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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STARLINE WINDOWS INC., a
Washington corporation,

Plaintiff,

v.

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA, an
Illinois corporation,

Defendant.

Case No.: 3:21-cv-00578-RBM-DEB

**ORDER GRANTING INSURANCE
COMPANY OF THE STATE OF
PENNSYLVANIA’S MOTION FOR
SUMMARY JUDGMENT**

[Doc. 39]

On July 13, 2022, Defendant Insurance Company of the State of Pennsylvania (“Defendant” or “ICSOP”) filed a Motion for Summary Judgment (“MSJ”). (Doc. 39.) Plaintiff Starline Windows Inc. (“Plaintiff” or “Starline”) filed a response in opposition to Defendant’s MSJ on August 15, 2022 (Doc. 41), and Defendant filed a reply on August 22, 2022 (Doc. 42). Plaintiff and Defendant (collectively, the “Parties”) filed a Joint Statement of Undisputed Facts as an attachment to Defendant’s reply brief. (See Doc. 42–1.)

For the reasons discussed below, Defendant’s MSJ is **GRANTED**.

I. BACKGROUND

A. Factual Background

The following facts are not reasonably in dispute. (See Doc. 42–1, Joint Statement

1 of Undisputed Facts at 3–6.) The Grande at Santa Fe Place, located at 1205 Pacific Coast
2 Highway, San Diego, California 92101 (“Grande North”), is a 39-story condominium
3 tower and was substantially completed on June 30, 2005. (*Id.* at 3.) Bosa Development
4 California, Inc. (“Bosa”) was the developer and general contractor for Grande North. (*Id.*)
5 In June 2003, Starline subcontracted with Bosa to furnish and install a window-wall system
6 at Grande North, which included insulated-glass units (“IGUs”), and Starline issued a 10-
7 year limited warranty for the windows at Grande North (“Starline Warranty”). (*Id.*)
8 Starline subcontracted with Star Team Installations Inc. (“Star Team”) for installation of
9 the window-wall system at Grande North. (*Id.*) The IGUs consist of three panes of
10 tempered glass, which are separated by perforated aluminum spacer bars filled with
11 desiccant used to absorb moisture within the IGU. (*Id.*) The IGUs were sealed with gray
12 polyisobutylene (“PIB”) as a primary sealant. (*Id.*)

13 Beginning in March 2014, Starline became aware that numerous homeowners at
14 Grande North served Notices of Claims under Civil Code § 895, *et seq.*, and under the
15 Starline Warranty concerning the IGUs located in their condominium units (“Window
16 Claims”). (*Id.* at 3–4.) Specifically, the homeowners alleged failure and migration of PIB
17 sealant within the IGUs. (*Id.* at 4.) In some instances, the PIB migrated onto the glass
18 panes of the IGUs, resulting in visual obstructions. (*Id.*) Some units experienced the PIB
19 migrating onto the perforated spacer bars, which can impair the desiccant’s ability to
20 absorb moisture and prevent fogging inside the IGUs. (*Id.*) The claims by the homeowners
21 did not involve physical injury to any property other than the IGUs Starline contracted to
22 furnish and install at Grande North. (*Id.*)

23 The affected IGUs at Grande North are primarily located on the South and West
24 elevations of the building as these are the elevations which experience the most ultraviolet
25 (“UV”) radiation from exposure to sunlight. (*Id.*) The affected PIB fundamentally changed
26 over time, losing molecular weight due to UV radiation. (*Id.* at 5.) The PIB’s loss of
27 molecular weight reduced its viscosity and increased its propensity to flow. (*Id.*) As the
28 PIB liquefied and lost viscosity, it migrated from its original position between the spacer

1 bars and the glass edges, and in some instances, onto the viewing areas of the glass surfaces
2 and the spacer bars of the IGUs. (*Id.*) As it moved, the PIB also changed color, becoming
3 grayish and somewhat opaque. (*Id.*) Approximately half of the IGUs installed at Grande
4 North were affected, and the remaining fifty percent of the IGUs at Grande North were
5 unaffected and remain in place as originally installed. (*Id.*)

6 Bosa had purchased a primary Owner Controlled Insurance Program (“OCIP”)
7 policy underwritten by Liberty Mutual Fire Insurance Company (policy number RG2- 691-
8 004303-023, effective July 1, 2003) “to cover itself and its subcontractors for course of
9 construction and completed operations liability regarding Grande North” (“Liberty
10 Policy”). (*Id.* at 6.) Bosa also purchased a first layer of “Follow Form Excess Liability”
11 coverage from ICSOP (policy number 4203-4877, effective July 1, 2003) which
12 incorporated the coverage provided by the Liberty Policy (“ICSOP Policy”). (*Id.*) The
13 Liberty Policy and the ICSOP Policy (collectively, the “OCIP Policy”) form the OCIP
14 Policy purchased by Bosa. (Doc. 39–1 at 12.)

15 On July 22, 2014, Starline executed a Repair Agreement with Bosa under which
16 Starline agreed to replace certain IGUs at Grande North in accordance with the Starline
17 Warranty. (Doc. 42–1 at 4.) Starline tendered defense and indemnity of the claims by the
18 homeowners to ICSOP in March 2014, September 2015, and December 2015, but ICSOP
19 did not respond to Starline’s tenders. (*Id.*) Starline’s claimed damages are costs it alleges
20 it incurred to remove and replace IGUs at Grande North. (*Id.* at 5.) Starline has not yet
21 paid its vendors, Starline Windows, Ltd. (f/k/a Starline Architectural Windows, Ltd.)
22 (“Limited”) and Starline Windows USA, LLC (“USA”), for the replacement IGUs or the
23 labor to remove and replace the affected IGUs.¹ (*Id.*) Starline is an entirely separate
24 company from its vendors, Limited, USA, and Star Team. (*Id.*; Doc. 39–1 at 10.) On April
25

26 ¹ Starline purchased the original window-wall system, including the IGUs, from Limited,
27 and Star Team performed the original installation work. (Doc. 39–1 at 10.) Starline also
28 purchased the replacement IGUs from Limited, and USA installed the replacement IGUs.
(*Id.* at 11.)

1 2, 2021, Starline filed the instant action against ICSOP alleging causes of action for: (1)
2 declaratory relief, and (2) breach of contract for failure to defend and indemnify Starline.
3 (*See* Doc. 1)

4 On July 13, 2022, ICSOP filed the instant MSJ. (*See* Doc. 39.) ICSOP contends it
5 does not owe a duty to indemnify Starline for the amounts Starline alleges it incurred to
6 replace IGUs at Grande North because: (1) “the window claims indisputably do not involve
7 covered ‘property damage’ and are otherwise excluded by the business-risk exclusions” in
8 the OCIP Policy; (2) as a supplier of the window-wall system, Starline does not qualify as
9 an Additional Named Insured under the OCIP Policy, but rather is considered an additional
10 insured for faulty installation work performed by its subcontractor (Star Team), and there
11 are no allegations that faulty installation was the cause of the window claims; and (3)
12 “Starline is no longer legally obligated to pay the damages it allegedly incurred to replace
13 the defective IGUs at Grande North.” (Doc. 39–1 at 17.)

14 B. OCIP Policy

15 Bosa purchased the OCIP Policy for the Grande North project which names the
16 Liberty Policy as the primary policy and the ICSOP Policy as the excess policy. (Doc. 39–
17 1 at 12.) The ICSOP Policy follows form to the Liberty Policy and expressly incorporates
18 the terms and conditions of the Liberty Policy, unless otherwise provided in the ICSOP
19 Policy. (*Id.*) The OCIP Policy provides commercial general liability coverage. (Doc. 41
20 at 11; *see* Doc. 1–2.)

21 The relevant policy language is as follows:

22 **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE**
23 **LIABILITY**

24 **1. Insuring Agreement**

- 25 a. We will pay those sums that the insured becomes legally obligated to
26 pay as damages because of “bodily injury” or “property damage” to
27 which this insurance applies.

28 . . .

1 **2. Exclusions**

2 This insurance does not apply to:

3
4 ...

5 **k. Damage To Your Product**

6 “Property damage” to “your product” arising out of it or any part of it.

7 ...

8 **m. Damage To Impaired Property Or Property Not Physically**
9 **Injured**

10 “Property damage” to “impaired property” or property that has not
11 been physically injured, arising out of:

- 12 (1) A defect, deficiency, inadequacy or dangerous condition in “your
13 product” or “your work”; or
14 (2) A delay or failure by you or anyone else acting on your behalf to
15 perform a contract or agreement in accordance with its terms.

16 This exclusion does not apply to the loss of use of other property
17 arising out of sudden and accidental physical injury to “your product”
18 or “your work” after it has been put to its intended use.

19 **n. Recall Of Products, Work Or Impaired Property**

20 Damages claimed for any loss, cost or expense incurred by you or
21 others for the loss of use, withdrawal, recall, inspection, repair,
22 replacement, adjustment, removal or disposal of:

- 23 (1) “Your product”;
24 (2) “Your work”;
25 (3) “Impaired property”;

26 if such product, work, or property is withdrawn or recalled from the
27 market or from use by any person or organization because of a known
28 or suspected defect, deficiency, inadequacy or dangerous condition
29 in it.

30 ...

1 17. "Property damage" means:

- 2 a. Physical injury to tangible property, including all resulting loss of use
3 of that property. All such loss of use shall be deemed to occur at the
4 time of the physical injury that caused it; or
5 b. Loss of use of tangible property that is not physically injured. All such
6 loss of use shall be deemed to occur at the time of the "occurrence" that
7 caused it.

8 ...

9 21. "Your Product":

10 a. Means:

- 11 (1) Any goods or products, other than real property, manufactured,
12 sold, handled, distributed or disposed of by:
13 (a) You;
14 (b) Others trading under your name; or
15 (c) A person or organization whose business or assets you have
16 acquired; and
17 (2) Containers (other than vehicles), materials, parts or equipment
18 furnished in connection with such goods or products.

19 b. Includes:

- 20 (1) Warranties or representations made at any time with respect to the
21 fitness, quality, durability, performance or use of "your product";
22 and
23 (2) The providing of or failure to provide warnings or instructions.

24 22. "Your work":

25 a. Means:

- 26 (1) Work or operations performed by you or on your behalf; and
27 (2) Materials, parts or equipment furnished in connection with such
28 work or operations.

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1 (citations omitted); *see also Horphag Rsch. Ltd. v. Garcia*, 475 F.3d 1029, 1035 (9th Cir.
2 2007). The nonmoving party “may not rest upon the mere allegations or denials of his
3 pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.”
4 *Anderson*, 477 U.S. at 248 (citation omitted).

5 When ruling on a summary judgment motion, the court must view the facts and draw
6 all reasonable inferences in the light most favorable to the nonmoving party. *Scott v.*
7 *Harris*, 550 U.S. 372, 378 (2007). “Credibility determinations, the weighing of the
8 evidence, and the drawing of legitimate inferences from the facts are jury functions, not
9 those of a judge, whether he is ruling on a motion for summary judgment or for a directed
10 verdict.” *Anderson*, 477 U.S. at 255. In ruling on a motion for summary judgment, the
11 court “need consider only the cited materials, but it may consider other materials in the
12 record.” FED. R. CIV. P. 56(c)(3).

13 **III. DISCUSSION**

14 **A. Breach of Contract Cause of Action**

15 ICSOP contends the Window Claims are not covered under the OCIP Policy and
16 that ICSOP does not owe a duty to indemnify Starline because: (1) “the window claims
17 indisputably do not involve covered ‘property damage’ and are otherwise excluded by the
18 business-risk exclusions” in the OCIP Policy; (2) as a supplier of the window-wall system,
19 Starline does not qualify as an Additional Named Insured under the OCIP Policy, but rather
20 is considered an additional insured for faulty installation work performed by its
21 subcontractor, Star Team; and (3) “Starline is no longer legally obligated to pay the
22 damages it allegedly incurred to replace the defective IGUs at Grande North.” (Doc. 39–
23 1 at 17.)

24 **a. Coverage Under the OCIP Policy**

25 *i. Whether the Window Claims Constitute “Property Damage”*

26 The OCIP Policy defines property damage as “[p]hysical injury to tangible property,
27 including all resulting loss of use of that property.” (Doc. 1–2 at 86.)

28 ///

1 1. Physical Injury to Tangible Property

2 ICSOP first argues that the Window Claims do not involve “property damage”
3 through physical injury because the migrating PIB did not cause damage to anything other
4 than the IGUs supplied by Starline. (Doc. 39–1 at 17.)

5 Under California law, “the prevailing view is that the incorporation of a defective
6 component or product into a larger structure does not constitute property damage unless
7 and until the defective component causes physical injury to tangible property in at
8 least some other part of the system.” *Webcor Constr., LP v. Zurich Am. Ins. Co.*, 372 F.
9 Supp. 3d 1061, 1071 (N.D. Cal. 2019), *aff’d*, 801 F. App’x 557 (9th Cir. 2020) (quoting *F*
10 *& H Constr. v. ITT Hartford Ins. Co.*, 118 Cal. App. 4th 364, 372 (2004)). Generally,
11 liability policies “are not designed to provide contractors and developers with coverage
12 against claims their work is inferior or defective. The risk of replacing and repairing
13 defective materials or poor workmanship has generally been considered a commercial risk
14 which is not passed on to the liability insurer.” *Maryland Cas. Co. v. Reeder*, 221 Cal.
15 App. 3d 961, 967 (Ct. App. 1990), *modified* (July 25, 1990). “Rather liability coverage
16 comes into play when the insured’s defective materials or work cause injury to property
17 other than the insured’s own work or products.” *Id.* “In the absence of allegations or
18 extrinsic facts suggesting that the defective work or materials caused damage to *other*
19 *property*, or physically harmed the whole of the structure, such as by introducing a
20 hazardous contaminant, no potential for coverage exists.” *Webcor Constr., LP*, 372 F.
21 Supp. 3d at 1071; *see Reg’l Steel Corp. v. Liberty Surplus Ins. Corp.*, 226 Cal. App. 4th
22 1377, 1392–93 (2014).

23 It is ICSOP’s position that the OCIP Policy does not provide coverage for the
24 Window Claims because the migrating PIB did not cause damage to anything other than
25 the IGUs. (Doc. 39–1 at 17.) ICSOP explains that “the incorporation of a defective product
26 into a building does not constitute ‘property damage’ covered by a commercial general
27 liability policy unless and until the defective product causes ‘physical injury to tangible
28 property’ in at least some other part of the system.” (*Id.* at 18.) Moreover, ICSOP contends

1 that “[c]osts incurred solely for the repair or replacement of faulty workmanship or inferior
2 materials are not covered under general liability policies” and “[t]his is because poor
3 workmanship is not a commercial risk that is passed on to a liability insurer.” (*Id.* (citing
4 *Maryland Cas. Co. v. Reeder*, 221 Cal. App. 3d 961, 967–68 (1990)).) Starline admits that
5 the migrating PIB did not cause damage to anything other than the IGUs, and Starline’s
6 experts agree that no building components other than the IGUs incorporated in the window-
7 wall system were damaged. (Doc. 39–1 at 19; *see* Ex. 9 to Doc. 39–2, Decl. of Jeffrey N.
8 Labovitch ISO ICSOP’s MSJ (“Labovitch Decl.”).) It is ICSOP’s position that the PIB
9 migrated because it was defective and, thus, there is no coverage afforded under the OCIP
10 Policy. (Doc. 39–1 at 19–20.) However, ICSOP explains that, “even if the dripping PIB
11 on the IGUs qualified as covered ‘property damage,’ the OCIP Policy includes ‘business-
12 risk exclusions’ that otherwise remove coverage” for the Window Claims. (*Id.* at 20.) The
13 exclusions include: (1) Exclusion K – Damage To Your Product; (2) Exclusion M –
14 Damage to Impaired Property Or Property Not Physically Injured; and (3) Exclusion N –
15 Recall Of Products, Work Or Impaired Property. (*See* Doc. 1–2 at 70–71; *see supra* p. 5.)
16 ICSOP explains that “the only alleged damages concern costs that Starline claims it
17 incurred in having to replace the IGUs that it supplied and had installed at Grande North.”
18 (Doc. 39–1 at 21.) Thus, ICSOP contends that the lack of “property damage” and the
19 aforementioned “business-risk exclusions” preclude coverage for the Window Claims and
20 ICSOP does not owe a duty to defend Starline. (*Id.*)

21 Starline counters that the Window Claims are within the scope of the OCIP Policy
22 and that there was property damage because of physical injury to the IGUs. (Doc. 41 at
23 19–20.) Here, “the affected PIB fundamentally changed its physical properties over time,
24 losing molecular weight and viscosity as a result of chemical reactions . . . due to
25 unexpected and extreme microclimates in the window-walls.” (*Id.* at 21.) “[T]he PIB’s
26 appearance, shape, dimension, and color also changed . . . it migrated from its original
27 position between the spacer bars and the glass edges, and onto the viewing areas of the
28 glass surfaces of the IGUs” which caused a visual obstruction. (*Id.*) Starline explains that

1 “California courts have found that physical injury ‘unambiguously connotes damage to
2 tangible property causing an alteration in appearance, shape, color or in other material
3 dimension.’” (*Id.* at 20–21 (quoting *F & H Constr.*, 118 Cal. App. 4th at 376).) It is
4 Starline’s position that “[w]hether the IGUs damaged by PIB migration are labeled ‘faulty’
5 or ‘inferior’ or ‘damaged,’ the OCIP Policy does not insure based on the label given the
6 damage. Instead, the OCIP Policy applies where there is physical injury to tangible
7 property or loss of use.” (Doc. 41 at 22.) Thus, Starline contends that in the instant
8 situation, the IGUs suffered physical injury from PIB migration which constitutes
9 “property damage” under the OCIP Policy. (*Id.*)

10 The OCIP Policy defines property damage as “[p]hysical injury to tangible property
11” (Doc. 1–2 at 86.) Applying that definition, “the prevailing view is that the
12 incorporation of a defective component or product into a larger structure does not constitute
13 property damage unless and until the defective component causes physical injury to
14 tangible property in at least some other part of the system.” *F & H Constr.*, 118 Cal. App.
15 4th at 372. Based on the evidence presented, the Court finds that the damage alleged in
16 the Window Claims do not involve injury to any structure other than the IGUs. (Doc. 39–
17 1 at 10; *see* Exs. 4, 9 to Labovitch Decl.) Through written discovery, Starline admits that
18 “there was no physical injury to tangible property at [Grande North] other than to the IGUs
19 at [Grande North] which were damaged by PIB migration.” (Ex. 4 to Labovitch Decl.)
20 Moreover, Starline’s expert, Richard Cechner, provides that the resulting damage from the
21 PIB migration is “all confined within the IGU.” (Ex. 9 to Labovitch Decl.) Thus, it appears
22 the damage was limited to the IGUs and did not extend to any other tangible property.
23 Accordingly, the Court finds no disputed issue of material fact that creates a potential for
24 property damage via physical injury covered by the OCIP Policy. *See Travelers Prop. Cas.*
25 *Co. of Am. v. Allwire, Inc.*, 508 F. Supp. 3d 736, 743 (C.D. Cal. 2020) (“there is only
26 physical injury to property ‘when the insured’s defective materials or work cause injury to
27 property other than the insured’s own work or products’”) (quoting *Maryland Cas. Co.*,
28 221 Cal. App. 3d at 967)); *see also F & H Constr.*, 118 Cal. App. 4th at 347, 377 (finding

1 no property damage because “the grade A–36 pile caps were an inferior product . . .
2 [h]owever, welding the caps to the driven piles did not damage the piles or any other
3 property; it merely rendered the piles inadequate for their intended purpose, and as noted,
4 commercial risk is not covered by liability insurance”).

5 2. Loss of Use of Tangible Property

6 Additionally, Starline argues that even if the migrating PIB does not constitute
7 property damage through physical injury, it does constitute property damage through loss
8 of use of the IGUs. (Doc. 41 at 23.) Starline explains “[t]he entire purpose of a window
9 is to have a transparent environmental barrier which allows light to pass through it – the
10 PIB migration blocking the light and views through the glass within the IGUs means that
11 they cannot be used for their intended purpose, thus being a loss of use.” (*Id.*; see Ex. 1 to
12 Doc. 41–1, Decl. of T. Daniel Heffernan ISO Starline’s Opposition (“Heffernan Decl.”).)
13 Thus, it is Starline’s position that the PIB migration prohibited the IGUs from being used
14 as windows and thus constitutes property damage as defined in the OCIP Policy. (Doc. 41
15 at 23.)

16 ICSOP counters that loss of use is described as the “measure of damages . . . [that]
17 may be determined with reference to the rental value of similar property which the plaintiff
18 can hire for use during the period when he is deprived of the use of his own property.”
19 (Doc. 42 at 8 (quoting *Collin v. Am. Empire Ins. Co.*, 21 Cal. App. 4th 787, 818 (1994)).)
20 ICSOP explains that, here, Starline does not make any cognizable claim for “loss of use”
21 and that “the only damages [Starline] seeks concern costs it allegedly incurred to remove
22 and replace its defective IGUs.” (Doc. 42 at 9.) Thus, “[b]ecause the only damage at issue
23 is to Starline’s defective product that it supplied, Starline cannot meet its burden to bring
24 the Window Claims within the OCIP [Policy’s] insuring agreement.” (*Id.*)

25 The Court again finds the allegations in the complaint are insufficient to constitute
26 property damage, and Starline’s loss of use argument fails. See *Emps. Mut. Cas. Co. v. N.*
27 *Am. Specialty Flooring, Inc.*, 424 F. Supp. 3d 958, 969 (E.D. Cal. 2019) (finding that
28 “property damage is not established by the mere failure of a defective product to perform

1 as intended. Nor is it established by economic losses such as the diminution in value of
2 the structure or the cost to repair a defective product structure”); *see also St. Paul Fire &*
3 *Marine Ins. Co. v. Coss*, 80 Cal. App.3d 888, 892 (1978) (denying coverage for “engaging
4 architects and contractors to correct the defective work of [the subcontractor], for loss of
5 use of the house, for having to rent a substitute residence, and for attorney’s fees incurred
6 in prosecuting their action against [the subcontractor]” where the defective work did not
7 cause any actual physical damage to any parts of the home); *F & H Constr.*, 118 Cal. App.
8 4th at 377 (concluding the claims are not covered as “property damage” under the relevant
9 policy because the only costs claimed “are the costs for repairing and modifying the
10 defective caps and for loss of the early completion bonus” and “[a] contrary conclusion
11 would allow contractors and developers to obtain liability insurance for inferior or
12 defective workmanship, a risk not covered by commercial liability insurance”).

13 *iii. Elimination of Coverage for “Your Products” Provision*

14 Starline goes on to explain that the OCIP Policy includes an amendment titled
15 “Elimination Of Coverage For ‘Your Products’” which confirms coverage for “work” of
16 subcontractors such as Starline and Star Team. (Doc. 41 at 23–24.) The provision
17 provides:

18 It is agreed that this insurance policy . . . does not apply to “bodily injury” or
19 “property damage” arising out of any and all products manufactured, sold,
20 handled, distributed, or disposed of by the First Named Insured or its
21 Affiliates. This provision does not apply to “work” performed by an
22 Additional Name Insured at a Project Site that is intended to permanently
23 remain as part of the completed project after completion of the project.

23 (Doc. 1–2 at 37–38.) Starline argues this provision confirms coverage for Bosa and its
24 insured contractors for “work” performed by Bosa’s subcontractors which is “intended to
25 permanently remain as part” of Grande North. (Doc. 41 at 24.) Since the “IGUs are
26 materials, parts and/or equipment furnished in connection with installation of the window-
27 wall system, and were intended to permanently remain where fastened, for the lifetime of
28 the building,” Starline believes coverage is afforded. (*Id.*)

1 ICSOP counters that the above provision does not restore coverage for the Window
2 Claims because “[t]his provision applies specifically to Bosa as the ‘First Named Insured’
3 and provides that there is no coverage for ‘property damage’ arising out of ‘products
4 manufactured, sold, handled, distributed, or disposed of by [Bosa] or its Affiliates.’” (Doc.
5 39–1 at 21.) Thus, “[b]ecause this provision only applies to coverage being sought by
6 Bosa, the provision is irrelevant for purposes of Starline’s claim for coverage.” (*Id.*)
7 ICSOP goes on to explain that the terms “work” and “operations” are two distinct terms,
8 which Starline uses interchangeably. (Doc. 42 at 9–10.) The term “work” includes
9 “materials, parts or equipment furnished in connection with the operations.” (*Id.*; *see* Doc.
10 1–2 at 60.) Here, “Starline concedes that the Window Claims do not arise out of Star
11 Team’s installation of the window-wall system (i.e., its operations) at Grande North,” and
12 therefore ICSOP argues the Window Claims are precluded “from falling within the scope
13 of the insuring agreement to begin with.” (Doc. 42 at 10.) ICSOP argues that Starline’s
14 interpretation “would magically turn the OCIP Polic[y] from [a] liability polic[y] to a
15 performance bond or warranty of the entire building.” (*Id.*) Even if Starline’s
16 interpretation of the provision was applied, “the Window Claims would still not be covered
17 because . . . they do not arise out of Starline’s ‘work’ . . . [r]ather, the Window Claims
18 indisputably arose out of a defect in the products (the IGUs) that Starline supplied.” (*Id.*)

19 The Court finds that the “Elimination Of Coverage For ‘Your Products’” provision
20 contained in the OCIP Policy does not otherwise restore coverage for the Window Claims.
21 Starline’s interpretation of the provision is overly broad and would provide coverage for
22 all “materials, parts or equipment furnished in connection with the operations.” (*See* Doc.
23 1–2 at 60.) Such interpretation would be inconsistent with various other provisions within
24 the OCIP Policy, including Exclusion N which excludes “damages claimed for any loss,
25 cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection,
26 repair, replacement, adjustment, removal or disposal of: (1) ‘Your Product’; (2) ‘Your
27 Work’; (3) ‘Impaired Property.’” (Doc. 1–2 at 70; *see supra*, p. 5); *see El Dora Oil Co. v.*
28 *Gibson*, 201 Cal. 231, 235 (1927) (“the whole of a contract is to be taken together, so as to

1 give effect to every part, if reasonably practicable, each clause helping to interpret the
2 other”); *see also Emps. Reinsurance Co. v. Superior Ct.*, 161 Cal. App. 4th 906, 919 (2008),
3 *as modified* (Apr. 22, 2008) (in interpreting an insurance contract, the Court of Appeal
4 “consider[s] the contract as a whole and interpret[s] the language in context, rather than
5 interpret[ing] a provision in isolation”).

6 In conclusion, the Court finds the Window Claims do not involve “property damage”
7 and that coverage for the Window Claims is not provided in the OCIP Policy.

8 **b. Whether the OCIP Policy Provides Coverage for Starline’s Activities**
9 **as a Supplier**

10 It is ICSOP’s position that the OCIP Policy “only provides coverage for construction
11 activities at Grande North – not product-defect claims arising from Starline’s supply of the
12 window-wall system.” (Doc. 39–1 at 22.) Thus, ICSOP contends that the OCIP Policy
13 does not provide coverage for Starline’s activities as a supplier. (*Id.* at 21–23.)

14 However, because the Court finds the damage alleged in the Window Claims does
15 not constitute “property damage” as alleged in the OCIP Policy, the Court need not
16 determine Starline’s position as a supplier or a subcontractor or whether the OCIP Policy
17 provides coverage for such role.

18 **c. Whether Starline is Legally Obligated to Pay Damages It Allegedly**
19 **Incurred to Replace the IGUs at Grande North**

20 ICSOP argues that “[e]ven if Starline could somehow demonstrate that the window
21 claims are covered” under the OCIP Policy, Starline would still not be owed coverage
22 because “Starline has paid nothing to Limited and USA for replacing the defective IGUs
23 at Grande North” and “the applicable statutes of limitation to collect on Starline’s purported
24 debts have long since expired.” (Doc. 39–1 at 23–24.)

25 Again, the Court finds that since the damage alleged in the Window Claims does not
26 constitute “property damage” as defined in the OCIP Policy, the Court need not decide the
27 instant issue.

28 ///

1 B. Declaratory Relief Cause of Action

2 Lastly, ICSOP contends that Starline’s declaratory relief action must also be
3 dismissed because “[u]nder California law, declaratory relief ‘operates prospectively to
4 declare future rights, rather than to redress past wrongs.’” (Doc. 39–1 at 26 (quoting
5 *Canova v. Tr. of Imperial Irrigation Dist. Emp. Pension Plan*, 150 Cal. App. 4th 1487,
6 1497 (2007)).) ICSOP explains that “[h]ere, in seeking declaratory relief, Starline is not
7 requesting the court’s guidance to declare ICSOP’s defense and indemnity obligations for
8 the future.” (Doc. 39–1 at 26.) Rather, the window claims have been settled and fully
9 resolved, and Starline’s exclusive remedy would be through breach of contract. (*Id.*)
10 However, “there is no breach of contract because the window claims are not covered under
11 the OCIP Policies. As such, the cause of action for declaratory relief should be dismissed.”
12 (*Id.*)

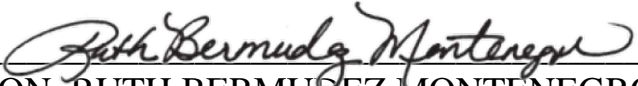
13 The Court disagrees with ICSOP’s contention that Starline is barred from seeking
14 declaratory relief in this action. However, to the extent Starline seeks declaratory relief as
15 to the Parties’ “respective rights and obligations under the ICSOP Policy,” the Court finds
16 the OCIP Policy does not provide coverage for the Window Claims.² (*See* Doc. 1 at 4.)

17 **IV. CONCLUSION**

18 For the foregoing reasons, Defendant’s MSJ (Doc. 39) is **GRANTED**. The Clerk
19 of the Court is directed to enter judgment accordingly and close this case.

20 **IT IS SO ORDERED.**

21 DATE: March 17, 2023

22 
23 HON. RUTH BERMUDEZ MONTENEGRO
24 UNITED STATES DISTRICT JUDGE
25

26 ² It appears Starline does not raise any other theories of liability. Aside from Starline’s
27 argument that ICSOP’s alleged failure to defend and indemnify constitutes a breach of
28 contract entitling Starline to declaratory relief, the Court notes no other causes of action
were raised. As such, this action may be resolved in full on the instant MSJ.