and binding approval by the board and thus trigger the Sureties’ duty to distribute funds.

As explained above, under the sinking fund agreement, Zurich and Atlantic Specialty (the sureties for the East Decker reclamation work) “shall release,” as consistent with the budget, “their respective Pro Rata Share of the budgeted expenses for the reclamation of East Decker in advance for the upcoming Funding Year.”⁹³ The budget must be approved by the board.⁹⁴ To be considered “approved” under the trust agreement, a budget “requires the consent of Member Two.”⁹⁵ Member Two, a defined term under the trust agreement, refers to the “member appointed by the Sureties.”⁹⁶ Member Two is a member of the board of directors, and as a result owes fiduciary

⁹² See D.I. 182.

⁹³ D.I. 136-21 at § 2.3(a).

⁹⁴ D.I. 136-3 at § 3.3 (listing in “Actions Requiring Approval of the Reclamation Trust Entity Board” the “Reclamation Trust Entity Budget”).

⁹⁵ *Id.* at § 3.3(q) (“[A]n approval of the majority of the Reclamation Trust Entity Board with respect to [approving a budget] shall require the consent of Member Two.”).

⁹⁶ *Id.* at § 3.1.

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duties – including, as relevant here, the duty of loyalty – to the reclamation trust.⁹⁷

The fiduciary duty of loyalty requires that Member Two act in the best interests of the trust, not in the interests of himself or the Sureties who appointed him.⁹⁸

Atlantic Specialty contends that Member Two (initially Danny Hall and subsequently Michael Ricci) did not represent its interests and thus could not have been a “surety representative.” That argument fails. Member Two *is* a “member appointed by the Sureties.” Nothing, however, requires Member Two to, in every instance, vote in favor of Atlantic Specialty. To the contrary, Member Two owes fiduciary duties to the trust, and as a result must act in the best interests of the trust. It is foundational that “[c]orporate officers and directors are not permitted to use their position of trust and confidence to further their private interests.”⁹⁹

Atlantic Specialty further asserts that “Atlantic has not consented to a budget since this litigation was filed.”¹⁰⁰ That, however, is neither here nor there. Under the trust agreement, the approval of a budget requires the consent of Member Two, *not* of the sureties (either collectively or individually). Nothing in any of the operative agreements gives Atlantic Specialty the right to reject a budget, or a right to consent to a budget. That power is expressly given to Member Two.

⁹⁷ *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 745 (Del. Ch. 2005) (“The fiduciary duties owed by directors of a Delaware corporation are the duties of due care and loyalty.”).

⁹⁸ *In re Cyber Litig. Inc.*, No. 20-12702, 2026 WL 363146, at *4 (Bankr. D. Del. Feb. 9, 2026) (citing *In re Nobilis Health Corp.*, 661 B.R. 891, 903 (Bankr. D. Del. 2024)).

⁹⁹ *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939).

¹⁰⁰ D.I. 175 at 13.

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Viewing the trust agreement and sinking fund agreement holistically, there is no ambiguity about Atlantic Specialty's obligation to release collateral. Under the operative agreements, the Sureties are required to release collateral as dictated by approved budgets.¹⁰¹ The approval of a budget requires the consent of an appointee of the Sureties.¹⁰²

The board minutes make clear that the 2024 and 2025 budgets were "unanimously approved."¹⁰³ The unanimous group approving the budgets included Michael Ricci.¹⁰⁴ Michael Ricci was appointed pursuant to a request of the Sureties, consistent with the requirements of the trust agreement.¹⁰⁵ Michael Ricci thus replaced Danny Hall as the surety appointee and became Member Two. His attendance and participation in the board meetings where the budgets were unanimously approved signifies the required "consent of Member Two" was obtained. Taken together, these facts indicate the budgets were properly approved, thus triggering Atlantic Specialty's responsibility to release its pro rata share of the budget into the sinking fund.¹⁰⁶

¹⁰¹ D.I. 136-21 at § 2.3(a).

¹⁰² D.I. 136-3 at § 3.3.

¹⁰³ D.I. 136-22; D.I. 136-23.

¹⁰⁴ D.I. 136-22 (listing among board members present Michael Ricci); D.I. 136-23 (same).

¹⁰⁵ D.I. 136-6 ("[T]he sureties, Zurich, Intact [parent of Atlantic Specialty,] and Chubb [parent of Westchester], collectively propose that Mike Ricci of RESPEC replace Mr. Hall on the Board.").

¹⁰⁶ D.I. 136-21 at § 2.3(a) ("Atlantic *shall* release." (emphasis added)).

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Atlantic Specialty failed to release its pro rata share for 2024, and has not released any funds since, in violation of the trust agreement and the sinking fund agreement. At bottom, Atlantic Specialty's principal obligation under the operative agreements is to release the collateral to fund the reclamation work. It has refused to do so. Such a breach is obviously a material one since it goes straight to the heart of the contract.¹⁰⁷

III. There is no ambiguity as it relates to the interplay between the bonding agreement and the indemnity agreement.

Atlantic Specialty next contends that whether it breached the sinking fund agreement before terminating the tolling agreement presents a genuine issue of material fact. In support, Atlantic Specialty argues that ambiguities exist in and conflicts exist between the operative agreements. Specifically, Atlantic Specialty asserts that it is unclear whether the indemnity agreement was rendered entirely ineffective by the bonding agreement or (as it argues) instead remained in effect. Atlantic Specialty asserts that reading the operative agreements together as *Lighthouse Resources* suggests leaves Atlantic Specialty with “no scenario in which [it] could demand collateral from Lighthouse.”¹⁰⁸ Atlantic Specialty maintains that

¹⁰⁷ *Prime Victor Int'l Ltd. v. Simulacra Corp.*, 682 F. Supp. 3d 428, 446-47 (D. Del. 2023) (“A material breach is a failure to do something ... so fundamental to a contract that the failure to perform [the] obligation defeats the essential purpose of the contract or makes it impossible for the other party to perform under the contract.” (internal quotations and citations omitted)).

¹⁰⁸ D.I. 175 at 18.

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such a reading would be commercially unreasonable, and thus a genuine dispute of material fact remains.

Atlantic Specialty is correct in noting that there remain scenarios in which Atlantic Specialty could demand collateral from Lighthouse Resources. As explained above, the bonding agreement expressly ensured that the indemnity agreement survived the bankruptcy and remained in effect.¹⁰⁹ That being said, the bonding agreement did also expressly modify the terms under which Atlantic Specialty could assert a right to indemnity.

Under the bonding agreement, any unilateral right on the part of Atlantic Specialty to demand collateral was eliminated, and the right was given to the Sureties as they should determine in their collective reasonable, good faith discretion. Specifically, the “Sureties agree[d] to forbear from enforcing the indemnity obligations” unless and until there is a material default as “determined in the reasonable, good faith discretion of the Sureties.”¹¹⁰ Again, Sureties is a defined term, referring to Westchester, Zurich, and Atlantic Specialty, collectively.¹¹¹

¹⁰⁹ D.I. 136-28 at § 1.2 (“The parties acknowledge that the Existing Indemnity Agreements have been assumed by the Reorganized Coal Side Debtors pursuant to the Plan and Confirmation Order.”).

¹¹⁰ D.I. 136-28 at § 1.5.

¹¹¹ D.I. 136-28 at § 1.1 (stating that defined terms in the bonding agreement have the meaning ascribed to them in the trust agreement); D.I. 136-3 (defining “Sureties” as the collective of Westchester, Zurich, and Atlantic Specialty, and defining each individually as a “Surety”).

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The bonding agreement therefore reserved to the Sureties as a collective the ability to determine whether a material default has been committed such that any surety may enforce indemnity obligations. Therefore, while the preexisting indemnity agreement did remain in effect, the bonding agreement expressly modified all preexisting indemnity agreements such that no individual surety could unilaterally exercise any indemnity obligation, under any indemnity agreement, after the execution of the bonding agreement.

A party is well within its rights to modify its own previous contracts, as Atlantic Specialty and Lighthouse Resources did here. No genuine dispute of material fact exists as it relates to the interplay between the indemnity agreement and bonding agreement.

Moreover, even if Atlantic Specialty could unilaterally invoke the indemnity agreement – which the terms of the bonding agreement do not permit – it still would have been unable to do so. Delaware law is clear that a party that has materially breached a contract cannot thereafter seek to enforce it.¹¹² No genuine dispute of material fact exists as it relates to any ambiguity in the indemnity agreement and the bonding agreement, or as concerns the interplay between the two.

¹¹² *Prime Victor*, 682 F. Supp. 3d at 446-447 (“Under Delaware law, [a] party who first commits a material breach of a contract cannot enforce the contract going forward.” (internal quotations and citations omitted)).

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IV. Lighthouse Resources gave adequate consideration under the operative agreements.

Atlantic Specialty finally asserts that adopting Lighthouse Resources’ reading of the operative agreements raises questions of whether Lighthouse Resources provided any consideration in connection with the agreements, a necessary element to have a valid contract. Atlantic Specialty argues that if “nothing in the agreements requires [Lighthouse Resources] to secure funding from Black Butte, meet any benchmarks, or make any progress toward reclamation before demanding that Atlantic release collateral” then a “fundamental question” arises: “what consideration did Lighthouse provide in exchange for Atlantic’s agreement to release millions of dollars in collateral?”¹¹³

Atlantic Specialty is correct that consideration is required to form a valid contract. But Lighthouse Resources did give such consideration. Under the operative agreements, Lighthouse Resources was to conduct the reclamation work. The trust agreement expressly lays out the responsibilities of Lighthouse Resources in § 1.1. There, the trust agreement explains that Lighthouse Resources shall, among myriad other duties, “supervis[e] the Reclamation Plans.”¹¹⁴ The fact that the agreement does not create a claim in favor of Atlantic Specialty for Lighthouse Resources’ failure to complete the work within the projected timeframe hardly means that Lighthouse

¹¹³ D.I. 175 at 22-23.

¹¹⁴ D.I. 136-3 at § 1.1.

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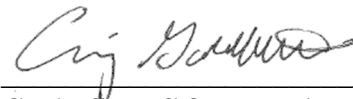
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Resources gave no consideration at all. The promise to supervise the reclamation work is sufficient consideration to support the formation of a valid contract.

Conclusion

For the foregoing reasons, the motion for partial summary judgment as to liability will be granted. The parties are directed to settle an order so providing.

Dated: May 5, 2026



CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE