SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

January 20, 2017

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RE: ***David A. Bramble, Inc. v. Old Republic Gen. Ins. Corp.***
C.A. No: S16C-06-025 ESB

Dear Counsel:

This is my decision on Plaintiff David A. Bramble, Inc.'s Motion for Partial Summary Judgment and Defendant Old Republic General Insurance Corporation's Motion to Dismiss in this declaratory judgment action where the issue is whether Old Republic has a duty to defend Bramble pursuant to the terms of a comprehensive general liability insurance policy issued by Old Republic to Bramble in a breach of contract and warranty case brought by the Town of Georgetown against Bramble over Bramble's allegedly defective construction of a spray irrigation system for Georgetown. Bramble argues that there is a duty to defend because the Georgetown Complaint alleges that the town's soils have been damaged by Bramble's defective spray irrigation system. Old Republic argues that Georgetown's Complaint makes

no such allegation. I agree. Georgetown's Complaint makes no such allegation and instead only alleges typical breach of contract and breach of warranty damages against Bramble, which are not covered by Old Republic's policy.

The Spray Irrigation System

Georgetown and Bramble entered into a contract on July 12, 2012, wherein Bramble agreed to construct for Georgetown a spray irrigation system on a wooded site in Georgetown, Delaware, for $1,212,786.85. Bramble and Liberty Mutual entered into a performance bond with Georgetown. Bramble agreed to correct any work found to be defective within one year of substantial completion of the spray irrigation system and longer if specified in the contract. Lee Rain, Inc., worked for Bramble as a subcontractor for the installation of the above-ground aluminum pipes, associated fittings and gaskets. Bramble started work on August 20, 2012. Bramble substantially completed the spray irrigation system on February 12, 2013. Bramble finally completed the spray irrigation system on June 7, 2013.

The spray irrigation system was operated one day in October 2013, three days in November 2013, zero days in December 2013, and only occasionally in January 2014.

On or about January 16, 2014, Georgetown's representatives noticed several splits in some of the spray irrigation system's piping joints.

In the second half of January and into early February 2014, Georgetown's representatives continued to inspect the spray irrigation system, finding additional broken pipes and couplers. It became apparent that the spray irrigation system was not self-draining as contemplated in the design specifications. It was also discovered that the gaskets installed in the spray irrigation system were "10-6-4M" "slow drain" gaskets, and not the "10-6-4L" "fast drain" gaskets as specified in the design documents.

When unaltered areas of the original pipes were examined and opened they were found to contain large amounts of water, even after periods of prolonged inactivity, due to the spray irrigation system's failure to drain.

In or around September 2014, Georgetown's representatives at the site noted excessive standing water in some areas, and discovered pinhole perforations along the bottom of certain sections of aluminum pipe. They also discovered corrosion on the inside of certain pipes when they were removed. The spray irrigation system was not in operation during the months of July or August 2014. As a result, a significant amount of water remained in the pipes due to the apparently systemic drainage failure, which caused the pipes to corrode.

The Georgetown Complaint

Georgetown filed a three-count complaint against Bramble and Liberty Mutual

Insurance Company in the Sussex County, Delaware, Superior Court on June 3, 2015. Count I is against Bramble for Breach of Contract. Count II is against Bramble for Breach of Warranty. Count III is against Liberty Mutual for Breach of Performance/Surety Bond. Georgetown seeks for all three counts the same monetary damages for the damaged and defective spray irrigation system. The Georgetown Complaint alleges that the spray irrigation system has the following problems:

1) the system is not self-draining; 2) the pipes have large amounts of water in them because they are not draining properly; 3) there are splits in the piping joints; 4) there are broken pipes and couplers; 5) Bramble and/or its subcontractor installed "10-6-4M" slow drain gaskets instead of "10-6-4L" fast drain gaskets; 6) about 90 sections of aluminum pipe are corroded and have pinhole perforations along the bottom of the pipes because water is not properly running out of them; and 7) there are also pinholes in some sections of the 6-inch and 4-inch pipes.

The following is Georgetown's prayer for relief for all three counts:

> As a direct and proximate result of Bramble's breaches of Contract, Plaintiff Town of Georgetown has incurred and will continue to incur substantial monetary damages and costs in connection with the damaged and defective system, including but not limited to:
>
> a) expenses, including manpower and labor costs, for repair and correction of defects, and remediation of defects, in the Pettyjohn Woods system;[1]

[1] The spray irrigation system is known as the Pettyjohn Woods System.

b) expenses, including manpower and labor costs, for repair or replacement of damaged or defective materials, including latent damages and defects, the full extent of which may still be unknown;

c) legal, engineering, testing, consulting and other professional costs and fees incurred as a result of Defendants' breaches, actions or inactions, delay, and denials of responsibility;

d) court costs, attorney fees and other costs of this action, and

e) other costs and damages.

The Georgetown case was subsequently removed to the United States District Court for the District of Delaware.

Standard of Review – Summary Judgment

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact.[2] Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.[3] The Court views the evidence in a light most favorable to the nonmoving party.[4] Where the moving party produces an affidavit or other evidence sufficient under *Superior Court Civil Rule 56* in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine

[2] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

[3] *Id.* at 681.

[4] *Id.* at 680.

issue of material fact for trial.[5] If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, then summary judgment must be granted.[6] If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is not appropriate.[7]

Standard of Review – Motion to Dismiss

The standards for a Rule 12(b)(6) motion to dismiss are clearly defined. The Court must accept all well-pled allegations as true.[8] The Court must then determine whether a plaintiff may recover under any reasonable set of circumstances that are susceptible of proof.[9] When deciding a motion to dismiss, the Court accepts as true all well-pleaded allegations in the complaint, and draws all reasonable inferences in favor of the plaintiff.[10] As a general rule, when deciding a Rule 12(b)(6) motion, the Court is limited to considering only the facts alleged in the complaint and normally

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[5] *Super. Ct. Civ. R. 56(e); Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

[6] *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. den.*, 112 S.Ct. 1946 (1992); *Celotex Corp.*, 477 U.S. 317 (1986).

[7] *Ebersole v. Lowengrub,* 180 A.2d 467, 470 (Del. 1962).

[8] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

[9] *Id.*

[10] *Ramunno v. Crawley*, 705 A.2d 1029 (Del. 1998).

may not consider documents extrinsic to it. There are two exceptions, however, to this general rule.[11] "The first exception is when the document is integral to a plaintiff's claim and incorporated into the complaint. The second exception is when the document is not being relied upon to prove the truth of its contents."[12] "Where allegations are merely conclusory, however, (*i.e.*, without specific allegations of fact to support them) they may be deemed insufficient to withstand a motion to dismiss."[13] Dismissal will not be granted if the complaint "gives general notice as to the nature of the claim asserted against the defendant."[14] A claim will not be dismissed unless it is clearly without merit, which may be either a matter of law or fact.[15] Vagueness or lack of detail in the pleaded claim are insufficient grounds upon which to dismiss a complaint under Rule 12(b)(6).[16] If there is a basis upon which the plaintiff may recover, the motion is denied.[17]

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[11] See *Vanderbilt Income & Growth Assocs., L.L.C., v. Arvida/JMB Managers, Inc.,* 691 A.2d 609, 612 (Del. 1996).

[12] *Vanderbilt*, 691 A.2d at 613.

[13] *Lord v. Souder*, 748 A.2d 393, 398 (Del. 2000).

[14] *Diamond State Telephone v. University of Delaware*, 269 A.2d 52, 58 (Del. 1970).

[15] *Id.*

[16] *Id.*

[17] *Id.*

The Insurance Contract

Old Republic sold to Bramble its Commercial General Liability insurance contract no. A-3CG-037713-01 for the period July 1, 2012, to July 1, 2013, later renewed for July 1, 2013, to July 1, 2014. The Old Republic policy provides limits of insurance in the amount of $1 million for each occurrence. The policy sets forth a "Commercial General Liability Coverage Form," including (under Section "A") the following insuring agreement:

> We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insurance against any "suit" seeking those damages.
>
> This insurance applies to "bodily injury" and "property damage" only if:
>
> (1) The bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
>
> (2) The "bodily injury" or "property damage" first takes place during the policy period, regardless of when such "occurrence" giving rise to "bodily injury" or "property damage" takes place.

The Old Republic policy sets forth a number of specially defined terms. "Property damage" is defined as [p]hysical injury to tangible property, including all resulting loss of use of that property...or...[l]oss of use of tangible property that is not physically injured." The term "suit" is defined as "a civil proceeding in which

damages because of 'bodily injury,' 'property damage' or 'personal and advertising injury' to which this insurance applies are alleged."

Pursuant to a dedicated amendatory endorsement, "occurrence" is defined as:

> an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
>
> For claims or "suits" seeking damages that are within the "Products – Completed Operations Hazard," an "Occurrence" shall also include a defect in "your work," where the defect is neither expected nor intended from the standpoint of any insured.

The "products – completed operations hazard" is defined in turn as follows:

> "Products – completed operations hazard":
>
> a. Includes all "bodily injury" and "property damage" occurring away from premises your own or rent and arising out of "your product" or "your work" except:
>
> (1) Products that are still in your physical possession; or
>
> (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
>
> (a) When all of the work called for in your contract has been completed.
>
> (b) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site.
>
> (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

> Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The term "coverage territory" includes the entire U.S., and (by extension) the State of Delaware. Finally, the term "your work" is defined in relevant parts as "[w]ork or operations performed by you, [that is, Bramble] or on your behalf[.]"

Commercial General Liability Insurance Policies

One statement and one illustration are very helpful in understanding the type of risks covered by general liability insurance policies. The statement and illustration appear in many cases that discuss the scope of these policies.

Dean Henderson's Statement on Commercial General Liability Insurance Policies

> The risk intended to be insured is the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to property other than to the product or completed work itself, and for which the insured may be found liable. The insured, as a source of goods or services, may be liable as a matter of contract law to make good on products or work which is defective or otherwise unsuitable because it is lacking in some capacity. This may even extend to an obligation to completely replace or rebuild the deficient product or work. This liability, however, is not what the coverages in question are designed to protect against. The coverage is for tort liability for physical damages to others and not for contractual liability of the insured for economic loss because the product or completed work is not that for which the damaged person bargained.[18]

[18] *Henderson,* "Insurance Protection for Products Liability and Completed Operations - What Every Lawyer Should Know," 50 Neb. L. Rev. [415] at 441 [(1971)].

An Illustration of Dean Henderson's Statement

> An illustration of this fundamental point may serve to mark the boundaries between "business risks" and occurrences giving rise to insurable liability. When a craftsman applies stucco to an exterior wall of a home in a faulty manner and discoloration, peeling and chipping result, the poorly-performed work will perforce have to be replaced or repaired by the tradesman or by a surety. On the other hand, should the stucco peel and fall from the wall, and thereby cause injury to the homeowner or his neighbor standing below or to a passing automobile, an occurrence of harm arises which is the proper subject of risk-sharing as provided by the type of policy before us in this case.[19]

The Duty to Defend

Under Delaware law, an insurer has a duty to defend the insured if the allegations in the underlying complaint fall within the terms of the insurance policy.[20] The test is whether the underlying complaint, read as a whole, alleges a risk within the coverage of the policy.[21] Thus, in Delaware, an insurer's duty to defend its insured arises when the allegations of the underlying complaint show a potential that liability within coverage will be established.[22]

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[19] *Weedo v. Stone-E-Brick, Inc.,* 405 A.2d 788 (N.J. 1979).

[20] *Continental Cas. Co. v. Alexis I. DuPont Sch. Dist.,* 317 A.2d 101, 103 (Del. 1974).

[21] *Id.* at 105.

[22] *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Rhone-Poulenc Basic Chems. Co.,* 1992 WL 22690, at *7 (Del. Super. Jan. 16, 1992); See also *C.H. Heist Caribe Corp. v. Am. Home*

Property Damage

Bramble argues that the Georgetown Complaint alleges property damage in the form of excessive standing water and over-saturated soils. Old Republic argues that the Georgetown Complaint does not allege property damage in the form of excessive standing water and over-saturated soils.

"Property damage" means:

> a. Physical injury to tangible property, including all resulting loss of use of that property.

I have concluded that the Georgetown Complaint does not allege property damage in the form of excessive standing water and over-saturated soils because (1) the Georgetown Complaint does not mention over-saturated soils at all, (2) the Georgetown Complaint only seeks compensation for damages to the spray irrigation system, (3) the Georgetown Complaint does not allege that the soils were damaged in any way or that Georgetown was unable to use the soils, (4) the Georgetown Complaint does not seek compensation for damages to the soils and/or for the loss of use of the soils, and (5) the context in which "standing water" was mentioned in the

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Assur. Co., 640 F.2d 479, 483 (3d Cir. 1981) (stating that duty to defend arises "if the allegations of the complaint state on their face a claim against the insured to which the policy potentially applies," and that "the factual allegations of [the third party's] complaint against [the insured] are controlling") (citation omitted) (emphasis in original); *New Castle County v. Hartford Accident and Indem. Co.,* 673 F.Supp. 1359, 1367 (D.Del. 1987) (recognizing that under Delaware law "insurers are required to defend any action which potentially states a claim which is covered under the policy").

Georgetown Complaint shows that standing water was only a symptom of a problem with the spray irrigation system – pinholes in the pipes – that could be corrected by fixing the pipes.

(1) Over-saturated Soils

Bramble argues that the Georgetown Complaint alleges that the town's soils were and/or are over-saturated. That is simply not the case. The Georgetown Complaint never once alleges in its 110 paragraphs that the town's soils were and/or are over-saturated. Indeed, the words "over-saturation" are not mentioned at all. This omission undermines Bramble's argument because the alleged over-saturation of soils was a key component of Bramble's property damage claim. Over-saturated soils, according to Bramble, can be a form of property damage.[23] In the case that Bramble relies on to support its argument that over-saturated soils can be a form of property damage, the property owner's statement of claim filed in an arbitration proceeding alleged that the contractor failed to perform the soil work correctly, resulting in over-saturated soils incapable of supporting pavement, crosswalks and sidewalks. Thus, the property owner clearly alleged that the soils were over-saturated and unable to support pavement, crosswalks and sidewalks. That is not the case here. Quite simply,

[23] *R.G. Brinkmen Co., v. Amerisure Ins. Co*., 2012 WL 5993803. (E.D. Mo. Nov. 30, 2012).

the Georgetown Complaint does not allege that the town's soils were and/or are over-saturated and it does not allege that the town's soils are not suitable for operation of the spray irrigation system or any other use. Notwithstanding the fact that Georgetown Complaint does not allege that the soils were and/or are over-saturated, Bramble argues that it is appropriate for me to infer that the soils were and/or are over-saturated. That is not in accordance with the applicable law. In determining whether there is a duty to defend, a court is barred from "reading into a complaint any factual assumption."[24] Thus, what is the critical element of Bramble's property damage claim simply has no basis in fact.

(2) The Georgetown Complaint Requests Breach of Contract Damages

The Georgetown Complaint's requests for damages for Breach of Contract, Breach of Warranty, and Breach of Performance/Surety Bond are set forth in paragraphs 99, 104 and 110, respectively. Paragraphs 99, 104 and 110 all allege that as a direct and proximate result of Bramble's Breach of Contract (Paragraph 99), Breach of Warranty (Paragraph 104), and Breach of Performance/Surety Bond (Paragraph 110), Georgetown has incurred and will continue to incur substantial monetary damages and costs in connection with the damaged and defective system, including but not limited to:

[24] *Id.*

a) expenses, including manpower and labor costs, for repair and correction of defects, and remediation of defects, in the Pettyjohn Woods system;

b) expenses, including manpower and labor costs, for repair or replacement of damaged or defective materials, including latent damages and defects, the full extent of which may still be unknown;

c) legal, engineering, testing, consulting and other professional costs and fees incurred as a result of Defendants' breaches, actions or inactions, delay, and denials of responsibility;

d) court costs, attorney fees and other costs of this action, and

e) other costs and damages.

As the Georgetown Complaint alleges, Georgetown is only seeking monetary damages and costs incurred with the damaged and defective spray irrigation system, including expenses incurred for the repair and correction of defects, and remediation of defects, in the spray irrigation system and for repair or replacement of damaged or defective materials. The request for relief only references the spray irrigation system and it only asks for damages to repair and correct defects in the spray irrigation system and for repair and replacement of damaged or defective materials used in the spray irrigation system. The request for damages does not refer to the soils and it does not seek any compensation for the soils. Moreover, the damages sought for all three counts are identical and are nothing more than typical breach of contract damages. Indeed, the damages sought by Georgetown against Liberty Mutual for the breach of the Performance/Surety Bond, which certainly has no coverage for damages

to the soils,[25] are the same damages that Georgetown seeks from Bramble for its Breach of Contract and Warranty claims. Thus, since they are all the same and Liberty Mutual has no responsibility for damages to soils, this certainly suggests that Georgetown is not asking for compensation for any damages to the soils and/or for loss of use of the soils.

(3) No Soil Allegations

The Georgetown Complaint does not allege that its soils have been damaged in any way or that the town has not been able to use it soils for the operation of the spray irrigation system or for any other use.

(4) No Soil Damages

The Georgetown Complaint's prayer for relief does not seek damages for the soils in any way. There is no request for remediation damages. There is no request for loss of use damages.

(5) The Context of the References to Standing Water

The 110 paragraph Georgetown Complaint only mentions standing water twice. The first mention of standing water is in paragraph 80, which is set forth below:

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[25] *400 15th Street, LLC, v. Promo-Pro, Ltd.*, 960 N.Y.S.2d 341, 2010 WL 3529466, at *9 (N.Y. Sup. Ct. Sept. 10, 2010) ("A surety's performance bond and an insurer's commercial general liability policy provide two different scopes of coverage. A performance surety is to be held liable, upon the default of its principal, for the costs of completing whereas the general liability insurer is liable for accidental damage caused by the insured to property owned by third parties.").

Further Damage, in the Form of Pinholes and Corrosion Within the Pipes is Discovered as a Result of the System's Failure to Drain

> 80. In or around September, 2014, Owner's representatives at the site noted **excessive standing water** in some areas, and discovered pinhole perforations along the bottom of certain sections of aluminum pipe, and corrosion was discovered on the inside of certain pipes, when they were removed. The system was not in operation during the months of July or August 2014. As a result, a significant amount of water remained in the pipes, due to the apparently systemic drainage failure, and corrosion ensued as a result. Further areas of corroded pipe continued to be discovered later in 2014. (Emphasis added.)

As the heading indicates, the next problem that Georgetown discovered – after learning that the wrong gaskets had been installed – was that there were pinhole perforations along the bottom of certain sections of the aluminum pipes. This was discovered after Georgetown's representative noticed excessive standing water on the ground (presumably some amount of standing water is not abnormal on the ground where the spray irrigation system is located). Further investigation led to the discovery that there were pinholes in the pipes, allowing water to run out of the pipes and collect on the ground. Apparently, the corrosion was causing pinholes in the pipes.

The second and last mention of standing water appears in paragraph 95, which is set forth below:

> 95. Defendant Bramble, directly and/or vicariously through its subcontractors and suppliers, failed to provide appropriate materials,

> including but not limited to, self-draining gaskets, and failed to utilize appropriate means, methods, techniques, sequences and procedures of construction to **avoid standing water, and the associated risk of damage and corrosion to pipes in the system**. (Emphasis added.)[26]

The conclusion I reach from reading these two references to standing water, and in considering that the Georgetown Complaint never alleges that the soils are damaged and does not seek compensation for any damage to the soils, is that the standing water was mentioned as nothing more than a symptom of a problem with the spray irrigation system – the problem being the pinholes in the aluminum pipes.

There were pinholes in the bottom of the pipes because the pipes were corroding. The pipes were corroding because the water was staying in the pipes instead of draining out of them. If the standing water had damaged the soils, then the complaint would have alleged that. It does not. If Georgetown was seeking compensation for damages to the soils, then the complaint would have asked for that compensation. It does not. Instead, Georgetown only asks for compensation to correct the defects in the spray irrigation system. Thus, the reference to standing water is nothing more than as a symptom of a problem with the spray irrigation system and not a problem in and of itself. Once the spray irrigation system is fixed,

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[26] I think the fairest reading of the Georgetown Complaint is that the standing water was on the ground, not in the pipes. However, the phrasing of Paragraph 95 certainly makes it less than clear.

as Georgetown does want, there will be no more excessive standing water.

Quite simply, the Georgetown Complaint is a standard breach of contract complaint that only alleges and seeks those damages for the spray irrigation system. Put another way, Georgetown only is seeking compensation for what it bargained for, a properly functioning spray irrigation system.

Occurrence

The Old Republic policy defines "occurrence" to mean:

> an ***accident*,** including continuous or reported exposure to substantially the same general harmful conditions.

The policy has an "Amendment of Occurrence Definition Products – Completed Operations Hazard Only." In addition to defining an "occurrence" as an "accident," it also defines an "occurrence" to mean:

> For claims or "suits" seeking damages that are within the "Products – Completed Operations Hazard," an "Occurrence" ***shall also include a defect in "your work,"*** where the defect is neither expected nor intended from the standpoint of any insured.

Accident

Those Delaware cases that have addressed this definition of "occurrence" in a commercial general liability policy have concluded that an allegation of defective workmanship does not constitute an "occurrence" for which the policy grants

coverage or triggers the insurance company's duty to defend or indemnify the insured in the underlying lawsuit.[27] The rationale is that an "occurrence requires an accidental or unexpected event."[28] An accident – in the context of insurance contracts – "is an event happening without human agency, or, if happening through such agency, an event, which under circumstances, is unusual and not expected by the person to whom it happens."[29] These definitions are in accordance with the principle that "defective workmanship does not constitute an occurrence for purposes of a commercial general liability policy,"[30] because such action is within the control of the worker and "and not a fortuitous circumstance happening 'without human agency.'"[31] Therefore, a commercial general liability policy is "not intended to serve as a performance bond or guaranty of goods or services."[32]

I agree that for this case defective workmanship does not constitute an

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[27] *Westfield Ins. Co., v. Miranda & Hardt Contracting and Building Services, L.L.C.,* 2015 WL 1477970 (Del. Super. March 30, 2015); *Brosnahan Builders, Inc., v. Harleysville Mutual Ins. Co.,* 137 F.Supp. 2d 517 (D. Del. 2001); *Goodville Mutual Casualty Comp., v. Baldo,* 2011 WL 2181627 (D. Del. June 3, 2011).

[28] *Goodville Mut. Cas. Co.*, 2011 WL 2181627, at *3.

[29] *Brosnahan Builders, Inc.,* 137 F.Supp. 2d at 526.

[30] *Goodville Mut. Cas. Co.,* 2011 WL 2181627, at *3.

[31] *Brosnahan Builders, Inc.,* 137 F.Supp. 2d at 526.

[32] *Westfield Ins. Co., Inc.,* 2015 WL 1477970, at *4.

"occurrence" because Georgetown is only seeking breach of contract damages arising out of Bramble's allegedly defective workmanship in the construction of the spray irrigation system. That is the type of risk that many courts have concluded is not covered by a commercial general liability policy.[33] However, if Bramble's defective workmanship had caused injury to a person or damage to property other than the spray irrigation system, then this well might qualify as an "occurrence." That is simply not the case here though.

Completed Operations Hazard

Bramble argues that where the underlying claim arises from "completed operations," the policy expressly provides coverage for unintended defects in the insured's work. "Completed operations," meanwhile, is defined as follows:

> "Products – completed operations hazard":
>
> a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
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> (1) Products that are still in your physical possession; or
> (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
> (a) When all of the work to be done at the job site has been completed.
> (b) When all the work to be done at the job site has been completed if

[33] *Pursell Construction v. Hawkeye-Security Insurance Company*, 596 N.W.2d 67 (Iowa 1999).

your contract calls for work at more than one job site.
(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

Bramble further argues that where a contractor's work on a project is done, but (allegedly) needs service**,** correction or repair, the policy treats such work as completed operations. Thus, according to Bramble, once a contractor's work is done, unintended defects in the contractor's work constitute a covered occurrence, even if the work allegedly requires service, correction or repair.

Bramble's statements are generally correct. However, they ignore the definition of "Products Completed Operations Hazard." This is defined as:

a. Includes all "bodily injury" as "property damage" occurring away from premises you own or rent arising out of "your product" or "your work" except:

Thus, in order to trigger this definition of "occurrence," you first must have "bodily injury" or "property damage" arising out of "your product" or "your work."[34] Bramble's "product" or "work" was the spray irrigation system. Bramble alleges that the property damage was to Georgetown's soils. I have already concluded that the Georgetown Complaint makes no such allegation. Thus, this definition of

[34] *State Farm Fire and Casualty Co., v. Tillerson*, 777 N.E.2d 986 (Ill. App. Ct. 2002).

"occurrence" is not triggered. In summary, there was no "occurrence" under the Old Republic Policy.

Exclusions

Old Republic argues that if the Georgetown Complaint did allege damages that were covered by its policy, then there were certain provisions of the policy that excluded the coverage. Since I have concluded that there was no coverage in the first place, then there is no need to determine if any of the exclusions apply.

Bad Faith

The ultimate question in determining if an insurer's denial of benefits or liability coverage constituted actionable, lack of good-faith dealings, or, in the alternative, the presence of bad faith on the part of the insurer, is whether there existed a set of facts or circumstances known to the insurer at the time the insurer denied liability or payment, that created a *bona fide dispute*, and, therefore, a meritorious defense to the insurer's liability.[35]

I have concluded that Old Republic's determination that there was no coverage was certainly not made in bad faith. The Georgetown Complaint only seeks breach of contract damages against Bramble. These damages are not covered by Old Republic's policy. Thus, Old Republic had no duty to defend Bramble.

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[35] *Casson v. Nationwide Ins., Co.,* 455 A.2d 361, 369 (Del. 1982).

Conclusion

I have Denied Plaintiff David A. Bramble, Inc.'s Motion for Partial Summary Judgment and Granted Defendant Old Republic General Insurance Corp.'s Motion to Dismiss.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal
oc: Prothonotary
cc: Counsel