

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

LEO E. STRINE, JR.
VICE CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: August 16, 2006
Date Decided: August 24, 2006

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RE: *Bedrock Technologies, LLC v. Earthwater Technology International, Inc.*
CA No. 1948

Dear Counsel:

I have now thoroughly reviewed the briefs in the self-titled “motion to dismiss the amended counterclaim and third-party complaint” filed by defendant Bedrock Technologies, LLC. Bedrock’s belated attempt to withdraw evidence that is extrinsic to the complaint is insufficient to cure the obvious reality that it has converted its motion for dismissal into a motion for summary judgment before granting the other side the opportunity to take relevant discovery. Bedrock’s submissions are replete with attempts to explain the context of, among other things, e-mails which, by their very nature, require broader context for complete understanding and with blatant attempts to contradict the pled facts.

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The procedural rules do not contemplate that a party may burden either the court or an opposing party with the obligation to parse through summary judgment papers searching for a core set of arguments made in compliance with Rule 12. Rather, they contemplate that parties will make an election — attack the complaint on its face for failure to state a claim or proceed down the summary judgment path, one which often requires granting the other side discovery.

Bedrock was cautioned about the potential for its motion to be denied on this basis. After reviewing the complete set of briefs, it is apparent to me that there is no rational way to address Bedrock's motion as a motion to dismiss without a head-hurting and unduly time-consuming exercise in excision, that would involve me making up the argument Bedrock should have made had it wished to attack the third-party complaint's legal sufficiency, while accepting its well-pled facts as true. Having clearly converted its motion to one for summary judgment, Bedrock has opened the door to discovery to its adversary.

Therefore, I am denying the motion to dismiss and cancelling the previously scheduled oral argument. Bedrock may file a motion for summary judgment after discovery is complete, on a schedule to be agreed upon among counsel for the parties. Any summary judgment briefing will start from scratch. That said, if, after discovery, it

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is clear that there are stark differences about factual matters, counsel are encouraged to consider whether it is more efficient for the case simply to go to trial.

IT IS SO ORDERED.

Very truly yours,

/s/ Leo E. Strine, Jr.

Vice Chancellor