

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 25-cv-01009-REB-KAS

BWB INVESTMENT COMPANY, LLC

Plaintiff,

v.

SCOTTSDALE INSURANCE COMPANY,

Defendant.

ORDER RE: CROSS-MOTIONS FOR SUMMARY JUDGMENT

Blackburn, J.

The matters before me are (1) plaintiff's **Motion for Partial Summary Judgment** [#28],¹ filed July 17, 2025; and (2) **Defendant Scottsdale Insurance Company's Cross Motion for Summary Judgment** [#34], filed December 23, 2025.² I grant defendant's motion and deny plaintiff's motion.

I. JURISDICTION

I have jurisdiction over this matter pursuant to 28 U.S.C. § 1332 (diversity of citizenship).

II. STANDARD OF REVIEW

¹ "[#28]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's electronic case filing and management system (CM/ECF). I use this convention throughout this order.

² The issues raised by and inherent to the motions for summary judgment are fully briefed, obviating the necessity for evidentiary hearing or oral argument. Thus, the motions stand submitted on the briefs. ***Gear v. Boulder Community Hospital***, 844 F.2d 764, 766 (10th Cir.) (hearing requirement for summary judgment motions is satisfied by court's review of documents submitted by parties), ***cert. denied***, 109 S.Ct. 312 (1988).

Summary judgment is proper when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. **FED. R. CIV. P.** 56(a); **Celotex Corp. v. Catrett**, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). A dispute is “genuine” if the issue could be resolved in favor of either party. **Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.**, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); **Farthing v. City of Shawnee**, 39 F.3d 1131, 1135 (10th Cir. 1994). A fact is “material” if it might reasonably affect the outcome of the case. **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); **Farthing**, 39 F.3d at 1134.

A party who does not have the burden of proof at trial must show the absence of a genuine fact issue. **Concrete Works, Inc. v. City & County of Denver**, 36 F.3d 1513, 1517 (10th Cir. 1994), **cert. denied**, 115 S.Ct. 1315 (1995). By contrast, a movant who bears the burden of proof must submit evidence to establish every essential element of his claim or affirmative defense. **See In re Ribozyme Pharmaceuticals, Inc. Securities Litigation**, 209 F.Supp.2d 1106, 1111 (D. Colo. 2002). In either case, once the motion has been properly supported, the burden shifts to the nonmovant to show, by tendering depositions, affidavits, and other competent evidence, that summary judgment is not proper. **Concrete Works**, 36 F.3d at 1518.³ All the evidence must be viewed in the light most favorable to the party opposing the motion. **Simms v.**

³ However, the fact that the parties have filed cross-motions for summary judgment does not necessarily indicate summary judgment is proper. **See Atlantic Richfield Co. v. Farm Credit Bank of Wichita**, 226 F.3d 1138, 1148 (10th Cir. 2000); **James Barlow Family Limited Partnership v. David M. Munson, Inc.**, 132 F.3d 1316, 1319 (10th Cir. 1997). “Cross-motions for summary judgment are to be treated separately; the denial of one does not require the grant of another.” **Buell Cabinet Co. v. Sudduth**, 608 F.2d 431, 433 (10th Cir. 1979).

Oklahoma ex rel Department of Mental Health and Substance Abuse Services, 165 F.3d 1321, 1326 (10th Cir.), **cert. denied**, 120 S.Ct. 53 (1999).

III. ANALYSIS

The operative facts of this case are not in dispute. Plaintiff, BWB Investment Company, LLC (“BWB”), owned a warehouse in Denver, Colorado. Sometime during the evening of November 4, 2024, unknown individuals broke into the warehouse and stole a substantial amount of copper wire from the building. In the process, they “ransacked” the building, breaking into electrical panels, drywall, ceiling, conduits, wire coverings, drinking fountains, air conditioners, fuse boxes ,and other fixtures and destroying the building’s electrical, HVAC, mechanical, and plumbing systems, rendering the warehouse inoperable. (**See Plf. Motion App.**, Exh. 3.)

At the time of this incident, the property was insured under a commercial liability and property insurance policy issued by defendant, Scottsdale Insurance Company (“Scottsdale”). The policy defined “Covered Causes of Loss” to include the following:

Vandalism, meaning willful and malicious damage to, or destruction of, the described property.

We will not pay for loss or damage caused by or resulting from theft, except for building damages caused by the breaking in or exiting of burglars.

(**Plf. Motion App.**, Exh. 1 at 119.) Relying on this provision, Scottsdale denied the claim other than to the extent of damage caused by the entry into or exit from the property. This lawsuit, by which BWB alleges claims for breach of contract and common law and statutory bad faith, followed. BWB now seeks summary judgment on its breach of contract claim. Scottsdale maintains summary judgment in its favor is

warranted on all claims. Because I agree the policy does not provide coverage for the loss suffered in this case, I grant Scottsdale's motion and deny BWB's motion.

Whether coverage exists in this case turns on the interpretation of the above-cited provision of the policy. Under Colorado law, which governs in this diversity case, *see Erie Railroad v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 822, 82 L.Ed. 1188 (1938); *James River Insurance Co. v. Rapid Funding, LLC*, 658 F.3d 1207, 1217 (10th Cir. 2011), an insurance policy is a contract and thus is to be interpreted according to principles which govern contracts generally, *see Allstate Insurance Co. v. Huizar*, 52 P.3d 816, 819 (Colo. 2002); *Chacon v. American Family Mutual Insurance Co.*, 788 P.2d 748, 750 (Colo. 1990). As with all contracts, the primary goal in interpreting the policy is to effectuate the intention of the parties. *Union Insurance Co. v. Houtz*, 883 P.2d 1057, 1061 (Colo. 1994); *Simon v. Shelter General Insurance Co.*, 842 P.2d 236, 239 (Colo. 1992).

To accomplish this objective, the terms of the policy are given their plain and ordinary meanings unless the policy itself indicates the parties intended otherwise. *Bohrer v. Church Mutual Insurance Co.*, 965 P.2d 1258, 1261-62 (Colo. 1998); *Chacon*, 788 P.2d at 750. The meaning of undefined terms is assessed from the perspective of a person of ordinary intelligence. *MarkWest Hydrocarbon, Inc. v. Liberty Mutual Insurance Co.*, 558 F.3d 1184, 1190 (10th Cir. 2009). "In other words, the Court construes the policy language not as the insurer intended it to mean, but according to what the ordinary reader and purchaser would have understood it to mean." *High Street Lofts Condominium Association, Inc. v. American Family Mutual Insurance Co.*, 821 F.Supp.2d 1235, 1240 (D. Colo. 2011). Although

exclusions are to be construed narrowly, ***Spectrum Retirement Communities, LLC v. Continental Casualty Co.***, 574 P.3d 733, 738 (Colo. App. 2025), ***cert. granted in part***, 2026 WL 214334 (Colo. Jan. 20, 2026) (No. 25SC43), terms of an exclusion are given their plain and ordinary meanings under this same standard, ***Worsham Construction Co. v. Reliance Insurance Co.***, 687 P.2d 988, 990 (Colo. App. 1984).

Policy provisions which are clear and unambiguous must be enforced as written, ***Chacon***, 788 P.2d at 750; ***Kane v. Royal Insurance Co. of America***, 768 P.2d 678, 680 (Colo. 1989), and strained constructions should be avoided, ***Huizar***, 52 P.3d at 819; ***Allstate Insurance Co. v. Starke***, 797 P.2d 14, 18 (Colo. 1990). While terms which are truly ambiguous must be construed in favor of the insured, ***see Pompa v. American Family Mutual Insurance Co.***, 520 F.3d 1139, 1141 (10th Cir. 2008), a term is only ambiguous when it is reasonably susceptible to multiple interpretations in the context in which it is used, ***Terranova v. State Farm Mutual Automobile Insurance Co.***, 800 P.2d 58, 60 (Colo. 1990). A term is not ambiguous simply because the parties disagree as to its meaning, or because it might be ambiguous under some set of hypothetical or abstract facts inapplicable to the case before the court. ***See Wagner v. American Family Insurance***, 968 F.Supp.2d 1100, 1104 (D. Colo. 2013), ***aff'd***, 569 Fed. Appx. 574 (10th Cir. 2014); ***Allstate Insurance Co. v. Juniel***, 931 P.2d 511, 513 (Colo. App. 1996). Accordingly, as to both coverage and exclusions from coverage, “the instrument’s language must be examined and construed in harmony with the plain and generally accepted meaning of the words employed, and reference must be made to all the provisions of the agreement.” ***Radiology Professional Corp. v. Trinidad***

Area Health Association, 577 P.2d 748, 750 (Colo. 1978).

It is absolutely the case that courts considering the interpretation of insurance contract clauses such as the one at issue here have not reached consistent conclusions. The caselaw is, to put it bluntly, all over the map, and courts have reached divergent conclusions as to the plain and ordinary meaning of the terms and the ambiguity *vel non* of their use in context without acknowledging or addressing potentially conflicting authority. Nevertheless, given the plain and ordinary meaning of *all* the terms of *this* policy, and applying Colorado law, **see *Racher v. Westlake Nursing Home Limited Partnership***, 871 F.3d 1152, 1162 (10th Cir. 2017), I am compelled to conclude there is no coverage for the damage to BWB's property in this instance.

As Scottsdale points out (and BWB attempts to elide by the use of ellipses in quoting the language of the contract, **see Plf. Motion** at 7), there are three clauses at play in determining whether damage to or destruction of the property is a covered loss: (1) the provision of coverage for vandalism (the coverage clause); (2) the exclusion of coverage for loss or damage caused by theft (the theft exclusion); and (3) the exception for damage to the building caused by the ingress or egress of burglars (the ingress/egress exception). I examine these in turn.

The coverage clause defines vandalism as willful and malicious damage to or destruction of property. In interpreting vandalism clauses, some courts have concluded that malice may be inferred merely from a deliberate wrongful act that would be expected to cause property damage. **See *Louisville & Jefferson County***

Metropolitan Sewer District v. Travelers Insurance Co., 753 F.2d 533, 538 (6th Cir. 1985) (citing cases). Even by their own lights, these decisions seem to give short shrift to the plain language of the clause, which expressly requires that the act be both willful *and* malicious. Rules of contract interpretation require those terms mean different things so that neither of them is rendered superfluous. **Federal Deposit Insurance Corp. v. Fisher**, 292 P.3d 934, 937 (Colo. 2013) (“Each *word* in an instrument is to be given meaning if at all possible.”) (emphasis in original).

Regardless, in none of these cases were the courts asked to interpret a vandalism clause in the context of a concomitant theft exception. **See Louisville & Jefferson County Metropolitan Sewer District**, 753 F.2d at 535, 538 (dumping of toxic waste into municipal sewer system); **King v. North River Insurance Co.**, 297 S.E.2d 637, 637-38 (S.C. 1982) (collapse of roof due to failure of water to properly drain because downspouts blocked by bottles tossed onto roof); **Hatley v. Truck Insurance Exchange**, 494 P.2d 426, 427-28, 431-32, **adhered to on reh’g**, 495 P.2d 1196 (Or. 1972) (damage to floors caused by sprinklers being redirected to strike front of building).⁴ Yet terms of an insurance policy must be interpreted in the context in which they are used. **See Pompa**, 520 F.3d at 1143; **Kimball v. Nationwide Insurance Co. of America**, 2023 WL 2891007 at *5 (D. Colo. April 11, 2023).

⁴ The main issue the court addressed in **Louisville & Jefferson County**, for example, was whether “malice” required a showing of personal animosity on the part of the vandals. 535 F.2d at 538. **See also King**, 297 S.E.2d at 638 (“malice” within meaning of policy does not require showing of “ill will or vindictiveness of purpose;” “to hold otherwise would in many instances defeat the purpose of insuring against vandalism, as vandals rarely destroy property in the open view of witnesses”). In **Hatley**, the court’s primary concern was whether malice could be inferred where the identities of the bad actors were unknown. **Hatley**, 494 P.2d at 431-32.

By contrast, the court here is asked to consider the exclusion from coverage for a certain subset of damages that standing alone might be characterized as vandalism – those “caused by or resulting from theft[.]” In other words, under this policy, damage done for the purpose of effectuating a theft is not covered. To give meaning to the policy’s distinction between the two types of damages, it is plain to this court that the type of malicious act required to constitute “vandalism” – as distinguished from damage which facilitates theft – is a malicious act undertaken for the very purpose of destroying the property. **See *Certain Underwriters at Lloyds, London v. Law***, 570 F.3d 574, 578 (5th Cir. 2009) (“Damage done for no purpose other than to destroy property for destruction’s sake is ‘vandalism[.]’”); ***Summit Bank & Trust v. American Modern Home Insurance Co.***, 2014 WL 3512770 at *3 (D. Colo. July 15, 2014) (damage done merely “for the thieves to have their jollies” is vandalism); ***Vita Farms, LLC v. Scottsdale Insurance Co.***, 2014 WL 11350197 at *3 (S.D. Fla. Sept. 29, 2014) (“By limiting the definition of vandalism to willful *and malicious* damage to property, the language plainly and unambiguously limits the scope of vandalism coverage to the destruction of property done for destruction’s sake.”) (emphasis in original).⁵ By contrast, damage done for the purpose of facilitating a theft – such as by the destruction of walls, fuse boxes, and/or electrical components to access and remove copper wiring

⁵ Such an interpretation arguably coincides also with the ordinary understanding of the term vandalism, which no doubt is informed by its historical roots. The term “derives from the brief but memorable history of the Vandals, a tribe of Germanic people who were responsible for the sack of Rome in 455 C.E,” during which they engaged in “wanton” and “senseless” destruction of art and monuments. ***Kimball***, 2023 WL 2891007 at *6 n.15. **See also *Smith v. Shelby Insurance Co. of Shelby Insurance Group***, 936 S.W.2d 261, 265 (Tenn. Ct. App. 1996) (“This definition refers to the type of damage caused by vandals as that concept is ordinarily understood, i.e., damaging something simply for the sake of damaging it.”), ***appeal denied***, (Dec. 2. 1996).

– is excluded. **See Law**, 570 F.3d at 578 (“[I]ncidental damage done in furtherance of thievery falls within the narrower category of damage resulting from theft.”); **Bita Trading, Inc. v. Nationwide Mutual Insurance Co.**, 2015 WL 433557 at *5 (S.D. Cal. Feb. 3, 2015) (“[D]amage done in furtherance of a theft or attempted theft is damage that falls within the theft exclusion of the instant policy.”), **aff’d**, 675 Fed. Appx. 692 (9th Cir. 2017) (citation and internal quotation marks omitted).

The ingress/egress exception makes this reading even more compelling. By excepting from the theft exclusion a particular type of damage – that “caused by the breaking in or exiting of burglars” – the exception reinforces the conclusion that, other than this narrower category of excepted damages, damages to the property caused by theft are not covered. “If there was coverage for all willful malicious building damage done in the course of carrying out theft, then there would be no need to specify that a certain subset of such damage (entering and exiting) was covered despite the theft exclusion.” **SJP Properties, Inc. v. Mount Vernon Fire Insurance Co.**, 2015 WL 4524337 at *7 (E.D. Mo. July 27, 2015) (citation omitted). **See also Summit Bank & Trust**, 2014 WL 3512770 at *3-4 (“[I]f the [theft] exclusion included all coverage for collateral damage caused by burglars during the course of their theft, then there would be no need for this exception to the exclusion; it would be superfluous.”). This reading also accomplishes the mandate to “interpret a contract in its entirety with the end in view of seeking to harmonize and to give effect to all provisions so that none will be rendered meaningless.” **Greystone Construction, Inc. v. National Fire & Marine Insurance Co.**, 661 F.3d 1272, 1283-84 (10th Cir. 2011) (quoting **Copper Mountain, Inc. v.**

Industrial Systems, Inc., 208 P.3d 692, 697 (Colo. 2009)), **as amended on reh'g in part** (Dec. 23, 2011)) (internal quotation marks omitted). **See also Riverbend Capital, LLC v. Essex Insurance Co.**, 2010 WL 3942907 at *7 (E.D. La. Oct. 5, 2010) (“This interpretation gives effect to all three provisions at issue and thus fulfills the requirement that a policy should be construed as a whole and one portion thereof should not be construed separately at the expense of disregarding another.”) (citation, internal quotation marks, and brackets omitted). Accordingly, I find the plain language of the contract unambiguously provides no coverage for BWB’s loss. BWB’s counterarguments do not convince me otherwise. BWB first maintains that an ordinary person would understand “theft” to mean the taking of personal property, not fixtures such as copper wiring embedded in the walls of a building. BWB cites no decision in which this interpretation has been adopted,⁶ and this court will not be the first, for at least two reasons.

First, I cannot find that the hypothetical reasonable, ordinary person, who does not have a law degree (and likely even many who do), would understand “theft” in common parlance to meaning anything more specific than “stealing.” **See High St. Lofts Condominium Association, Inc.**, 821 F.Supp.2d at 1240. While there certainly are dictionary definitions that indicate “theft” pertains to the taking of personalty, many

⁶ The issue was raised in **Summit Bank & Trust**, but the court considered the argument abandoned. 2014 WL 3512770 at *3 n.2. The plaintiff in **SJP Properties** also advanced this argument, but the court essentially side-stepped it by noting the issue apparently had not been presented in prior cases and that courts simply “either state or assume that taking copper fixtures from a building is theft.” 2015 WL 4524337 at *8.

alternatively or also employ the common, broader understanding of the term as the act of taking anything that does not belong to you. (**See, e.g.**, Cambridge Dictionary, *Theft* (“([t]he act of) dishonestly taking something that belongs to someone else and keeping it.”) (available at: <https://dictionary.cambridge.org/dictionary/english/theft>) (last accessed: February 26, 2026); Dictionary.com, *Theft* (“[T]he act of stealing[.]”) (available at: <https://www.dictionary.com/browse/theft>) (last accessed: February 26, 2026).) That the term “theft” is also routinely used in common parlance in the contexts of, for example, “identity theft” or “theft of services,” buttresses my conclusion that the ordinary purchaser of insurance would interpret the term broadly as the taking of anything of value, regardless of its status as personal property *vel non*.⁷

Second, Colorado law supports this more expansive definition of theft. The Colorado theft statute provides that a person may be found guilty of theft for taking “*anything of value* of another without authorization.” §18-4-401(1)(a), C.R. S. (emphasis added). Furthermore, “[t]hing of value’ *includes real property*[.]” §18-1-901(3)(r), C.R.S. (emphasis added). **See also *People v. Parga***, 535 P.2d 1127, 1129 (Colo. 1975) (noting legislative history of statute supported conclusion that defendant was properly charged with theft of real property). For these reasons, I reject BWB’s argument that fixtures do not come within the ambit of the theft exception.

BWB’s invocation of the reasonable expectations doctrine adds nothing to this aspect of my analysis, and thus does not change my conclusion. The reasonable

⁷ Moreover, at least one court has concluded that the removal of copper from walls transforms them from fixtures into personal property. **See *Nautilus Insurance Co. v. Steinberg***, 316 S.W.3d 752, 756 (Tex. App. 2010) (“Once the copper pipes were separated from the building, they became property that could be stolen. That the pipes were originally part of a fixture does not prevent them from being subject to theft.”) (internal citations omitted).

expectations doctrine ensures insurers “fully and fairly convey[] coverage limitations to insureds.” **Bailey v. Lincoln General Insurance Co.**, 255 P.3d 1039, 1050 (Colo. 2011) (internal quotation marks omitted). Under the branch BWB invokes here,⁸ the reasonable expectations doctrine is simply another way of expressing the idea that the scope of coverage is determined from the perspective of the ordinary reasonable person. *Id.* See also **Curtis Park Group, LLC v. Allied World Specialty Insurance Co.**, 124 F.4th 826, 834 (10th Cir. 2024) (“[T]he Colorado Supreme Court requires that the text of insurance contracts be read and interpreted to ensure that the reasonable expectations of an ordinary individual purchasing the contract will be fulfilled.”) (citation and internal quotation marks omitted). On the other hand, the reasonable expectations doctrine does not create a permission structure to ignore ordinary rules of contract interpretation in order to “expand coverage ‘on a general equitable basis.’” **Allen v. United Services Automobile Association**, 907 F.3d 1230, 1234 (10th Cir. 2018) (quoting **Bailey**, 255 P.3d at 1054).

Nor can I credit BWB’s argument that the contract must be construed in favor of coverage because it allegedly fails unambiguously to exclude any cause of the damage other than that caused by the theft. Although BWB claims there is a “robust body of case law” in support of its position (**Plf. Motion** at 9), it relies almost exclusively on just

⁸ The reasonable expectations doctrine also is implicated “where, because of circumstances attributable to an insurer, an ordinary, objectively reasonable person would be deceived into believing that he or she is entitled to coverage, while the insurer would maintain otherwise.” **Bailey**, 255 P.3d at 1050. See also **Allen v. United Services Automobile Association**, 907 F.3d 1230, 1234 (10th Cir. 2018). BWB does not suggest Scottsdale is guilty of any such deception in this case, and the facts before me would not support such a conclusion in any event. *Cf. Davis v. M.L.G. Corp.*, 712 P.2d 985, 992 (Colo. 1986) (invalidating exclusionary insurance policy term written in tiny, “light grey type on white paper,” where the insurer “made a ‘concerted effort’ to discourage persons from reading” exclusionary language).

one.⁹

In **Novell v. American Guaranty and Liability Insurance Co.**, 15 P.3d 775 (Colo. App. 1999), **as modified on denial of reh’g** (Dec. 23, 1999), the court interpreted an all-risk commercial building insurance policy which excluded coverage for losses “caused by or resulting from” settling of the building. **Id.** at 777. The court of appeals found these “limited words of causation” were ambiguous, and therefore properly construed against the insurer, because they did not make clear “whether the efficient cause of the settling can be only water from a naturally occurring condition such as an underground water table, or instead, water from broken pipes.” **Id.** at 778. The court therefore distinguished that case from the Colorado Supreme Court’s decision in **Kane v. Royal Insurance Co.**, 768 P.2d 678 (Colo.1989), which found broader policy language excluding coverage “caused, by resulting from, contributed to, or aggravated by” flood to be unambiguous, **id.** at 684-86.

To the extent BWB intends to suggest that *any* exclusion of *any* type in *any* policy which fails to exclude all concurrent causes or does not use the more comprehensive language endorsed in **Kane** necessarily is ambiguous, I cannot agree. In interpreting the terms of a contract, context matters. “[A] term is only ambiguous when it is reasonably susceptible to multiple interpretations in the context in which it is used.” **Kimball**, 2023 WL 2891007 at *5 (citing **Terranova v. State Farm Mutual**

⁹ Contrary to BWB’s suggestion, I did not “adopt” **Novell** in my decision in **Arkansas Valley Drilling, Inc. v. Continental Western Insurance Co.**, 703 F.Supp.2d 1232 (D. Colo. 2010). Instead, I cited the case as part of my review of Colorado caselaw construing flood exclusions and found, in that particular context, the language of the policy at issue unambiguously excluded coverage. **See id.** at 1239-41.

Automobile Insurance Co., 800 P.2d 58, 60 (Colo. 1990)). **See also Juniel**, 931 P.2d at 513 (“[W]hether a policy term is ambiguous is not determined in a vacuum, but by use of an objective standard within the context of circumstances at issue.”). In the context of the settling exclusion in **Novell**, more precise language of causation was necessary to eschew ambiguity because there may be multiple, concurrent causes contributing to the damage.¹⁰ By contrast, BWB fails to identify any other secondary, concurrent, or efficient cause that might have contributed to the damage for which it seeks coverage in this case.¹¹

BWB’s argument that the policy must be read to exclude coverage for the loss of the copper but provide coverage for the damage caused to extract it is not reasonable because it is not consistent with the plain terms of the policy. The policy specifically excludes coverage for “loss *or damage* caused by or resulting from theft.” That language plainly evidences an intent not to “split the baby,” as it were, by denying coverage for the value of the items stolen but preserving it for damage to the property caused in the course of the theft. Under this policy, if “[b]ut for the thieves’ desire to steal the copper tubing, the damage would not have occurred,” neither the loss of the copper nor the damage caused to access it are covered. **Law**, 570 F.3d at 579.

¹⁰ Indeed, this is context in which the more comprehensive language BWB advocates is used in its own policy. (**See Plf. Motion App.**, Exh. 1 at 120 (excluded coverage for a variety of types of, *inter alia*, environmental losses, including flooding, “regardless of any other causes or event that contributes concurrently or in any sequence of loss”).)

¹¹ BWB’s citation to the New Jersey district court’s decision in **South Millville Properties LLC v. Westchester Surplus Lines Insurance Co.**, 698 F.Supp.3d 766 (D.N.J. 2023), in support of this interpretation is wholly inapt. New Jersey follows the “**Appleman Rule**,” pursuant to which policy language that does not include anti-concurrent/sequential cause language preemptively is considered ambiguous. **See id.** at 773-74. BWB points to no similar global default rule under Colorado law.

Not that this interpretation means, as BWB maintains, that evidence of *any* theft in connection with damage that might otherwise constitute vandalism negates coverage under the policy. Courts have been clear to point out that theft and vandalism “are not per se mutually exclusive events.” **Law**, 570 F.3d at 579 (footnote omitted). **See also Mercedes Zee Corp., LLC v. Seneca Insurance Co.**, 151 F.Supp.3d 255, 260 (D. Conn. 2015) (“What might start as an escapade by hooligans to vandalize a building may morph into a thieving spree as valuable items happen to be found; what might start as a burglary may morph into vandalism and vengeful destruction of property if no valuable items for the taking are found.”); **Vita Farms**, 2014 WL 11350197 at *3 (“This is not to say that vandalism cannot occur in the course of a theft or attempted theft.”). The distinction instead turns on the purpose for which the damage was done. **See Law**, 570 F.3d at 578; **Mercedes Zee Corp.**, 151 F.Supp.3d at 259-60. To make that determination requires an “item-by-item consideration of the property that has been lost or damaged to determine if specific loss or damage is the result of an act of vandalism (covered) or an act of theft (not covered).” **Mercedes Zee Corp.**, 151 F.Supp.3d at 260.

Here, however, BWB presents neither argument nor evidence suggesting the damages for which it seeks coverage can be parsed in this manner. Indeed, on the evidence before me, it cannot. The evidence shows the thieves were part of a “sophisticated criminal crew.” (**Plf. Motion App.**, Exh. 3 at 2; **Def. Motion App.**, Exh. A at 12 (describing thieves as “a pretty sophisticated gang;” “they knew exactly what they were doing.”).) They carried a duffle bag full of tools designed to extract copper

wherever it might be found. (**Def. Motion App.**, Exh. A at 14.) They deactivated all the alarms and security cameras. (*Id.*, Exh. A at 10.) Every item destroyed in the course of the theft appears to have been accessed for its ability to yield up copper. (**See Pif. Motion App.**, Exh. 3 (noting multiple “roof top air conditioning unit[s] were torn apart to remove the copper”); **Def. Motion App.**, Exh. A at 7-9 (thieves “stole every lick of copper,” tore through ceilings and walls to get copper; “anything that you can imagine that had copper in it is – it just is gone”), & at 12 (thieves “knew exactly where to go to find . . . the most amount of copper”).) Given these facts, it is clear the perpetrators had no time – and more importantly, no intention – to commit the type of wanton or reckless destruction that is the hallmark of vandalism; they had a clear purpose, which they effected with brutal precision.¹²

Moreover, interpreting the theft exclusion in the manner BWB advocates would render the ingress/egress exception meaningless. By carving out one specific category of damage as within the coverage of the policy despite the exclusion, the exclusion must be read to preclude coverage for any other type of damage or loss caused by the theft.¹³ **SJP Properties**, 2015 WL 4524337 at (“If there was coverage for all willful

¹² Nor does the fact that the damage was extensive, in and of itself, necessarily indicate some portion thereof might be considered vandalism. **See Law**, 570 F.3d at 579 (rejecting “contention that any damage which is excessive and unnecessary to accomplish a theft, even if in furtherance of it, is vandalism;” “Even though the damage done might have exceeded the minimum required to gain access to the copper tubing, it was done entirely to gain such access. As such, the damage was done solely to further the theft and was not vandalism as that term is used in the policy.”).

¹³ Scottsdale acknowledged its obligation to pay for damages resulting from the breaking in or exiting of the building by the thieves (**Pif. Motion App.**, Exh. 1 at 2, Exh. 5 at 2), but there is no evidence before me which describes or quantifies any such damage.

malicious building damage done in the course of carrying out theft, then there would be no need to specify that a certain subset of such damage (entering and exiting) was covered despite the theft exclusion.”) (citation and internal quotation marks omitted).

Accordingly, BWB’s breach of contract claim is not viable, and Scottsdale is entitled to summary judgment on that claim. Further, because all BWB’s alleged damages in this case flow from the alleged denial of coverage, its statutory and common law bad faith claims do not survive either. “It is settled law in Colorado that a bad faith claim must fail if, as is the case here, coverage was properly denied and the plaintiff’s only claimed damages flowed from the denial of coverage.” **MarkWest Hydrocarbon**, 558 F.3d at 1193. **See also Crest Exteriors, LLC v. American Family Mutual Insurance Co.**, 2020 WL 8181824 at *3 (D. Colo. Nov. 25, 2020) (“The failure of [insured’s] breach of contract claim necessarily dooms its statutory bad faith claim. Under §10-3-1115(1)(a), C.R.S., an insurer may be liable if it ‘unreasonably delay[s] or den[ies] payment of a claim for benefits owed to or on behalf of any first-party claimant.’”) (emphasis and brackets in original.)

Although BWB claims it also is alleging bad faith in the investigation and handling of its claims, the allegations of the complaint do not support this characterization. Several expressly involve questions of coverage *vel non*. (**See Plf. Motion** at 18 (citing **Complaint ¶¶** 25(c) (faulting Scottsdale for “failing to provide coverage”) & (d) (“delaying and denying payment of Policy benefits owed”).).¹⁴ While paragraph 25(b) of

¹⁴ The reference to §§10-1-101 and 10-3-1104(1), C.R.S., in paragraph 25(h) of the complaint are global and non-specific; §10-1-101, C.R.S., is simply the declaration of legislative purpose, while §10-3-1104(1) describes no fewer than nine types of misrepresentations (§10-3-1104(1)(a)), three varieties of false advertising (§10-3-1104(1)(b)), and at least 26 species of discrimination (§10-3-1104(1)(f)), along

the complaint accuses Scottsdale of improperly and inadequately investigating the claim, BWB fails to apprise the court how it believes Scottsdale's claims handling or investigation procedures were unreasonable or otherwise indicate bad faith on its part. "The court is neither required nor inclined to make arguments on behalf of a party which he himself has not raised." *Meyer v. Massachusetts Mutual Life Insurance Co.*, 2024 WL 2106452 at *5 (D. Colo. April 26, 2024).

IV. ORDERS

Accordingly, there is no coverage for the losses and damages BWB claimed in connection with the destruction of its property. BWB's motion for partial summary judgment will be denied, and Scottsdale's summary judgment motion will be granted.

THEREFORE, IT IS ORDERED as follows:

1. That the **Motion for Partial Summary Judgment** [#28], filed July 17, 2025, by plaintiff, BWB Investment Company, LLC, is denied;
2. That **Defendant Scottsdale Insurance Company's Cross Motion for Summary Judgment** [#34], filed December 23, 2025, is granted;
3. That plaintiff's claims against defendant are dismissed with prejudice;
4. That judgment shall enter on behalf of defendant, Scottsdale Insurance Company, and against plaintiff, BWB Investment Company, LLC, as to all claims for

with various and sundry other types of conduct which may be considered unfair trade practices. BWB has not specified which of these diverse expressions of malfeasance is implicated on the facts before me, and I refuse to consider such bare-bones assertions as if they were actual legal arguments. *Ford v. State Farm Fire & Casualty Co.*, 2024 WL 1829265 at *1 (D. Colo. Jan. 4, 2024) ("[C]ursory, unsupported, or otherwise inadequately briefed arguments need not be considered.") (citation and internal quotation marks omitted).

relief and causes of action asserted herein;

5. That all pending deadlines are vacated;

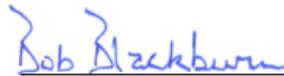
6. That the combined Final Pretrial Conference and Trial Preparation Conference scheduled September 9, 2026, at 1:30 p.m., and the trial scheduled to commence September 28, 2026, are vacated;

7. That defendant is awarded its costs, to be taxed by the clerk pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1; and

8. That this case is closed.

Dated March 10, 2026, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge