SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1230-21

CONSTRUCTURAL DYNAMICS, INC., t/a SILVI CONCRETE, assignee of MJF MATERIALS, LLC,

Plaintiff-Respondent,

v.

ARCH INSURANCE COMPANY,

Defendant-Appellant,

and

COVINGTON SPECIALTY INSURANCE COMPANY,

Defendant.

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Submitted November 2, 2022 – Decided May 30, 2023

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-1814-20.

Dickie McCamey & Chilcote PC, attorneys for appellant (Jeffrey H. Quinn, on the brief).

Cohen Seglias Pallas Greenhall & Furman, PC, attorneys for respondent (Jonathan A. Cass and Alexander F. Barth, on the brief).

PER CURIAM

In this insurance coverage action, defendant Arch Insurance Company challenges two Law Division orders.[1] The first denied its application for summary judgment and the second granted plaintiff Constructural Dynamics, Inc., trading as Silvi Concrete Products, Inc., as the assignee of MJF Materials, LLC's, summary judgment and awarded it $935,063. For the reasons stated in our opinion, we reverse the court's order granting plaintiff summary judgment and vacate the related money judgment. We further direct the court on remand to issue an order granting summary judgment to Arch.

I.

In August 2013, MJF, a trucking company, was hired to deliver salt to a New Jersey Department of Transportation facility. Trucks numbered 41, 45, 54,

[1] Covington Specialty Insurance Company, MJF's commercial general liability carrier, was dismissed from this action with prejudice by way of stipulation and is not party to this appeal.

55, 59 and 64 completed the delivery. MJF, however, failed to properly clean those trucks, leaving salt residue in the cargo areas of the vehicles.

The next day, MJF used those same trucks to transport concrete aggregate material to Silvi's concrete plant. As a result, the salt residue that had been left in the trucks mixed with the aggregate during transit. The contaminated mixture was then deposited from the trucks into "hoppers" at Silvi's concrete plant. Silvi used this contaminated aggregate to mix a batch of concrete for the construction of a warehouse floor for a facility owned by KTR Capital Partners. KTR hired Clayco, Inc. as a general contractor for the project, who in turn, hired GMAC Construction Company as a subcontractor. GMAC was responsible for the installation of all concrete structures for the warehouse floor project and contracted with Silvi to provide the concrete it required. By April 2014, Silvi completed all required performance under its contract with GMAC regarding its supply, preparation, and delivery of concrete.

Approximately one month after the floor was installed, it began to show signs of corrosion and discoloration. A later inspection by both Clayco and Silvi revealed concentrations of dissolved salt in the concrete requiring its removal and replacement along with all related systems and fixtures.

In December 2014, Silvi sued MJF in the United States District Court for the Eastern District of Pennsylvania, seeking damages incurred to "remove and replace the contaminated concrete and remediate all associated damages." Specifically, Silvi sought: (1) $551,397.58 for the costs to remove and replace the concrete; and (2) $383,666.22 for the costs to dismantle and reinstall the necessary warehouse systems and fixtures.

MJF timely notified Arch, which had issued MJF a $1,000,000 commercial automobile policy that covered all sixteen of MJF's vehicles, including the trucks that delivered the aggregate to the warehouse project, and requested it defend and indemnify MJF with respect to Silvi's underlying claim. Arch rejected MJF's tender and claimed its care, custody or control, handling of property, and completed operations exclusions barred coverage. Following a trial, a jury awarded Silvi $935,063. MJF thereafter assigned its rights under the Arch policy to Silvi.

The Arch commercial automobile policy contains standard coverage provisions, exclusionary language and definitions. In outlining its policy liability coverage, Arch agreed to "pay all sums an 'insured' legally must pay as damages because of 'bodily injury' or 'property damage' . . . caused by an 'accident' and resulting from the ownership maintenance or use of a covered

'auto.'" Arch defined "accident" as the "continuous or repeated exposure to the same conditions resulting . . . [in] 'property damage'" and property damage as "damage to or loss of use of tangible property."

MJF's ability to recover for accidental property damage was limited by three, pertinent exclusionary provisions. 1) Under the care, custody or control exclusion, Arch refused to cover "'property damage' . . . involving property owned or transported by the 'insured' or in the 'insured's' care, custody or control." 2) It also did not insure, under the handling of property exclusion, "'property damage' resulting from the handling of property . . . [b]efore it is moved from the place where it is accepted by the 'insured' . . . or [a]fter it is moved from the covered 'auto' to the place where it is finally delivered by the 'insured.'" 3) Finally, the completed operations exclusion precludes coverage for "'property damage' arising out of 'your work' after that work has been completed or abandoned," and defines your work as "[w]ork or operations performed by you or . . . [m]aterials, parts or equipment furnished in connection with such work or operations."

Arch steadfastly refused to cover the underlying losses. As a result, Silvi filed a declaratory judgment action seeking indemnification as well as damages for Arch's breach of contract. Arch later moved for summary judgment and

asserted it had no duty or obligation to defend or indemnify MJF based on the aforementioned exclusions. Silvi moved for summary judgment.

After considering the parties' submissions and oral arguments, the court entered an order granting Silvi summary judgment in the amount of $935,063 and issued a separate order denying Arch's motion. The court detailed its reasoning in a written opinion.

In its decision, the court determined the underlying judgment related to property damage "caused by an 'accident' and resulting from the ownership, maintenance or use of a covered 'auto.'" The court also found, based on the jury verdict, MJF was negligent in its "contaminat[ion] [of] the aggregate used to make cement for . . . the [] [f]loor," which constituted a covered "accident" under the policy.

The court next explained New Jersey precedent, including our decision in Craggan v. IKEA USA, 332 N.J. Super. 53, 65 (App. Div. 2000), interprets the term "use" in automobile policies broadly to include "all acts, including preparation, [and] the loading and unloading process" and concluded Silvi's claim was covered by the Arch policy because the contaminated aggregate constituted "damaged property" as it was delivered in a "condition in which it could not properly be used." The court also concluded the aggregate was

"tangible property in the care, custody or control of [MJF]," as transporting the aggregate was a necessary element of MJF's work, and during transport it was under MJF's "direct and continuous supervision."

The court rejected Arch's arguments that the exclusionary language in the policy precluded coverage for the underlying judgment. It acknowledged that although no New Jersey court has addressed similar incidents involving contaminated products under the care, custody or control exclusion, persuasive authority from other jurisdictions, specifically, Hudson River Concrete Production Corporation v. Callahan Road Improvement Company, 5 A.D.2d 49, 52 (N.Y. App. Div. 1957), and Harleysville Worcester Insurance Company v. Wesco Insurance Company, 314 F. Supp. 3d 534, 547 (S.D.N.Y. 2018), supported the proposition that such claims "aris[ing] out of the use of the vehicle in which the contamination occurred are not excluded," because contamination occurring in the vehicle "plainly arises" from its "maintenance," specifically the failure to properly clean the interior of the insured vehicles. The court further found the care, custody or control exclusion did not apply because "MJF did not have control over the finished concrete, or the warehouse where the concrete was poured and later replaced."

In addition, the court explained that because the underlying judgment against MJF related to the costs to repair the "incidental damages caused by MJF's contamination" and not the damage to the aggregate alone, the care, custody or control exclusion did not bar coverage. The court rejected Arch's argument that the undefined word "involving" in the exclusion meant the exclusion bars claims "involving" the contaminated aggregate and noted even if it were to find the language ambiguous, the lack of clarity "must be resolved in favor of Silvi."

The court also determined the handling of property exclusion did not bar Silvi's claim as the contamination causing the compromised concrete occurred during transit. Likewise, the court rejected Arch's arguments related to the completed operations exclusion, and relied on a Maryland case, Griffith Energy Services Incorporated v. National Union Fire Insurance Company of Pittsburgh, Pennsylvania, 120 A.3d 808 (Md. App. 2015), explaining, the aggregate became contaminated, or damaged, while in transit and prior to the completion of MJF's delivery, and only "manifested itself after its delivery." This appeal followed.

II.

Before us, Arch reprises many of the same arguments it raised before the court. Specifically, it contends it was not required to defend MJF nor

responsible to indemnify it or Silvi for the underlying judgment based on the same three exclusionary provisions rejected by the court.

As to the care, custody or control exclusion, Arch principally relies on an unpublished opinion from our court and further contends the trial court's statement the aggregate was "tangible property in the care, custody or control of [MJF]" should have resulted in a judgment in its favor, as the transportation of the aggregate was a "necessary element" of MJF's contracted work for Silvi.

Arch further maintains the court erred in relying on Harleysville Worcester, 314 F. Supp. 3d at 548, as the contamination of the aggregate formed the "core" of Silvi's claims, unlike the damages sought in that case, which included other contaminated milk, cheese, and products at the plant, the cost of storage of contaminated cheese, cleaning, sanitizing and inspecting the plant, the cost of plant downtime, and the diversion of milk as a result of contamination. On this point, Arch explains the contaminated aggregate became a "critical material and indivisible element[] of the affected concrete . . . " and therefore, the court should have determined it was within MJF's care, custody or control. Additionally, Arch asserts that because the loss Silvi seeks to recover "arose" out of damage to excluded property, the court was "mandated" to find the exclusion applicable.

Relying on the phrase within the care, custody or control exclusion which bars coverage for "'property damage' . . . involving property owned or transported by the 'insured,'" Arch contends because the term "involving" is undefined, the court should have ascribed the word its ordinary meaning such as a "situation or event[] including []something[] as a necessary part or result." Arch posits that because the damage to the floor resulted from the damage to the aggregate, the related damages are excluded from coverage.

Arch further claims that even if we conclude the floor constituted covered property damage, it is not obligated to indemnify Silvi under the handling of property or the completed operations exclusions because the damage to the floor occurred after MJF deposited the aggregate into the hoppers. On this point, Arch relies on Pisaneschi v. Turner Construction Company, 345 N.J. Super. 336, 344-45 (App. Div. 2001), for the proposition that coverage related to movement of goods exists only "from the moment [the goods] are given into the insured's possession until they are turned over at the place of destination to the party to whom delivery is to be made." Finally, Arch contends the completed operations exclusion also applies as MJF concluded its "work" of delivering the aggregate prior to Silvi's production of the damaged floor, and therefore the court's reliance

on Griffith Energy Servs., Inc., 120 A.3d at 808, is misplaced, as the damage in that case occurred during delivery.

III.

We apply the same standard as the trial court when reviewing a grant of summary judgment. Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016). Pursuant to Rule 4:46-2(c), a court is required to grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." If there are no genuine and material factual questions, we then determine whether the trial court made a correct ruling on the law. Walker v. Alt. Chrysler Plymouth, 216 N.J. Super. 255, 258 (App. Div. 1987). Further, the interpretation and construction of an insurance contract is a matter of law that we review de novo. Simonetti v. Selective Ins. Co., 372 N.J. Super. 421, 428 (App. Div. 2004).

Insurance policies are considered "contracts of adhesion," and, as such, are "construed liberally in [the insured's] favor" to provide coverage "to the full extent that any fair interpretation will allow." Longobardi v. Chubb Ins. Co., 121 N.J. 530, 537 (1990) (alteration in original) (citing Kievit v. Loyal

Protective Life Ins. Co., 34 N.J. 475, 482 (1961)). Thus, it follows that provisions granting coverage are to be interpreted liberally, while exclusionary provisions should be strictly construed, Simonetti, 372 N.J. Super. at 429, leaving the burden on the insurer "to bring the case within the exclusion," Flomerfelt v. Cardiello, 202 N.J. 432, 442 (2010) (quoting Am. Motorists Ins. Co. v. L-C-A Sales Co., 155 N.J. 29, 41 (1980)).

Further, our Supreme Court has held policy exclusions are "presumptively valid and will be given effect if 'specific, plain, clear, prominent, and not contrary to public policy.'" Princeton Ins. Co. v. Chunmuang, 151 N.J. 80, 95 (1997) (quoting Doto v. Russo, 140 N.J. 544, 559 (1995)). If terms are not clear, however, but rather ambiguous, "they are construed against the insurer and in favor of the insured, in order to give effect to the insured's reasonable expectations." Flomerfelt, 202 N.J. at 441.

In general, courts should not write "for the insured a better policy of insurance than the one purchased." Flomerfelt, 202 N.J. at 441 (quoting Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 529 (1989)). However, "it must not be forgotten that the primary object of all insurance is to insure." Elcar Mobile Homes, Inc. v. D.K. Baxter, Inc., 66 N.J. Super. 478, 492 (App.

Div. 1961) (quoting Boswell v. Travelers Indem. Co., 38 N.J. Super. 599, 605 (1956)).

As this matter involves a commercial automobile insurance policy, we find it necessary prior to our analysis of the parties' arguments to distinguish the differences between a commercial general liability policy and a commercial automobile policy. Traditionally, commercial general liability policies "provide coverage for claims arising out of the insured's liability for injury or damage caused from ownership of property, manufacturing operations, contracting operations, and the sale of products." George J. Kenny & Frank A. Lattal, New Jersey Insurance Law § 8-1 at 219 (2d ed. 2000). Commercial automobile policies, however, are tailored to the specific liability concerns which arise out of the "ownership, maintenance, use, loading, or unloading of a motor vehicle." See 9 Couch on Ins. § 127:34 (2022).

Against these legal principles, we reverse the trial court's decisions as we conclude both the handling of property and completed operations exclusions apply. For purposes of completeness, however, we evaluate all three exclusions, addressing each in turn.

IV.

A. Care, Custody or Control

Property is within the care, custody or control of the insured where "the property that is damaged is under the direct and continuous supervision of the insured and is a necessary element of the work involved." Condenser Serv. & Eng'g Co. v. Am. Mut. Liab. Ins. Co., 58 N.J. Super. 179, 183-84 (App. Div. 1959). As such, significance is placed on the insured's possessory control rather than its proprietary control. Id. at 184. We have found, however, the phrase "care, custody or control" to be "inherently ambiguous," . . . "for they are words of art which have been the focus of considerable judicial construction," Boswell, 38 N.J. Super. at 607, with its purpose to shield the insurer from a "greater moral hazard," and to "eliminate[] the possibility of the insured making the insurance company a guarantor of workmanship," Elcar Mobile Homes, Inc., 66 N.J. Super. at 491.

What "constitutes 'care, custody or control,'" Elcar Mobile Homes, Inc., 66 N.J. Super. at 491, is a fact sensitive inquiry and

> depends not only upon whether the property is realty or personalty, but as well upon many other facts, such as the location, size, shape and other characteristics of the property, what the insured is doing to it and how, and the interest in and relation of the insured and others to it. Whether the property is realty or personalty, and the

> precise legal relationship of the insured and others to it, may be material in a given situation; but when they are . . . merely facts (more or less important, depending upon the circumstances) to be taken in conjunction with all other facts, in determining whether there is exclusion.
>
> [Ibid.]

Further, when damage to property, is "'merely incidental' to the property upon which the work [is] being done by the insured," Reliance Ins. Co. v. Armstrong World Indus., Inc., 292 N.J. Super. 365, 386 (1996), it is not deemed to be within the insured's care, custody or control. We have noted these distinctions have been "easy to make verbally, but . . . when . . . applied to a given state of facts, the facts have governed, and not the verbalization. The alleged distinction rarely dictated the result; rather it justified it." Elcar Mobile Homes, Inc., 66 N.J. Super. at 491.

As a preliminary matter, we note we are unaware of any New Jersey case which addresses the unique circumstances of the contamination of materials in transit, which then affect other incorporated property. We therefore turn to authority from other state and federal courts, and, in doing so, adopt the reasoning of the court in Harleysville Worcester, 314 F.Supp. 3d at 534, which

supports our conclusion that the care, custody or control exclusion does not apply to bar Silvi's claim.[2]

In Harleysville Worcester, id. at 547, an insured hauler delivered contaminated milk and deposited the milk directly into the pipes of a cheese plant. The tainted milk caused damage to the plant, and the plant's owner later sought claims for the associated losses, including "loss of cheese, milk, and other products at the plant." Id. at 539. The Harleysville Worcester court held the care, custody or control exclusion did not apply as the insured hauler had "no possessory dominion over the cheese, other milk, or plant equipment that form[ed] the core of [the plant's] alleged damages." Id. at 548. Notably, the court rejected the insurer's argument that coverage should be precluded for damage which "flow[ed] directly from the [milk] within [the insured]'s care, custody [or] control," id. at 547, and found "no evidence in the record" to suggest that an entity "entering into a commercial business auto policy for a [hauler]

[2] We note, in Harleysville Worcester the court did not evaluate either the parties' handling of property or the completed operations exclusions in its analysis as arguments regarding the handling of property exclusion were deemed waived, see 314 F. Supp. 3d at 548, n.4, and because the effect of a completed operations exclusion on the insured's coverage claims was not raised by either party. See generally id. at 547-48.

would expect the exclusion to apply beyond the cargo to all 'natural consequences' of the cargo's delivery." Ibid.

We agree with the Harleysville Worcester court's reasoning and the trial court's application of it to the matter before us. Here, Silvi seeks recovery of costs incurred to remove and replace the defective concrete floor, as well as the costs to remove and replace the warehouse fixtures. At no point did MJF have "possessory dominion," id. at 548, over the concrete, Silvi's plant, or the warehouse which form the core of its claims.

We similarly are reluctant to expand this exclusion to include any damages which flow from damaged property, as Arch has failed to identify any controlling New Jersey case law which supports such an extension. We also have found a comparable unwillingness in decisions of several of our sister states. See Michigan Millers Mut. Ins. Co. v. DG & G Co., Inc., 569 F.3d 807, 812 n.2 (8th Cir. 2009) (stating "[i]t is important that this appeal only concerns property damage to the ginned cotton. If excessively moist cotton made its way to a mill and was incorporated into yarn or fabric that became contaminated, the damage to that other property would likely be covered [by the insurer]"); Opies Milk Haulers, Inc. v. Twin City Fire Ins. Co., 755 S.W.2d 300, 303 (Mo. Ct. App. 1988) (allowing a milk hauler to amend its complaint to include a cause of

action for losses sustained when contaminated fructose interacted with Pepsi-Cola products in tanks as the insurer conceded the exclusion would not apply to material not within the insured's care, custody or control). But see Barry Concrete, Inc. v. Martin Marietta Materials, Inc., No. 06-504-JJB-CN, 2008 WL 1885326, at *1 (M.D. La. Apr. 28, 2008) (finding the exclusion did apply to the costs for removing and replacing concrete on a motion for reconsideration, as "[i]nsurance companies in Louisiana are permitted to exclude coverage for consequential damages as a result of damage to property").[3]

Further, we find Arch's argument that any resulting damages from the aggregate is excluded because it was damaged while in MJF's "direct and continuous supervision," misplaced. Here, Silvi's claim is not confined to the costs of the damaged aggregate, rather it includes the associated costs of the floor's removal and replacement, which MJF did not have exclusive control over.

[3] We note that in Barry Concrete, the court initially rejected the application of the care, custody or control, handling of property, and completed operations exclusions. See Barry Concrete, Inc. v. Martin Marietta Materials, Inc., 531 F. Supp. 2d 766 (M.D. La. 2008). On a motion for reconsideration, however, the court concluded the care, custody or control exclusion did apply. See Barry Concrete, No. 06-504-JJB-CN at *1-2. In rendering its reconsideration decision the court did not address its prior conclusions regarding the inapplicability of either the handling of property exclusion or the completed operations exclusion. See id. at *1-3.

Finally, we are not persuaded by Arch's argument that the plain meaning of the term "involving" within the policy's exclusionary language precludes coverage. Arch's contention would in effect swallow the policy's coverage grant contrary to a reasonable insured's expectations.

B. Handling of Property

The handling of property exclusion ordinarily precludes insurance coverage for injury or accidents that occur prior to delivery or following delivery by the insured. See Motor Carrier Liability, ¶ 1821 B. Fundamentals of Coverage Analysis (2015) (stating handling of property exclusion "tends to apply when an injury or damage occurs following the completed delivery . . . ."); see also Home State Cnty Mut. Ins. Co. v. Acceptance Ins. Co., 958 S.W.2d 263, 267 (Tx. App. 1997).

Relevant to our analysis of this exclusion is a brief discussion of the term "use" in reference to auto insurance policies in New Jersey. "[T]he concept [that the] 'use of a vehicle' includes the acts of loading and unloading the vehicle is well settled." Kennedy v. Jefferson Smurfit Co., 147 N.J. 394, 398 (1997). In New Jersey, coverage for the unloading and loading of a covered vehicle follows the complete operation doctrine, meaning the insurer "covers the entire process involved in the movement of goods, from the moment that they are given into

the [named] insured's possession until they are turned over at the place of destination to the party to whom delivery is made . . . ." Pisaneschi, 345 N.J. Super. at 344-45 (quoting Cenno v. W. Va. Paper & Pulp Co., 109 N.J. Super. 41, 46 (App. Div. 1970)).

It therefore reasonably follows that the handling of property exclusion must also abide by the complete operations doctrine and cannot apply until the unloading process has been finished. See Home State Cnty. Mut. Ins. Co., 958 S.W.2d at 267 ("Under the [handling of property] exclusion coverage ceased once the unloading operation was completed."). The loading and unloading doctrine, however, "is not intended to insure all defendants against all claims arising from any accident in any way incident to loading/unloading irrespective of causation, that is, irrespective of the defendant's actual involvement with the insured vehicle itself." Pisaneschi, 345 N.J. Super. at 343.

As noted, Arch primarily relies on Pisaneschi, 345 N.J. Super. at 336, and argues under the exclusion, "the end[]point in coverage [was] when the aggregate was turned over at the place of destination," Silvi's plant. It further contends it was "illogical" for the trial court to conclude the care, custody or control exclusion did not apply, as the core of Silvi's claims arose from damage for which MJF had no possessory control, while simultaneously determining the

handling of property exclusion inapplicable because the aggregate in MJF's control was damaged prior to it being unloaded into the plant's hoppers. We agree.

The plain language of the exclusion precludes coverage for accidents or damage which occur before it is placed in the covered auto, or after it is removed from the covered auto. Here, MJF finished unloading the aggregate when it deposited the material into Silvi's hoppers and left the facility. While we acknowledge MJF deposited the contaminated aggregate "directly" into Silvi's hoppers, at that point, the concrete was not mixed or poured, and accordingly the damage to the warehouse floor had not occurred.

We find further support in our conclusion in Pisaneschi, though it did not directly address this specific exclusion. In that case, we reversed the trial court and concluded the insured's policy did not cover a loss where packaged air conditioners had been unloaded from the insured's truck, and an employee was injured while moving a package to a storage unit. Id. at 336. There, we reasoned that because the truck had pulled away from the loading dock, and all units were removed from the truck when the bailing strap on the units broke and caused the employee's injury, the delivery had been "accomplished," and "the accident in question post-dated the loading and unloading process." Id. at 341, 347-48.

Additionally, in Pisaneschi the court suggested there would be a different outcome had the bailing strap broken during the unloading and loading process, rather than the accident occurring following the removal of the goods from the truck and the truck's departure from the location. Id. at 348.

Here, as noted, MJF delivered the aggregate, and subsequently left the plant's premises following the completion of the delivery. Accordingly, Silvi did not mix or create the particular batch of concrete, until after MJF completed its unloading of the materials at the plant.

C. Completed Operations

The completed operations exclusion precludes coverage for claims arising following an insured's completion of its contracted work. See Griffith, 120 A.3d at 820; Am. States Ins. Co. v. Travelers Prop. Cas. Co. of America, 167 Cal. Rptr. 3d 288, 299 (Ca. Ct. App. 2014); Liberty Mut. Ins. Co. v. St. Paul Fire and Marine Ins. Co., 842 N.E.2d 170, 174 (Ill. App. Ct. 2005) ("Under the 'completed operations' exclusion, a contract or operation is generally deemed completed when the work contracted for or undertaken has been finished and put to its intended use."). Generally, "[c]ommentators are in complete agreement that this exclusion refers to accidents caused by defective workmanship which arise after completion of work by the insured on

construction or service contracts." Kenny & Lattal, New Jersey Insurance Law § 8-28:3 at 240.[4] In fact, completed operations clauses are "seen as the counterpart of products hazard coverage for a service company," and are usually "intended to apply to work performed on other's premises, such as construction or maintenance work." Rhone-Poulenc Rorer Inc. v. Home Indem. Co., 832 F. Supp. 114, 118 (E.D. Pa. 1993).

As noted, Arch argues that because MJF finished its contracted work, specifically its delivery of the aggregate to Silvi, before any damage to the concrete and the warehouse floor occurred, the completed operations exclusion applies. Again, we agree.

We come to this conclusion in a similar manner as our reasoning for the applicability of the handling of property exclusion. The completed operations exclusion plainly provides Arch will not cover "'property damage' arising out of 'your work' after that work has been completed or abandoned," and defines your work as "[w]ork or operations performed by you or . . . [m]aterials, parts or equipment furnished in connection with such work or operations." It is

[4] We note, traditionally, the completed operations exclusion is commonly found in commercial general liability policies. Neither party has cited any legal authority from this State which directly addresses this exclusion as it relates to a commercial auto policy, nor have we found any case law within our jurisdiction which does so.

undisputed MJF's contracted work for Silvi was its delivery of aggregate to the plant and did not include any additional obligations prior to the creation of the concrete. It is further undisputed MJF fulfilled this contracted work upon its delivery of the aggregate. The damaged concrete and costs to replace the warehouse floor form the core of Silvi's claims and accordingly we conclude this exclusion applies to Silvi's coverage claims, as the creation of the concrete and the warehouse floor occurred well after MJF completed its delivery.

Finally, we find the court's reliance on Griffith Energy Servs., Inc., 120 A.3d at 808, misplaced. In that case, a Maryland court found a similar completed operations exclusion in an auto policy inapplicable when damage to homes "arose out of the insured's work," prior to when "the work ha[d] been completed or abandoned," and the damage "commenced" during the active use of the covered vehicle. Id. at 823.

Specifically, in Griffith, the driver of a fuel truck pumped 330 gallons of fuel into an incorrect fill port of a triplex for approximately eight minutes before he was alerted to his mistake. Id. at 810-11. Though there was no immediate evidence of oil in two of the basements of the triplex, oil seepage was discovered through testing and soil samples, and the homes were demolished and eventually condemned. Id. at 812. The Maryland court held coverage was "triggered"

under the automobile policy because the discharge of oil into one of the triplex homes was an "accident" from the use of the fuel truck which in turn "resulted in property damage," to the three homes. Id. at 822-23. Notably, the damage to the property occurred during the pumping of the oil from the covered truck.

Here, as noted, the damage to the concrete and the warehouse floor did not occur during MJF's delivery. Rather, the corruption of the concrete and corrosion of the floor occurred following MJF's fulfillment of its contracted work. While Arch's exclusionary language is to be strictly construed, Simonetti, 372 N.J. Super. at 429, its clear and unambiguous phrasing compels us to conclude the completed operations exclusion applies under these unique circumstances, see Princeton Ins. Co., 151 N.J. at 95.

In sum, we agree in part with the trial court, and conclude the care, custody or control exclusion did not apply as MJF lacked possessory dominion over the damaged concrete batch and warehouse floor. We part company with the trial court, however, and determine the handling of property and completed operations exclusions are applicable, as MJF completed its delivery of the aggregate prior to the damages incurred which form the core of Silvi's claims.

To the extent we have not specifically addressed any of the parties' arguments, it is because we have concluded they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed and remanded for the entry of appropriate orders consistent with this opinion.