

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

September 19, 2018

Francis J. Jones, Jr., Esquire  
Morris James, LLP  
803 North Broom Street  
Wilmington, Delaware 19806

David Malatesta, Jr., Esquire  
Kent & McBride, P.C.  
824 North Market Street, Suite 805  
Wilmington, Delaware 19801

Robert D. Schultz, Esquire  
14 North Hanson Street  
Easton, Maryland 21601

David G. Culley, Esquire  
Tybout, Redfearn & Pell  
750 Shipyard Drive, Suite 400  
P.O. Box 2092  
Wilmington, DE 19899-2092

Kenneth M. Doss, Esquire  
Casarino Christman Shalk Ransom  
& Doss, P.A.  
1007 North Orange Street, Suite 1100  
P.O. Box 1276  
Wilmington, DE 19899

**Re: *Slaubaugh Farm, Inc., et al. v. Farm Family Cas. Ins. Co.***  
**C.A. No. S16C-06-033 ESB**

Dear Counsel,

This is my decision on the Plaintiffs' Motion for Reargument of my decision granting summary judgment in favor of Defendant Farm Family Casualty Insurance

Company on its denial of insurance coverage for the collapse during a blizzard of the Plaintiffs' chicken house.<sup>1</sup>

1. The Plaintiffs are "puzzled" by my assertion that neither of Farm Family's engineers had recommended to Farm Family that additional testing, or investigation, of the Plaintiffs' collapsed chicken house was necessary. There is no reason for the Plaintiffs to be puzzled. At the time that Farm Family denied coverage for the Plaintiffs' claim - which is the relevant time frame under the applicable law<sup>2</sup> - neither of Farm Family's engineers had made such a recommendation. Indeed, it was not until almost seventeen months after Farm Family initially denied coverage for the Plaintiffs' claim that Harvey Kagan, one of the two engineers hired by Farm Family to inspect the Plaintiffs' collapsed chicken house, said that it was his intent to do a more in-depth investigation. Seventeen months later was not the relevant time frame. I do note that after Harvey Kagan reviewed the Plaintiffs' expert report, he remained convinced that his original opinion about snow causing the Plaintiffs' chicken house to collapse was still correct.

2. The Plaintiffs argue that Harvey Kagan's report was unreliable on its face. This is nothing more than a repeat of the Plaintiffs' original argument. Moreover, I

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<sup>1</sup> *Slaubaugh Farm, Inc. v. Farm Family Cas. Ins. Co.*, 2018 WL 3559252 (Del. Super. Ct. July 23, 2018).

<sup>2</sup> *Casson v. Nationwide Ins. Co.*, 455 A.2d 361, 369 (Del. Super. Ct. 1982).

did not think so. Harvey Kagan is an engineer. Kagan conducted a visual inspection of the Plaintiffs' collapsed chicken house and concluded that the three-day blizzard put so much snow on the roof that the chicken house collapsed. I certainly understand that the Plaintiffs - who are not engineers - felt that Kagan should have done more. However, the Plaintiffs never offered the opinion of an engineer - even though they had one - that Kagan's work was too shoddy to rely on. Conclusory allegations from non-experts are not persuasive. I note further that Farm Family had a second engineer also conduct a visual inspection of the Plaintiffs' collapsed chicken house. Thus, a visual inspection alone did not strike me as being unreasonable under the circumstances.

3. The Plaintiffs argue that whether or not it was proper for Farm Family to rely on Harvey Kagan's report is a matter best left for the jury. Unfortunately, the Plaintiffs ignored the procedural posture of this issue. The Plaintiffs filed for summary judgment and argued that no issue of material fact existed and that they were entitled to summary judgment as a matter of law. Farm Family filed its response, agreed that no issue of material fact existed, and argued that it was entitled to summary judgment as a matter of law. Since both parties agreed that the facts were undisputed and had both asked for summary judgment, it was appropriate for me to

consider the matter on that basis.<sup>3</sup> The Plaintiffs knew the procedural posture of this issue and said nothing. Now, after having lost, the Plaintiffs complain. The Plaintiffs' complaint is too late.

4. The Plaintiffs argue that it was improper for me to consider David Fender's opinion about the cause of the Plaintiffs' collapsed chicken house because his opinion came after Farm Family initially denied coverage. Plaintiffs' argument misses the fact that I considered Farm Family's first denial of coverage separately from its second denial of coverage. Farm Family first hired Harvey Kagan to inspect the Plaintiffs' collapsed chicken house. Kagan inspected it on January 25, 2016. Kagan sent a memo to Farm Family the same day stating that the chicken house collapsed because of the snow on the roof. Farm Family issued its denial of coverage letter to the Plaintiffs on January 26, 2016.

Farm Family then hired a second engineer, David Fender, to inspect the Plaintiffs' collapsed chicken house. Fender inspected it on January 29, 2016. Fender concluded that the chicken house collapsed because the metal connector plates failed due to the weight of the snow on the roof. Fender issued his report to Farm Family on February 5, 2016. Farm Family issued a second denial letter to the Plaintiffs on February 16, 2016. Thus, Farm Family had issued two denial letters to the Plaintiffs

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<sup>3</sup> *Superior Court Civil Rule 56(h)*.

in a period of just fifteen days based on inspections done three days apart by two different engineers.

In my decision granting summary judgment in favor of Farm Family, I considered Farm Family's first denial of coverage and reliance on Kagan's report separately, stating the following:

I conclude that Farm Family was justified in relying upon the expert opinion of Mr. Kagan that, at the time the Plaintiffs' claim was presented to Farm Family, the cause of the poultry house's collapse was snow accumulation on the poultry house's roof that the poultry house's trusses could not support and that a more thorough investigation was not necessary.<sup>4</sup>

I then went on to separately conclude that Farm Family's second denial of coverage was also appropriate. Thus, I did consider Farm Family's first denial, which was based solely on Kagan's report, independently of Fender's report. Moreover, the Plaintiffs knew that Farm Family had relied upon Fender's report in its response to the Plaintiffs' motion for summary judgment and said nothing. The Plaintiffs' objection now is simply too late. The Plaintiffs further note that my reliance on Fender's report is unfair because they had not taken his deposition. The Plaintiffs, of course, knew this, but once again said nothing. This is simply another objection that comes too late.

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<sup>4</sup> *Slaubaugh Farm, Inc.*, 2018 WL 3359252, at \*5.

I have denied the Plaintiffs' Motion for Reargument, concluding that I did not overlook the applicable facts or law.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ E. Scott Bradley*

E. Scott Bradley

cc: Prothonotary  
All Counsel of Record