

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

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BACON CONSTRUCTION CO., INC.  
and AGOSTINI CONSTRUCTION  
CO., INC.,  
Plaintiffs,

v.

OHIO SECURITY INSURANCE  
COMPANY and THE OHIO  
CASUALTY INSURANCE COMPANY  
both d/b/a LIBERTY MUTUAL  
INSURANCE COMPANY; COLONY  
DRYWALL, INC.; DANIEL  
ALFAIATE; and MARLENE  
ALFAIATE,  
Defendants.

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C.A. No. 20-00280-MSM-LDA

**ORDER**

With respect to the plaintiffs', Bacon Construction Co., Inc. and Agostini Construction Co., Inc. ("Bacon" and "Agostini"), Motion for Partial Summary Judgment pursuant to Fed. R. Civ. P. 56 (ECF No. 38), and on the Cross-Motion for Summary Judgment of the defendants, Ohio Security Insurance Co. and the Ohio Casualty Ins. Co., both d/b/a Liberty Mutual Insurance Company ("Ohio Security and/or Ohio Casualty") (ECF No. 40), it is hereby ORDERED:

1. Defendants' Cross Motion for Summary Judgment (ECF No. 40) is DENIED.
2. Plaintiffs' Motion for Partial Summary Judgment, only as to Count I, seeking a declaration with respect to their right to a defense and/or indemnity under

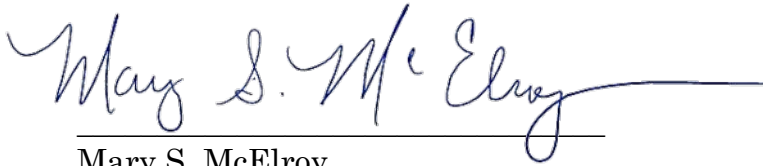
policies of insurance issued by Ohio Security and/or Ohio Casualty (ECF No. 38) is GRANTED.

3. The following Declaratory Judgment shall enter:

- (a) Bacon qualifies as an insured under the Commercial General Liability policy issued by Ohio Security referenced in Paragraph 9 of the Second Amended Petition for Declaratory Relief;
- (b) Bacon qualifies as an insured under the Umbrella policy issued by Ohio Casualty referenced in Paragraph 10 of the Second Amended Petition for Declaratory Relief;
- (c) Agostini qualifies as an insured under the Commercial General Liability policy issued by Ohio Security referenced in Paragraph 9 of the Second Amended Petition for Declaratory Relief;
- (d) Agostini qualifies as an insured under the Umbrella policy issued by Ohio Casualty referenced in Paragraph 10 of the Second Amended Petition for Declaratory Relief;
- (e) Ohio Security owes a duty to defend Bacon and Agostini as to the claims asserted by Daniel and Marlene Alfaiate (“the Alfaiate litigation”) in the Massachusetts Superior Court action referenced in Paragraph 17 of the Second Amended Petition for Declaratory Relief;
- (f) Bacon and Agostini shall be reimbursed, by the defendants, for the fees and costs incurred in connection with the defense of the Alfaiate litigation;

(g) Plaintiffs shall submit a bill of costs to the defendants within 30 days of this order. Thereafter Defendants will have 30 days to respond.

IT IS SO ORDERED.

A handwritten signature in blue ink, reading "Mary S. McElroy", followed by a horizontal line.

Mary S. McElroy  
United States District Judge

July 6, 2022