

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PATRICIA AND CHRISTOPHER
CAMPANILE

Plaintiffs,

v.

THE HANOVER INSURANCE
COMPANY,

Defendant.

CIVIL ACTION NO. 2:25-cv-03028-HB

ORDER

AND NOW, this _____ day of _____, 2026, upon consideration of the Motion for Summary Judgment filed by Defendant, The Hanover Insurance Company, and the Response in Opposition thereto filed by Plaintiffs, Patricia and Christopher Campanile, it is hereby **ORDERED** and **DECREED** that the Motion is **DENIED**.

BY THE COURT:

Hon. Harvey Bartle, U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PATRICIA AND CHRISTOPHER
CAMPANILE

Plaintiffs,

v.

THE HANOVER INSURANCE
COMPANY,

Defendant.

CIVIL ACTION NO. 2:25-cv-03028-HB

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT’S CONCISE
STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFF’S
RESPONSE IN OPPOSITION TO SUMMARY JUDGMENT**

Plaintiffs, Patricia and Christopher Campanile (“Plaintiffs” or “the Campaniles”), by and through their counsel, Wheeler, DiUlio & Barnabei, P.C., hereby files the following Response in Opposition to Defendant, The Hanover Insurance Company’s (“Defendant” or “Hanover”), Concise Statement of Material Facts in Support of Plaintiffs’ Response in Opposition to Summary Judgment, and in support thereof, avers as follows:

1. Admitted
2. Admitted
3. Admitted.
4. Denied as stated. These assertions, which reference Plaintiffs’ deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or

characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

5. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.
6. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.
7. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

8. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.
9. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.
10. Denied. Defendant's July 24, 2024 denial letter is a document, in writing, the content of which speaks for itself and any conclusions drawn from it are strictly denied. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.
11. Denied. Defendant's July 24, 2024 denial letter is a document, in writing, the content of which speaks for itself and any conclusions drawn from it are strictly denied. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

12. Admitted in part, denied in part. While it is admitted that Defendant issued a letter denying the Campaniles claim and that it includes the cited portion of the Policy, it is denied that the cited exclusion applies in the instant case. First, it is well-established that Defendant, not the Campaniles, bears the burden on this Motion. As the insurer invoking exclusionary and coverage-limiting provisions, Defendant, Hanover Insurance Company, must prove that the cited exclusions *unambiguously* apply to the Campaniles' loss. See *Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999); *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888, 897 (Pa. 2006) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage.”). Any failure of proof is fatal. *Ibid.* By way of further response, see Plaintiffs' Memorandum of Law, which is attached hereto and incorporated by reference as if set forth fully herein.

13. Admitted in part, denied in part. While it is admitted that Defendant issued a letter denying the Campaniles claim and that it includes the cited portion of the Policy, it is denied that the cited exclusion applies in the instant case. First, it is well-established that Defendant, not the Campaniles, bears the burden on this Motion. As the insurer invoking exclusionary and coverage-limiting provisions, Defendant, Hanover Insurance Company, must prove that the cited exclusions *unambiguously* apply to the Campaniles' loss. See *Madison Constr. Co. v. Harleysville Mut.*

Ins. Co., 735 A.2d 100, 106 (Pa. 1999); *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888, 897 (Pa. 2006) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage.”). Any failure of proof is fatal. *Ibid.* By way of further response, see Plaintiffs’ Memorandum of Law, which is attached hereto and incorporated by reference as if set forth fully herein.

14. Denied as stated. These assertions, which reference Plaintiffs’ deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs’ Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

15. Denied as stated. These assertions, which reference Plaintiffs’ deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs’ Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

16. Denied as stated. These assertions, which reference Plaintiffs’ deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs’ Brief in

Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

17. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

18. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

19. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

20. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks

for itself and therefore requires no additional interpretation and/or characterization. Additionally, the October 9, 2024 letter is a document, in writing, the content of which speaks for itself and any conclusions drawn from it are strictly denied. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

21. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

22. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

23. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in

Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

24. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

25. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

26. Denied as stated. These assertions, which reference Plaintiffs' deposition testimony, are specifically denied to the extent that the testimony speaks for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

27. Admitted in part, denied in part. While it is admitted this is the language of the Policy, it is denied in that the Policy is a document, in writing, the

content of which speaks for itself and any conclusions drawn from it are strictly denied. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

28. Admitted in part, denied in part. While it is admitted this is the language of the Policy, it is denied that any of the exclusions apply in the instant case. First, it is well-established that Defendant, not the Campaniles, bears the burden on this Motion. As the insurer invoking exclusionary and coverage-limiting provisions, Defendant, Hanover Insurance Company, must prove that the cited exclusions *unambiguously* apply to the Campaniles' loss. See *Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999); *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888, 897 (Pa. 2006) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage.”). Any failure of proof is fatal. *Ibid.* By way of further response, see Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

29. Admitted in part, denied in part. While it is admitted this is the language of the Policy, it is denied that any of the exclusions apply in the instant case. First, it is well-established that Defendant, not the Campaniles, bears the burden on this Motion. As the insurer invoking exclusionary and coverage-limiting provisions, Defendant, Hanover Insurance Company,

must prove that the cited exclusions *unambiguously* apply to the Campaniles' loss. See *Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999); *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888, 897 (Pa. 2006) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage.”). Any failure of proof is fatal. *Ibid.* By way of further response, see Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

30. Admitted in part, denied in part. While it is admitted this is the language of the Policy, it is denied that any of the exclusions apply in the instant case. First, it is well-established that Defendant, not the Campaniles, bears the burden on this Motion. As the insurer invoking exclusionary and coverage-limiting provisions, Defendant, Hanover Insurance Company, must prove that the cited exclusions *unambiguously* apply to the Campaniles' loss. See *Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999); *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888, 897 (Pa. 2006) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage.”). Any failure of proof is fatal. *Ibid.* By way of further response, see Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

31. Admitted.

32. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

33. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

34. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. Mr. Zisa's colloquial use of the word "contaminant" to describe dust-covered surfaces is descriptive language used by the Campaniles' public adjuster to quantify and describe physical damage to the home; it is not a legal opinion on whether the dust in the Campaniles' home fit within the Policy language. Certainly, the colloquial use of the phrase "contaminant" is not the same sort of evidence that the *Madison* court identified as relevant in considering whether a given substance is a

pollutant. *Compare* Def. Ex. 6; *with Madison*, 735 A.2d at 107 (insurer supported pollution exclusion defense with evidence of substance's chemical composition and documented health effects); *Lititz Mut. Ins. Co. v. Steely*, 785 A.2d 975, 980 (Pa. Super. 2001) (insurer supported pollution exclusion with doctors' affidavits and federal regulations regarding the substance); *Matcon*, 815 A.2d at 1113 (insurer supported pollution exclusion by referencing federal legislation designating carbon monoxide as a pollutant). By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

35. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, Plaintiffs incorporate paragraph 34 above as if fully stated herein. See also Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

36. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, Plaintiffs incorporate paragraph 34 above as if fully stated herein. See also Plaintiffs' Brief in

Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

37. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, Plaintiffs incorporate paragraph 34 above as if fully stated herein. See also Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

38. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, Plaintiffs incorporate paragraph 34 above as if fully stated herein. See also Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

39. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, Plaintiffs incorporate paragraph 34 above as if fully stated herein. See also Plaintiffs' Brief in

Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

40. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, Plaintiffs incorporate paragraph 34 above as if fully stated herein. See also Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

41. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, Plaintiffs incorporate paragraph 34 above as if fully stated herein. See also Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

42. Denied. The allegations are specifically denied to the extent that Mr. Zisa's report is a document, in writing, and the contents of which speak for itself and therefore requires no additional interpretation and/or characterization. By way of further response, Plaintiffs incorporate paragraph 34 above as if fully stated herein. See also Plaintiffs' Brief in

Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

43. Denied as a conclusion of law to which no further response is required. By way of further response, Plaintiffs vehemently deny the implication that Plaintiffs' loss is not covered under the Policy. By way of further response, see Plaintiffs' Brief in Support of their Opposition, which is attached hereto and incorporated by reference as if set forth fully herein.

Respectfully Submitted,

WHEELER, DIULIO & BARNABEI, P.C.

BY: /s/ Kathleen Petrone

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Attorney for Plaintiffs

DATE: April 29, 2026

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PATRICIA AND CHRISTOPHER
CAMPANILE

Plaintiffs,

v.

THE HANOVER INSURANCE
COMPANY,

Defendant.

CIVIL ACTION NO. 2:25-cv-03028-HB

**PLAINTIFF’S BRIEF IN SUPPORT OF ITS RESPONSE IN OPPOSITION
TO SUMMARY JUDGMENT**

Plaintiffs, Patricia and Christopher Campanile (“Plaintiffs” or “the Campaniles”), by and through their counsel, Wheeler, DiUlio & Barnabei, P.C., hereby files the following Brief in Support of Plaintiffs’ Response in Opposition to Defendant, the Hanover Insurance Company’s (“Defendant” or “Hanover”) Motion for Summary Judgment.

I. INTRODUCTION

This case presents a straightforward question of insurance coverage: when a homeowner’s property is damaged by fine dust dispersed throughout the home as a result of a contractor’s faulty foundation work, must the homeowner’s all-risk insurer pay for the loss? Under the plain language of the Policy, under the well-settled principles of Pennsylvania insurance law, and on the undisputed record before this Honorable Court, the answer is yes.

Defendant, The Hanover Insurance Company, seeks summary judgment based on an overbroad and unsupported application of policy exclusions that it itself drafted, but cannot carry its burden to prove. This case arises from a straightforward property loss: following defective foundation work performed by a contractor, fine dust and debris were dispersed throughout the Campaniles' home, causing widespread physical damage. Rather than investigate the nature, cause, or extent of that damage, Hanover denied the claim without testing the dust, without conducting a meaningful inspection, and without developing any competent evidence to support its coverage position.

Now, at summary judgment, Defendant attempts to retroactively justify that denial by invoking two policy exclusions, the "faulty workmanship" exclusion and the "pollutant" exclusion, neither of which unambiguously apply here. In doing so, Defendant asks this Court to adopt strained interpretations of its policy language, ignore well-settled principles of Pennsylvania insurance law, and relieve it of its burden of proof. **The law and this Honorable Court should not permit such a result.**

Under Pennsylvania law, an insurer invoking exclusions and coverage-limiting provisions must prove that they apply clearly and unambiguously. Any ambiguity must be construed in favor of coverage, and exclusions must be interpreted narrowly against the insurer. These principles are particularly forceful in the context of a homeowner's policy, where the reasonable expectations of non-commercial insureds govern. Hanover's Motion disregards each of these doctrines.

The record, when viewed in the light most favorable to the Campaniles, demonstrates at minimum, the existence of genuine disputes of material facts. The dust that permeated the Campaniles' home constitutes a distinct, ensuing physical loss, separate from any defective work. And Hanover's attempt to classify that dust as a "pollutant," despite failing to test it, despite omitting "dust" from its Policy definition, and despite covering dust elsewhere in the Policy, falls far short of its burden.

Because Defendant cannot establish that its exclusions apply as a matter of law, and because the governing principles of insurance interpretation under Pennsylvania law compel a finding of coverage, Defendant's Motion for Summary Judgment must be denied.

II. FACTUAL BACKGROUND

This case arises from an insurance dispute between the parties. The Campaniles own a home at 941 Prichard Avenue, West Chester, Pennsylvania 19382 ("the Property"). (See ECF No. 12, ¶ 1). Defendant, the Hanover Insurance Company ("Defendant" or "Hanover"), insured the Property under a policy of insurance ("Policy"), effective from December 30, 2023 to December 20, 2024. (ECF No. 25, ¶ 5). On or about July 4, 2024, while the Policy was in full force and effect, the Campaniles suffered an accidental loss to the Property; namely, fine dust and debris that were disbursed throughout the Property. (Def. Ex. 2, at p. 7:21-8:5). The Campaniles submitted a claim for the damage in their Property to their homeowner's insurance company, Hanover Insurance Company, on or about July 17, 2024. (Def. Ex. 3). After

failing to conduct any investigation into the claim, Hanover denied the claim one week later. (*See* ECF No. 12-1).

Prior to the July 4 loss, the Campaniles discovered a large void under the foundation of their home, which needed to be filled in to secure the structural integrity of the Property. (Def. Ex. 2, at p. 8-9). The Campaniles retained Newtown Construction to perform work on the foundation and to fill in the void. (*Id.*). It is not disputed that Newtown Construction performed the work poorly, and Newtown Construction readily admits that it did not perform the foundation work properly. (Def. Ex. 2, at p. 20:1-9). Hanover Insurance Company's position is that the dust covering the Campaniles' home was caused by Newtown Construction's work. (*Id.*, at 7:21-8:5); (ECF No. 12-1).

The Campaniles submitted claims to Hanover and Selective Insurance, Newtown Construction's insurer. (Def. Ex. 2, at p. 18:12-14; p. 20:18-22). Selective opted to investigate the damage by testing the dust, although it did not share the results of that test with either the Campaniles or Defendant, Hanover. (*Id.*, p. 20-21). The Campaniles were informed that, because Selective has a specific silica exclusion in their policy, Selective would not cover Newtown Construction's work. (*Ibid.*). Hanover, who does not have a specific silica exclusion in its Policy, chose not to test the dust before denying the Campanile's claim. Def. Br. at 17. Instead, without conducting any form of investigation, Hanover determined that the Campanile's claim was excluded. (ECF 12-1).

In its Denial Letter, Hanover Insurance Company cited two bases for denying the Campaniles' claim. (*Id.*) First, Hanover cited the "faulty workmanship" exclusion. (*Id.*) That exclusion provides: "We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered...3. **Faulty**, inadequate or defective:...b. Design, specifications, **workmanship**, repair, construction, renovation, remodeling, grading, compaction[.]" (Def. Ex. 1, p. 13 of form HO 37 03 08 11) (emphasis added). Even though this exclusion contains an "ensuing loss" exception, (*see id.*), Hanover claims that the dust present in the Campaniles home was not an "ensuing loss" because it was apparently "foreseeable" to the Campaniles that their contractor would perform poor work (and because, on Hanover's tortured interpretation of "ensuing loss," foreseeable losses cannot be described as "ensuing."). (ECF 12-1 ("As you can see the policy language specifically excludes...the silica dust that escapes during the repair process.")).

Second, Hanover cited the "pollutant" exclusion. That exclusion provides: "2. We do not insure, however, for loss:...c. Caused by:... (6) Any of the following:... (e) Discharge, dispersal, seepage, migration, release or escape of **pollutants** unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril Insured Against named under Coverage C. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste." (Def. Ex. 1, p. 9-10 of form HO 37 03 08 11)

(emphasis added). Even though dust is not included within the Policy’s definition of “pollutant,” and even though Hanover did not *test* the dust to determine whether it *was* a “pollutant,” Hanover argues that the dust in the Campaniles’ home was unambiguously a “pollutant” within the Policy definition because of its potential (but untested) adverse health effects. (*Id.*)

Even though Newtown Construction’s insurer denied the claim (based on its specific silica exclusion, and on its testing of the dust for silica), Newtown Construction offered to pay for the cleaning of a number of items in the Campaniles’ home. (Def. Ex. 2, p. 21-22). Although Newtown Construction sent Pro Action Restoration to “clean the entirety of the home,” dust remains present in the Property. (*Id.*, p. 33:1-12). As such, the Campaniles retained public adjuster William Zisa to review the claim and provide an opinion as to the steps necessary to effectively remove the dust and return the Campanile’s home to its pre-loss condition. (*See* Def. Ex. 6).

The Campaniles initiated this action by filing a Civil Action Complaint against Defendant, in the Court of Common Pleas for Philadelphia County, asserting claims for breach of contract and bad faith. (ECF No. 1-1). Defendant removed the case to this Court soon thereafter. (ECF No. 1). This Court then dismissed Plaintiffs’ claim for bad faith, leaving Plaintiffs’ breach of contract claim remaining. Defendant now moves for summary judgment on that claim.

III. LEGAL STANDARD ON A MOTION FOR SUMMARY JUDGMENT

Under Rule 56, the entry of summary judgment is appropriate only if “the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” *See* Fed. R. Civ. P. 56(a). A factual dispute is “genuine” if a reasonable trier of fact could find in favor of the non-movant based on the evidence in the record. *Lichtenstein v. Univ. of Pittsburgh Med. Ctr.*, 691 F.3d 294, 300 (3d Cir. 2012) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute is “material” when it could affect the outcome of the case under governing law. *Id.*; *see Anderson*, 477 U.S. at 248. In asking whether there exists a genuine issue of material fact in the record, the Court “must draw all reasonable inferences in favor of the non-moving party[.]” *Lichtenstein*, 691 F.3d at 300 (citing *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

In considering a motion for summary judgment, the Court’s function “is not...to weigh the evidence and determine the truth of the matter[.]” *Anderson*, 477 U.S. at 249. “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge[.]” *Id.* at 255. The non-moving party’s evidence “is to be believed, and all justifiable inferences are to be drawn in his favor.” *Id.* The Court’s role is to “determine whether there is a genuine issue for trial.” *Id.* at 249.

IV. LEGAL ARGUMENT

A. The Well-Established Principles of Insurance Policy Interpretation in this Commonwealth Foreclose Defendant’s Entitlement to Summary Judgment.

Defendant’s Motion is premised on the theory that two exclusions—each drafted by Hanover, using language that Hanover chose—unambiguously defeat the

Campaniles' claim for coverage. That theory is faulty. The principles governing insurance policy interpretation under Pennsylvania law, applied to the facts of this case, compel a finding of coverage, and foreclose Defendant's entitlement to summary judgment.

First, it is well-established that Hanover Insurance Company, not the Campaniles, bears the burden on this Motion. As the insurer invoking exclusionary and coverage-limiting provisions, Defendant, Hanover Insurance Company, must prove that the cited exclusions *unambiguously* apply to the Campaniles' loss. *See Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999); *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888, 897 (Pa. 2006) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage.”). Any failure of proof is fatal. *Ibid.* Here, Hanover, who denied the Campaniles' claim based on the presence of a specific form of dust, did not test the dust before denying the claim. To this day, Hanover has produced no chemical analysis, toxicity report, or other qualified opinion classifying the dust in the Campaniles' home as a “pollutant.” That evidentiary void is, itself, a sufficient basis to deny Defendant's Motion, in light of its burden. *See Madison*, 735 A.2d at 106.

Equally well-established is the principle that insurance policy exclusions must be construed *narrowly*, and *against the drafter* of the policy. *See Mut. Benefit Ins. Co. v. Politsopoulos*, 115 A.3d 844, 852, n.6 (Pa. 2015) (“[P]olicy exclusions are to be construed narrowly in favor of coverage.”); *Spence v. Erie. Ins. Grp.*, 850 A.2d 679,

692 (Pa. Super. 2004) (“[T]he policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement.”). In interpreting policies written by insurance companies, courts “do not assume that its language was chosen carelessly.” *401 Fourth St., Inc. v. Investors Ins. Grp.*, 879 A.2d 166, 171 (Pa. 2005). Here, Hanover Insurance Company wrote the Policy. It chose to place the “faulty workmanship” exclusion in Part B of its “Exclusion” provision, where ensuing losses are *covered*, rather than in Part A, where ensuing losses are not. It equally chose the substances listed in its definition of “pollutant”—and, pointedly, chose not to include “dust” in that list. Pennsylvania law does not allow this Court to rewrite the Policy on Hanover’s behalf. *See 401 Fourth St.*, 879 A.2d at 171.

A third significant principle of policy interpretation is that ambiguous policy language is construed in favor of the insured. *See id.* “When a policy provision is ambiguous...the policy is to be construed in favor of the insured *to further the contract’s prime purpose of indemnification* and against the insurer, as the insurer drafts the policy, and controls coverage.” *Id.* (citing *Gene & Harvey Builders, Inc. v. Pennsylvania Mfrs. Assn. Ins. Co.*, 517 A.2d 910, 913 (Pa. 1986)) (emphasis added). Policy language is ambiguous “if it is reasonably susceptible of different constructions and capable of being understood in more than one sense.” *Madison*, 735 A.2d at 106. And, under Pennsylvania law, an insurer’s failure to use clearer or “more distinct language” in an exclusion “reinforces a conclusion of ambiguity.” *See McMillan v. State Mut. Life Assurance Co.*, 922 F.2d 1073, 1077 (3d Cir. 1990) (applying Pennsylvania law). Both of the exclusions on which Hanover relies in this case are,

at a minimum, “reasonably susceptible of different constructions:” a “pollutant” exclusion aimed at environmental pollution does not *unambiguously* sweep in dust; and the *very authority on which Hanover relies* for its “ensuing loss” argument explicitly conceded that the ensuing loss provision contained “a facial ambiguity.” *See Ridgewood Group, LLC v. Millers Capital Ins. Co.*, 2017 Pa. Super. Unpub. LEXIS 764, at *9 (Pa. Super. Feb. 28, 2017) (non-precedential). Whatever ambiguity the Court finds in either provision must, as a matter of Pennsylvania law, be resolved in the Campaniles’ favor.

Fourth, even if the exclusions in the Policy were unambiguous (which they are not), Pennsylvania law applies the doctrine of reasonable expectations to non-commercial insureds, like the Campaniles. *See Betz v. Erie Ins. Exch.*, 957 A.2d 1244, 1253 (Pa. Super. 2008); *Reliance Ins. Co. v. Moessner*, 121 F.3d 895, 903 (3d Cir. 1997). “The proper focus regarding issues of coverage under insurance contracts is the reasonable expectation of the insured.” *Betz*, 957 A.2d at 1253 (quoting *Bubis v. Prudential Prop. & Cas. Ins. Co.*, 718 A.2d 1270, 1272 (Pa. Super. 1998)). Pennsylvania courts have “affirmed that ‘regardless of the ambiguity, or lack thereof, inherent in a given set of insurance documents’ insurance transactions with *non-commercial* insureds are subject to a review of the totality of the underlying circumstances.” *Id.* (quoting *Pressley v. Travelers Prop. Cas. Corp.*, 817 A.2d 1131, 1139 (Pa. Super. 2003)) (emphasis added); *see also Moessner*, 121 F.3d at 903 (“[E]ven the most clearly written exclusion will not bind the insured where the insurer...has created in the insured a reasonable expectation of coverage.”). The Campaniles are

homeowners, not sophisticated commercial enterprises capable of bargaining around the meaning of terms like “pollutant” and “ensuing loss.” No reasonable homeowner reading the Campaniles’ Policy would expect that a fine dust arising from careless contracting work would be barred as a “pollutant,” alongside “acids, alkalis, and waste.” Nor would a reasonable homeowners expect that the Campaniles’ Policy’s express promise to cover “ensuing loss” would entirely dissipate whenever the underlying loss was foreseeable.

These doctrines, together, point to the plain conclusion that Defendant, Hanover Insurance Company, is not entitled to summary judgment in this case. Applying these well-settled doctrines to the exclusions invoked by Defendant demonstrates that its Motion must be denied.

B. The Campaniles’ Loss is Covered Under the Ensuing Loss Exception to the Faulty Workmanship Exclusion.

The “ensuing loss” exception to the faulty workmanship exclusion in the Policy provides coverage for the dust which spread throughout the Campaniles’ home. The Policy provides: “We do not insure for loss to property described in Coverages A and B caused by any of the following. *However, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered...3. Faulty, inadequate or defective:...b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction[.]*” (Def. Ex. 1, p. 13 of form HO 37 03 08 11) (emphasis added). Despite Hanover’s attempt to re-define the plain meaning of the word “ensuing,” the dust which spread throughout the Campaniles’ home *is* an “ensuing loss to property described in Coverage[] A.” (*Id.*). The dust is,

accordingly, not *excluded* by the faulty workmanship exclusion; instead, it constitutes a distinct physical loss that is covered as a loss “ensuing” from the workmanship. Because the dust constitutes an “ensuing loss,” the real issue is whether dust is “precluded by any other provision in th[e] policy.” (*See id.*). Defendant, Hanover Insurance Company, argues that coverage for the dust present in the Campaniles’ home is precluded because the dust is *unambiguously* a “pollutant” within the meaning of the “pollutant exclusion” in the Policy. The Policy defines “pollutant” as “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.” (*Id.*, p. 10 of form HO 37 03 08 11). Dust is plainly *not* included in this definition. (*See id.*). Dust is, however, included in (and *covered by*) other provisions of the Policy, demonstrating that dust cannot *always* be an excluded “pollutant.” First, under “Section I – Property Coverages: E. Additional Coverages: 1. Debris Removal,” Hanover will cover “your reasonable expense for the removal of: ... (2) Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.” (emphasis added); *id.*, p. 5 of form HO 37 03 08 11. And second, under “Section II – Perils Insured Against: B. Coverage C – Personal Property: 2. Windstorm or Hail where Hanover will cover losses “caused by...dust” when “the direct force of wind or hail damages the building caus[es] an opening in a roof or wall and the rain, snow, sleet, sand or *dust* enters through that opening.”) (emphasis added); *id.*, p. 5 of form HO 37 03 08 11. No evidence that Defendant has presented in this case illustrates why, in this case (but not other cases), dust is *unambiguously* a “pollutant” even

though it is not included in the Policy definition. Thus, Defendant has not met its burden of demonstrating that the loss ensuing from the faulty construction work is separately precluded by the Policy, and Defendant's Motion should, accordingly, be denied.

i. The Plain Language of the Ensuing Loss Exception Demonstrates that the Campaniles' Loss is Covered.

The Policy's faulty workmanship exclusion does not bar the Campaniles' claim. Although the Policy excludes losses caused by faulty workmanship, it expressly provides coverage for "any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered." (Def. Ex. 1, p. 13-14 of form HO 37 03 08 11). The damage caused by the dust which spread throughout the Campaniles' home is "ensuing loss" within the plain meaning of that phrase, and Hanover's effort to rewrite the provision using inapposite caselaw should be rejected.

The Policy does not define the phrase "ensuing loss." *Id.* Thus, this Court should construe the term according to its "natural, plain, and ordinary" meaning, and may reference dictionary definitions as evidence of ordinary usage. *See Madison Construction Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 108 (Pa. 1999). The word "ensue" is ordinarily defined as "to take place afterward or as a result." *See* "Ensuite," Merriam-Webster.com Dictionary, Accessed 22 Apr. 2026 <https://www.merriam-webster.com/dictionary/ensue>; *see also TMW Enterprises, Inc. v. Federal Ins. Co.*, 619 F.3d 574, 581 (6th Cir. 2010) (Cole, J., dissenting) ("to ensue" may be defined as "to follow as a chance, likely, or necessary consequence" or "to follow in chronological succession;" "to cause" as "to serve as cause or occasion of" or to "bring into existence;")

and “to result” as “to proceed, spring, or arise as a consequence, effect, or conclusion.”) (quoting *Webster’s Third New Int’l Dictionary* (2002)). The word therefore implies temporal and/or causal sequence: an event “ensues” when it follows from or happens as a result of another event. *See ibid*; *see also GTE Corp. v. Allendale Mut. Ins. Co.*, 372 F.3d 598, 614 (3d Cir. 2004) (“an ensuing loss provision...covers loss caused to *other* property wholly separate from the defective property itself.”) (emphasis retained). Thus, where a distinct loss “ensues” from one of the enumerated excluded causes, the plain text covers that ensuing loss. *See 401 Fourth St., Inc. v. Investors Ins. Group*, 879 A.2d 166, 171 (Pa. 2005) (“Courts in interpreting a contract, do not assume that its language was chosen carelessly.”) (internal citations omitted).

Hanover Insurance Company, however, takes a different view of the meaning of the phrase “ensuing loss.” Def. Br. at 10-14. In Hanover’s view, a “natural and foreseeable” loss which arises from an excluded loss *cannot* be an “ensuing loss.” *Id.* That interpretation—that only “non-foreseeable” losses can qualify as ensuing losses—requires reading language into the Policy which is simply not there. The plain language of the provision at issue provides coverage for “any ensuing loss...not precluded by any other provision of this policy.” (Def. Ex. 1, p. 13-14 of form HO 37 03 08 11). The text does *not* say “any ***unforeseeable*** ensuing loss” or “any ensuing loss ***that did not naturally result from the excluded cause.***”¹ Adopting

¹ *See TMW*, 619 F.3d at 584 (Cole, J., dissenting) (“As plainly written, the Ensuing Loss clause does not cover only ‘ensuing loss or damage caused by or resulting from a peril not otherwise excluded *that is not the natural and foreseeable consequence of a peril listed above,*’ nor does it cover only ‘*separate and independent* ensuing loss or damage caused by or resulting from a peril not otherwise excluded.’ Rather, the plain language of the clause, which we are compelled to follow, [] suggests that any loss ‘caused by or resulting from a peril not otherwise excluded’ is covered.”) (all emphasis retained)

Hanover's bespoke "foreseeability" theory would subject the Campaniles to a contractual limitation that they did not bargain for or otherwise agree to in their non-commercial Policy. *See 401 Fourth St.*, 879 A.2d at 171 (Courts "do not assume that [contractual] language was chosen carelessly."); *see also Betz*, 957 A.2d at 125 ("The proper focus regarding issues of coverage under [non-commercial] insurance contracts is the reasonable expectation of the insured.").

The structure of the Policy itself confirms the Campaniles' reading of "ensuing loss," *not* Hanover's reading, is the correct one. The Policy's Section I Exclusions are divided into two parts. (*See* Def. Ex. 1, p. 12-14 of form HO 37 03 08 11). Part A exclusions are introduced with language stating that the excluded losses are excluded "regardless of any other cause or event contributing concurrently or in any sequence to the loss." (*Id.*, p. 12). Part B exclusions, by contrast, are introduced with the "ensuing loss" language described above. (*See id.*, p. 13). Hanover Insurance Company, the drafter of the Policy, chose to place the faulty workmanship exclusion in Part B rather than Part A. Had Hanover intended to exclude every foreseeable downstream consequence of faulty workmanship regardless of its nature, it could simply have placed the exclusion in Part A, which provides no "ensuing loss" exception. *See TMW*, 619 F.3d at 584-85 (Cole, J., dissenting) ("If [the insurer] had intended the Ensuing Loss clause to preserve coverage only for separate and independent losses, it could have drafted contractual language to say so clearly, just as in the several exclusions that apply 'regardless of any other cause or event that directly or indirectly...contributes in any sequence to...the loss or damage[.]'").

Hanover did not do so, and because courts “do not assume that [a contract’s] language was chosen carelessly,” Hanover’s choice must be given meaning. *401 Fourth St.*, 879 A.2d at 171.

Although the text of the Policy does not support Hanover’s reading of “ensuing loss,” Hanover suggests that one Pennsylvania case compels this Court to adopt its interpretation of the phrase. *See* Def. Br. 11-14 (relying on *Ridgewood Group, LLC v. Millers Capital Ins. Co.*, 2017 Pa. Super. Unpub. LEXIS 764* (Pa. Super. Feb. 28, 2017) (non-precedential)). Defendant’s reliance on *Ridgewood* should fail for two independent reasons.

First, *Ridgewood* is an unpublished, non-precedential memorandum of the Superior Court; it has no binding effect on this Court. *See Griggs Rd., L.P. v. Selective Way Ins. Co. of Am.*, 368 F. Supp. 3d 799, 808 (M.D. Pa. Feb. 21, 2019). Indeed, there is no *binding* or *precedential* Pennsylvania case that Defendant has identified which adopts Defendant’s preferred interpretation of the phrase “ensuing loss,” meaning any potential ambiguity in the meaning of the phrase must be resolved in favor of the insured. *See Ridgewood*, 2017 Pa. Super. Unpub. LEXIS 764, at *8-*9 (“[T]he [insurance company] concedes that there is no binding authority [addressing how to interpret ensuing loss clauses]. This is important, because a close reading of the above quoted provision leads us to conclude that *it contains a facial ambiguity.*”) (emphasis added); *see also 401 Fourth St.*, 879 A.2d at 171 (“When a provision in a policy is ambiguous...the policy is to be construed in favor of the insured to further the

contract's prime purpose of indemnification and against the insurer, as the insurer drafts the policy, and controls coverage.”).

Second, this Court, sitting in diversity, is obliged to predict how the Pennsylvania Supreme Court would decide to interpret “ensuing loss,” and *Ridgewood* is inconsistent with at least two well-established principles of Pennsylvania insurance law endorsed by the Supreme Court. *See Griggs*, 368 F. Supp. 3d at 809. For example, the Supreme Court of Pennsylvania has explained that because insurance contracts are contracts of adhesion, “the principle of *contra proferentem* requires ambiguities to be construed in favor of the insured and against the insurer.” *Id.*, n.62 (collecting cases); *see also 401 Fourth St.*, 879 A.2d at 171. The *Ridgewood* court acknowledged that the ensuing loss clause it was interpreting “contain[ed] a facial ambiguity.” *See* 2017 Pa. Super. Unpub. LEXIS 764, at *9. But, in contravention of the Supreme Court’s admonition, the *Ridgewood* court decided *not* to resolve the ambiguity in favor of coverage. *Griggs*, 268 F. Supp. 3d. at 809. *Ridgewood*, therefore, ignored a substantial number of cases from the Pennsylvania Supreme Court which require ambiguities to be resolved in favor of coverage. *Id.*

The *Ridgewood* court also erred by adopting the reasoning of the Sixth Circuit without performing any substantive analysis of Pennsylvania law. *Id.* The Pennsylvania Supreme Court has held that when construing insurance policy language, “caselaw from other jurisdictions is generally inapposite, especially when there is Pennsylvania caselaw directly on point.” *Id.*, n.63 (citing *Pa. Nat’l Mut. Cas. Ins Co. v. St. John*, 106 A.3d 1, 23 (Pa. 2014)). Despite the abundance of caselaw

“setting forth Pennsylvania’s principles of insurance contract interpretation,” and the “generally inapposite” nature of extra-jurisdictional law, the *Ridgewood* court adopted the reasoning of the Sixth Circuit without analyzing Pennsylvania law. *Id.* The amalgamation of infirmities present in *Ridgewood* has led at least one Court to expressly refuse to follow the decision as inconsistent with Pennsylvania law. *Id.* (“Accordingly, because this Court must predict how the Pennsylvania Supreme Court would adjudicate this matter, and *Ridgewood* arguably contravenes uncontroverted principles of insurance contract interpretation adopted by the Pennsylvania Supreme Court, Selective’s reliance upon *Ridgewood* is not persuasive.”); *see also id.*, n.64 (rejecting reliance on *Burgunder v. United Specialty Ins. Co.*, 2018 WL 2184479 (W.D. Pa. May 11, 2018), because it relies on *Ridgewood*).

Even setting aside the issues with *Ridgewood* as a precedential matter, the fire damage illustration that *Ridgewood* uses to explain the “foreseeability” standard actually demonstrates that foreseeability, alone, cannot be the operative test. The illustration posits that if water infiltrates a structure due to faulty maintenance to a roof and reaches an electrical socket, leading to a fire, the fire damage would be covered as an ensuing loss—even though the faulty workmanship exclusion would bar a stand-alone water damage claim. *See Ridgewood*, 2017 Pa. Super. Unpub. LEXIS 764, at *12 (quoting *TMW*, 619 F.3d at 579). But if it is foreseeable that water could infiltrate the structure because of the faulty workmanship, then it cannot be *unforeseeable* that the same water may hit an electrical component within the structure and cause a fire. If the dispositive question were truly “foreseeability,” the

fire damage in the illustration would have to be excluded along with the water damage that preceded it. Neither Court articulating the “foreseeability” test suggested that excluding the fire would be an appropriate result, even though *it is a foreseeable second-order consequence of water damage*. See *Ibid*. Thus, the fire damage illustration in *Ridgewood* (and *TMW*) really demonstrates that coverage turns not on foreseeability alone, but on whether the later harm constitutes a distinct physical loss, caused by a separate mechanism, to property beyond the locus of the defective work.

The fire damage illustration in *Ridgewood* describes precisely *this* loss, albeit with different variables. The Campaniles contracted for foundation work confined to a discrete area of their home. The damage they sustained spread *throughout* the home, into bedrooms, living areas, and the kitchen—“other property wholly separate from the defective [foundation] itself.” See *GTE Corp. v. Allendale Mut. Ins. Co.*, 372 F.3d 598, 613 (3d Cir. 2004). Moreover, the mechanism that caused the spread of the dust was not the foundation work itself; instead, it was the HVAC unit that distributed the dust throughout the home. The HVAC unit is the logical equivalent of the electrical short in *Ridgewood*’s fire damage illustration—a mechanism separate from the defective work, producing distinct physical harm to separate property. Under any fair reading of the phrase “ensuing loss,” including even the non-binding framework adopted in *Ridgewood*, the Campaniles’ loss is covered by the ensuing loss provision.

- ii. Coverage for the Ensuing Construction Dust is not “Precluded” by the Policy’s Pollution Exclusion.

Having established that the Campaniles' loss constitutes ensuing loss under the plain language of the Policy, the remaining question is whether the loss is "precluded by any other provision" in the Policy. (*See* Def. Ex. 1, p. 13 of form HO 37 03 08 11). Specifically, the question is whether coverage for the widespread presence dust is precluded by the Policy's "pollutant" exclusion. (*See id.*, p. 10 of form HO 37 03 08 11). It is not, and Defendant's arguments to the contrary should be unpersuasive.

First, Hanover chose not to list "dust" among the various exemplary "pollutants" included in its definition of the phrase. *See id.* ("Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste."). Hanover, however, *did* choose to cover forms of dust in other Policy provisions. (*See, e.g., id.*, p. 11 of form HO 37 08 11 (excluding losses "caused by...dust *unless* the direct force of wind or hail damages the building causing an opening in a roof or wall and the...dust enters through this opening.") (emphasis added); *id.*, p. 5 of form HO 37 03 08 11 (covering "reasonable expense[s] for the removal of...ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.")). Thus, Hanover can insert the term "dust" into the Policy when it means to do so. *See 401 Fourth St.*, 879 A.2d at 171 ("Courts in interpreting a contract do not assume that its language was chosen carelessly."). Hanover's failure to include "dust" in the "pollutant" exclusion, accordingly, supports an inference that the "pollutant" exclusion was not intended to capture "dust." *See McMillan*, 922 F.2d at 1077 ("An insurer's failure to

utilize more distinct language which is available reinforces a conclusion of ambiguity under Pennsylvania law.”) (internal citation omitted).

Further, Hanover claims that the “Policy’s definition of ‘pollutant’ does not hinge on the presence of” any specific substance, like construction dust, because “**any** solid irritant or contaminant qualifies.” Def. Br. at 17 (emphasis added). The Policy, itself, demonstrates the absurdity of the claim that “any solid irritant or contaminant qualifies” as a “pollutant.” *Id.* The Policy defines “pollutant” to include “**smoke**, vapor, soot, [and] fumes,” which the Policy refers to as “irritants” or “contaminants.” (See Def. Ex. 1, p. 10 of form HO 37 03 08 11). However, in Coverage C, the Policy specifically **covers** the named peril: “Smoke.” (*Compare id.; with id.*, at p. 11 of form HO 37 03 08 11). The “smoke” provision provides coverage for any “sudden and accidental damage from smoke, including the emission or puffback of smoke, soot, fumes or vapors[.]” (*Id.*, p. 11 of form HO 37 03 08 11). The only way to read these provisions together, “while at the same time giving effect to *all of the policy’s provisions*,” is to recognize that smoke cannot *always* be a “pollutant.” See *Clarke v. MMG Ins. Co.*, 100 A.3d 271, 276 (Pa. Super. 2014) (“An insurance policy must be read as a whole, and not ‘in discrete units.’”) (emphasis added) (internal citations omitted). Stated differently, the Policy’s provisions themselves demonstrate that, while smoke is always “irritat[ing]” or “contamin[at]ing,” it is not always a “pollutant” excluded from coverage. Recognizing that simple, structural proposition forecloses Defendant, Hanover’s position that the term “pollutant” sweeps in anything and everything that could conceivably “irritate” or “contaminate.”

The Policy's treatment of "smoke" also reveals a deeper issue in Defendant's argument: Hanover's position creates an exclusion with no discernable boundaries, under which Hanover alone determines whether a given substance is *covered* smoke damage, or *excluded* smoke pollution. *See McMillan*, 922 F.2d at 1077 (rejecting "the insurance company's attempt to dictate narrowly the meaning of an undefined, ambiguous word" as reminiscent of Humpty Dumpty: "When *I* use a word...it just means what *I* choose it to mean—neither more nor less.") (quoting *Through the Looking Glass*, in *The Complete Works of Lewis Carroll* 196 (1939)). No reasonable insured, like the Campaniles, could know from reading the Policy which side of the line their loss falls on. That ambiguity cannot be resolved in favor of Defendant, Hanover Insurance Company. *Id.*; *see also 401 Fourth St., Inc. v. Investors Ins. Grp.*, 879 A.2d at 171 ("When a provision in a policy is ambiguous...the policy is to be construed in favor of the insured to further the contract's prime purpose of indemnification and against the insurer, as the insurer drafts the policy, and controls coverage.").

Second, the Policy's definition of "pollutant," read in light of a non-commercial insured's reasonable expectations, does not encompass dust following from a construction project. *See Betz v. Erie Ins. Exch.*, 957 A.2d 1244, 1253 (Pa. Super. 2008) ("The proper focus regarding issues of coverage under insurance contracts is the reasonable expectation of the insured.") (internal citation omitted). The Policy defines "pollutant" as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste." *See* Def. Ex.

1 p. 25. Every item listed in the Policy’s exemplary list—smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste—is a distinctly industrial substance associated with traditional *environmental* contamination; construction dust in a residential home shares no characteristic with any other item on this list aside from its being a “solid.” Def. Br. at 17. Certainly, it would be challenging for a homeowner to read a list of “pollutants” and reasonably expect that it was aimed at excluding dust.

Under Pennsylvania law, the “reasonable expectations” doctrine does not apply to commercial insureds; instead, the “reasonable expectations” doctrine applies to non-commercial insureds, like the Campaniles. *See Betz*, 957 A.2d at 1253. Thus, in *this case*, the Campaniles’ reasonable expectation of coverage is the “proper focus” of the Court’s inquiry *Id.* By contrast, each of the cases cited by Defendant involved a *commercial* insured, to whom the “reasonable expectations” doctrine is generally inapplicable. *See e.g., Madison*, 735 A.2d at 102-03 (commercial general liability policy); *Devcon Inter. Corp. v. Reliance Ins. Co.*, 609 F.3d 214, 221 (3d Cir. 2010) (same); *Matcon Diamind v. Penn Nat’l Ins. Co.*, 815 A.2d 1109, 1111 (Pa. Super. 2003) (same); *Travelers Prop. Cas. Co. of Am. v. Chubb Custom Ins. Co.*, 864 F. Supp. 2d 301, 305-06 (E.D. Pa. Mar. 30, 2012) (same). Not one of these cases analyzes the “pollutant” exclusion in a homeowner’s policy in light of an average insured’s “reasonable expectation.” *See Betz*, 957 A.2d at 1253. Accordingly, the fact that some courts have determined that commercial policies with total pollution exclusions are unambiguous with respect to certain products, *see, e.g., Madison*, 735 A.2d at 102-03, says nothing about the “reasonable expectation” of a “non-commercial insured[.]”

which is “[t]he proper focus regarding issues of coverage under insurance contracts.” *Betz*, 957 A.2d at 1253. It is unlikely that a reasonable non-commercial policyholder would read the “pollutant” exclusion as designed to exclude anything *other than* traditional environmental “pollutants,” notwithstanding Pennsylvania courts’ varying views of total pollution exclusions in commercial policies.² Commercial insureds can also bargain for (and contract around) pollution risks in a way that residential insureds simply cannot, rendering the courts’ analyses in those cases inapposite to the Campaniles’ bargain with Defendant, Hanover Insurance Company. *See, e.g., Devcon*, 609 F.3d at 221 (“If it seems harsh to leave Devcon without coverage, we reiterate that both Devcon and Reliance are sophisticated businesses capable of bargaining to protect their interests.”).

Third, and independently, Defendant has wholly failed to carry its burden of proving that the specific dust in the Campaniles’ home qualifies as a pollutant. It is well-established that the insurer bears the burden of proving the application of “any exclusions or limitations on coverage.” *Kvaerner*, 908 A.2d at 897. Any failure of proof is fatal to an insurer’s entitlement to judgment. *Id.* Here, Hanover dismisses as “irrelevant” the fact that dust does not appear in the Policy definition of “pollutant.” Def. Br. at 15. Moreover, Hanover boasts that it did not *need to* test the dust, because (Hanover says) “any solid irritant or contaminant qualifies.” *Id.*, at 17. Thus,

² Defendant may respond to this point by arguing that the Supreme Court of Pennsylvania, in *Madison*, rejected the position that pollution exclusions should be limited to environmental pollutants. *See Matcon*, 815 A.2d at 1115 (citing *Madison*, 735 A.2d at 108). The *Madison* case, however, does not address whether a non-commercial insured could *reasonably expect* the reach of a non-commercial “pollutant” exclusion to be constrained to environmental pollutants. *Madison*, 735 A.2d at 101. Thus, Pennsylvania law does not foreclose the “traditional environmental pollutant” argument with respect to non-commercial policies, like the one the Campaniles bargained for.

Hanover's argument, reduced to its essence, is that the exclusion for "pollutants" is written so broadly that Hanover can invoke it even when it possesses no evidence to support the claim that the substance at issue. Such an argument is plainly inconsistent with the insurer's burden to prove the application of "any exclusions or limitations on coverage." *Kvaerner*, 908 A.2d at 897.

Moreover, under *Madison* and its progeny, whether a specific substance is listed *in* the Policy's definition of "pollutants" is relevant, both to the Court's analysis, and to Defendant's burden. Where a substance is not specifically listed in a policy's definition of "pollutant," Pennsylvania law requires that a court perform "an extensive analysis" focused on the specific product at issue, including any evidence related to its toxicity or chemical makeup. *See Atl. Cas. Ins. Co. v. Epstein*, 2004 U.S. Dist. LEXIS 18725, at *8 (E.D. Pa. Sept. 15, 2004) ("The Pennsylvania Supreme Court...requires that where a pollution exclusion does not specifically and unambiguously classify a substance as a pollutant, the court must perform an extensive analysis to determine if the exclusion applies.") (citing *Madison*, 735 A.2d at 107); *see also Whitmore v. Liberty Mut. Fire Ins. Co.*, 2008 U.S. Dist. LEXIS 76049, at *10-*11 (E.D. Pa. Sept. 30, 2008) (following *Epstein*). Because the "pollutant" provision is an exclusion, it is the insurer's burden to demonstrate the applicability of the exclusion. *Madison*, 735 A.2d at 106. Thus, where insurers have sought to exclude substances as "pollutants" which are *not* listed in the policy definition of the term but have not produced evidence about the specific substance at issue supporting the claim that the substance is a "pollutant," courts have uniformly rejected insurers'

arguments. *See, e.g., Epstein*, 2004 U.S. Dist. LEXIS, at *15; *Whitmore*, 2008 U.S. Dist. LEXIS, at *20-*21.

Here, Hanover conducted no testing and produced no evidence regarding the specific dust in the Campaniles' home—it has produced no chemical analysis of the dust, no report analyzing its toxicity, and no assessment of its risk. Indeed, Hanover readily admits this fact, claiming it is not relevant that it did not conduct any testing because “*any* solid irritant or contaminant qualifies.” Def. Br. at 17 (emphasis added). As *Madison* instructs, though, “the pertinent inquiry is not whether the policy’s definition of ‘pollutant’ is so broad that virtually any substance could be said to come within its ambit. Rather, we focus on the *specific product* at issue.” 735 A.2d at 107 (emphasis added). Hanover’s argument that “the dust at issue here clearly was both an irritant and a contaminant” does precisely what *Madison* forbids: it argues that the definitional language is sufficiently broad to presumptively exclude dust, without ever examining what the dust actually was or what risks it actually posed. *Id.*

Hanover’s attempts to fill this evidentiary void by pointing to Plaintiffs’ expert report, prepared by William Zisa. *See* Def. Ex. 6. That maneuver cannot save the day. First, Hanover simultaneously argues that Mr. Zisa’s report is inadmissible *because* it offers opinions on coverage, *see* Def. Br. p. 4, n.1, while relying on *precisely those opinions* to prove that the exclusion applies, *id.*, p. 15, 19. Defendant cannot selectively adopt portions of Mr. Zisa’s report that favor itself while jettisoning those portions that favor the Campaniles. If Mr. Zisa’s report is not admissible to the extent that it “offer[s] opinions on the application of the insurance policy to the Campaniles’

claimed loss,” *id.*, p. 4, n.1, then it is hard to fathom how Mr. Zisa’s report could possibly be evidence supporting *Hanover’s interpretation* of how the “pollutant” exclusion applies to the Campaniles’ loss.

More fundamentally, Mr. Zisa’s colloquial use of the word “contaminant” to describe dust-covered surfaces is descriptive language used by the Campaniles’ public adjuster to quantify and describe physical damage to the home; it is not a legal opinion on whether the dust in the Campaniles’ home fit within the Policy language. Certainly, the colloquial use of the phrase “contaminant” is not the same sort of evidence that the *Madison* court identified as relevant in considering whether a given substance is a pollutant. *Compare* Def. Ex. 6; *with Madison*, 735 A.2d at 107 (insurer supported pollution exclusion defense with evidence of substance’s chemical composition and documented health effects); *Lititz Mut. Ins. Co. v. Steely*, 785 A.2d 975, 980 (Pa. Super. 2001) (insurer supported pollution exclusion with doctors’ affidavits and federal regulations regarding the substance); *Matcon*, 815 A.2d at 1113 (insurer supported pollution exclusion by referencing federal legislation designating carbon monoxide as a pollutant). Defendant Hanover has produced nothing comparable to a legal or medical opinion regarding the classification or effects of the dust, and has accordingly failed to satisfy its burden of demonstrating that the dust present in the Campaniles’ home is unambiguously included within the Policy’s definition of “pollutant.” *See Madison*, 735 A.2d at 106.

Accordingly, the dust which spread throughout the Campaniles’ home is not barred by the “pollutant” exclusion, and, as such, is “not precluded by any other

provision in this policy.” *See* Def. Ex. 1, p. 13 of form HO 37 03 08 11. The ensuing loss provision, therefore, operates exactly as it is written, and provides the Campaniles coverage for this loss.

V. CONCLUSION

For the foregoing reasons, Plaintiffs, Patricia and Christopher Campanile, respectfully requests that this Court deny Defendant’s Motion for Summary Judgment.

Respectfully Submitted,

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DATE: April 29, 2026

CERTIFICATE OF SERVICE

I, Kathleen Petrone, hereby certify that a true and correct copy of the foregoing **OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was electronically filed on April 29, 2026 and is available for viewing and downloading for all counsel of record from the ECF system.

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