

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0457, R.S. Audley, Inc. v. Pike Industries, Inc., the court on March 18, 2008, issued the following order:

Pike Industries, Inc. (Pike) appeals an order of the trial court granting the petition for declaratory judgment filed by R.S. Audley, Inc. (Audley). Pike argues that the trial court erred in granting “declaratory judgment summarily on its own” and in denying its motion for summary judgment. We affirm.

Audley’s petition for declaratory judgment, *see* RSA 491:22 (1997), sought a declaration that: (1) the comprehensive general liability (CGL) policy issued to Pike extended liability coverage to Audley; and (2) under the terms of their contract, Pike owed a duty to defend and indemnify Audley in a pending civil action. Pike filed a motion for summary judgment arguing that: (1) the parties’ contract did not provide indemnity coverage for claims related to Audley’s own negligence; and (2) Audley could not obtain a declaration against Pike as to insurance coverage under Pike’s CGL policy as the carrier was not a party to the declaratory judgment action.

The trial court denied Pike’s motion for summary judgment and granted Audley’s petition for declaratory judgment, finding that the language of the parties’ contract obligated Pike to defend Audley and to provide insurance covering its operations with Audley. The trial court’s order specifically stated that it made “no ruling as to entities not a party to this action.”

Whether the trial court correctly construed the parties’ contract to require that Pike defend and indemnify Audley is a question of law; we therefore review its decision, including whether a contract term is ambiguous, *de novo*. Merrimack School Dist. v. Nat’l School Bus Serv., 140 N.H. 9, 11 (1995). The issue before us is whether language which appears in the challenged provision but that has a line running through it, evidencing an intent to give it no effect, should be considered in interpreting the provision. We conclude that it should not. When we interpret a contract, we limit our search for the parties’ intent to the express words of the contract. Gulf Ins. Co v. AMSCO, 153 N.H. 28, 34 (2005). We see no reason to depart from that principle just because the contract was not retyped. Because we discern no ambiguity in the contested contract provision, we need not look beyond its language to determine the parties’ intent.

Pike also argues that the trial court erred in finding that the lawsuit giving rise to the declaratory judgment action arose out of Pike’s work. We have interpreted the phrase “arising out of” as a “very broad, general and

comprehensive term, which we have defined as meaning originating from or growing out of or flowing from.” Merrimack School Dist., 140 N.H. at 13 (quotations and brackets omitted). The injury in this case was caused when the injured party struck a hole in the road on Route 101. There is no dispute that the hole was created by Pike as it performed work under the parties’ contract. That Audley may have had certain responsibilities under the contract does not absolve Pike of its obligation to indemnify Audley for all claims arising out of the contract. Accordingly, we find no error.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**