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Third Circuit Reopens Window for Potential Coverage of Product Defect Claims Based Upon Definition of an "Occurrence"

By: Steven D. Cantarutti and James F. Layman
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On September 13, 2019, the U.S. Third Circuit ("Third Circuit") partially overturned a decision from the U.S. District Court ("District Court") in favor of the insurers that an aluminum products manufacturer was not entitled to coverage for claims arising from its production of faulty window components. The Third Circuit's decision hinged on reviewing the definition of an "occurrence" for each of the twenty-eight (28) policies at issue, which it found the District Court did not do when issuing the underlying decision.

The matter, captioned Sapa Extrusions, Inc. v. Liberty Mutual Ins. Co., et al, No. 18-2206 (3d Cir. 2019), involved a coverage dispute between an insured manufacturer, Sapa Extrusions, Inc. ("Sapa"), and several of its insurers. Sapa manufactured and supplied "organically coated aluminum profiles" to Marvin Lumber and Cedar Company ("Marvin"), which incorporated the product into windows and other products. In 2010, Marvin sued Sapa, alleging, *inter alia*, that Sapa's defective components began to oxidize shortly after installation, failing to meet Marvin's contractual product specifications. Sapa ultimately settled the underlying action and sought defense and indemnity coverage from the twenty-eight (28) commercial general liability policies issued by the insurers. Each policy required its respective insurer to defend and/or indemnify Sapa for property damage "caused by an occurrence". The District Court granted summary judgment in the insurers' favor, holding that the underlying lawsuit did not constitute an "occurrence," irrespective of the varying definitions of an "occurrence".

On appeal, the Third Circuit declined to consider the policies as a whole (as the District Court ruled) and instead analyzed each policy's individual definition of an "occurrence".

The Third Circuit first considered the language of the first nineteen (19) policies, which defined "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions". Under this language, which it characterized as the "Accident Definition," the Third Circuit sided with the District Court, holding that the cause of the dispute, Sapa's failure to meet Marvin's product specifications, was too foreseeable to be considered an accident on Sapa's part, even if some of the damage occurred to non-defective property. In doing so, it relied upon

controlling precedent from three cases applying Pennsylvania law, which held that allegations of "faulty workmanship" are not an "occurrence" (*i.e.*, an unforeseeable or fortuitous event) to trigger coverage.

The Third Circuit next considered the language of the seven (7) policies, which defined "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". Under this language, which the Third Circuit characterized as the "Expected/Intended Definition," it found the language turns on the insured's subjective intent, excluding injury or damage where the insured intended an injury if he/she desired the consequences or acted knowing that such consequences were substantially certain to occur. Accordingly, the Third Circuit found that the District Court erred by not considering the insured's subjective intent with these seven (7) policies and remanded this issue back to the District Court for further consideration.

Finally, the Third Circuit considered the last two (2) policies, which defined "occurrence" as "injurious exposure, including continuous or repeated exposure, to conditions, which results, during the policy period, in personal injury or property damage…neither expected or intended from the standpoint of the insured". Under this language, which the Third Circuit characterized as the "Injurious Exposure Definition," the Third Circuit also found the District Court had failed to analyze these policies despite their "unique" wording and remanded this issue back to the District Court for further consideration.

The Third Circuit's decision in Sapa is a further illustration of Pennsylvania law on policy construction, which requires policies to be interpreted in accordance with their plain meaning and the relevant Pennsylvania law. Thus, the ultimate outcome of whether or not coverage is triggered is dependent upon analyzing the language contained in each policy. As a result, the decision adheres to the principle that courts should refrain from analyzing or "grouping" policies together unless the policy language at issue is the same.