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November 10, 2014

Setback For Pa. Insurers In Product Liability Cases

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Published in Law360

The Pennsylvania Supreme Court has rejected a liability insurer's attempt to overturn an intermediate state appellate court decision holding that insurers must defend product liability claims. See Indalex v. National Union Fire Insurance Co. of Pittsburgh Pa., No. 126 WAL 2014 (Pa. Sept. 18, 2014). The decision confirms that loss arising from a defective product may constitute an occurrence, triggering general liability insurance coverage under Pennsylvania law.

Background

Indalex, a window and door manufacturer, sought coverage under a commercial umbrella insurance policy issued by National Union Fire Insurance Co. of Pittsburgh Pa., for multiple lawsuits filed by homeowners and property owners. The lawsuits alleged Indalex's windows and doors were defectively designed or manufactured and resulted in water leakage that caused physical damage, including mold and cracked walls as well as personal injury. The claims against Indalex were based on strict liability, negligence, breach of warranty and breach of contract. After National Union declined coverage, Indalex commenced insurance coverage litigation.

In the trial court, National Union argued there was no "occurrence"[1] triggering coverage, relying on Kvaerner Metals Division of Kvaerner U.S. Inc. v. Commercial Union Ins. Co., 908 A.2d 888 (Pa. 2006). In Kvaerner, the court found there was no occurrence where the only "damage" alleged in the underlying complaint was the faulty work product itself. Kvaerner was also based on an underlying complaint that contained only claims for breach of contract and breach of warranty. Despite the considerable differences between the claims and damage at issue in Kvaerner and those alleged in Indalex, the Indalex trial court concluded that Kvaerner barred coverage. Accordingly, the trial court granted summary judgment in favor of the insurer. Indalex appealed.

Pennsylvania Superior Court's Decision

In Indalex v. National Union Fire Insurance Co. of Pittsburgh, Pa., 2013 PA Super 311 (Pa. Super. Dec. 3, 2013), the Superior Court reversed the trial court's order and ruled that the underlying complaints against Indalex triggered coverage under the National Union policy.

Finding that the underlying plaintiffs alleged damage to property, other than Indalex's own product, as well as personal injuries, the Superior Court concluded that claims against Indalex sufficiently alleged an occurrence. The court also found that, unlike Kvaerner, where the claims asserted sounded only in breach of contract and breach of warranty, the claims against Indalex included product liability based tort claims given the allegedly defective Indalex products and specific instances of physical damage and personal injury resulting from those products. As the Superior Court explained, "because appellants set forth tort claims based on damages to person or property, other than the insured's product, we cannot conclude that the claims are outside the scope of coverage."

The Superior Court concluded that the holding in Kvaerner is too narrow to support the preclusion of coverage for the claims asserted against Indalex.[2] Rather Kvaerner's holding may apply, at most, in situations where the underlying complaint contains only breach of contract or breach of warranty claims that do not sound in tort[3] and seek only damages to the insured's work product itself. In contrast, Indalex broadly concerns tort claims alleging product failure that causes property damage — to products other than the insured's — and personal injury. Such claims are squarely covered under liability policies.

The Superior Court also rejected the insurer's attempt to apply the gist of the action doctrine to bar coverage for the tort claims, finding that the Pennsylvania Supreme Court never applied that doctrine in an insurance coverage context. The gist of the action doctrine maintains "the conceptual distinction between breach of contract claims and tort claims" and typically precludes the recasting of ordinary breach of contract claims as tort claims. McShea v. City of Philadelphia, 995 A.2d 334, 339 (Pa. 2010).

The Indalex Court ruled that applying the gist of the action doctrine in an insurance coverage context would be inconsistent with established Pennsylvania law that "an insurance company is obligated to defend its insured whenever the complaint filed by the injured party may potentially come within the policy's coverage." American States v. Maryland Cas., 628 A.2d 880, 887 (Pa. Super. 1993) (emphasis added). As the court explained, "If a single claim in a multiclaim lawsuit is potentially covered, an insurer must defend against all claims until it is clear that the underlying plaintiff cannot recover on any claim." Id.

In sum, because the underlying complaints against Indalex alleged that defective products caused damage to property other than the insured's products and personal injury, the Superior Court held there was an occurrence and reversed the trial court's order.

National Union filed a petition for allowance of appeal. The Pennsylvania Supreme Court denied National Union's petition, allowing the Superior Court's decision to stand and confirming that general liability insurers must defend defective product claims under Pennsylvania law.

Implications

The Superior Court's opinion in Indalex is a well-reasoned confirmation for policyholders that product liability claims sounding in tort trigger coverage under Pennsylvania law. The court's expansive view of coverage is consistent with policyholders' reasonable expectations under general liability policies. Moreover, the Supreme Court's decision not to entertain the insurer's appeal suggests agreement with the Superior Court's reasoning and conclusion.

Consequently, Indalex stands as a substantial hurdle to insurers looking to evade their duty to defend claims arising from negligently designed or faulty products. It limits Kvaerner's reach and clarifies that Kvaerner and its progeny have been misinterpreted by insurers as a basis for the denial of product and faulty workmanship claims.

Still, insurers will likely continue to argue that property damage or personal injuries resulting from defective products or faulty workmanship do not constitute an occurrence. Policyholders in Pennsylvania should therefore be prepared to argue forcefully against any attempt by insurers to limit Indalex's effect on insurance coverage or to rely on Kvaerner to deny coverage for product liability claims.

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[1] The policy defines an occurrence as an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

[2] The Superior Court also concluded that two opinions relying on Kvaerner — Millers Capital Ins. Co. v. Gambone Bros. Development Co. Inc., 941 A.2d 706 (Pa. Super. 2007) and Erie Insurance Exchange v. Abbot Furnace Co., 972 A.2d 1232 (Pa. Super. 2009) — also did not bar coverage for the claims against Indalex.

[3] As the court noted, the Pennsylvania Supreme Court has held that a breach of warranty claim can sound in tort. Williams v. West Penn Power Co., 467 A.2d 811, 816 (Pa. 1983).