

INSURANCE SERVICES

DECEMBER

A L E R T

2014

PA SUPREME COURT DECLINES TO EXTEND MULTIPLE TRIGGER THEORY TO PROPERTY DAMAGE CLAIMS

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Where an insured loss causes damages that straddle multiple policy periods, insurers and insureds must determine which policies are implicated. Clear rules regarding “trigger” of coverage benefit policyholders seeking to invoke coverage, an insurer gauging its own duties, or an insurer pursuing contribution from other carriers issuing successive policies. In *Pennsylvania National Mut. Cas. Ins. Co. v. St. John*, No. 86 MAP 2012 (December 15, 2014), the Pennsylvania Supreme Court affirmed use of the “manifestation trigger” as the “general rule” for determining when commercial general liability (CGL) policies are triggered. The Court rejected an attempt to apply the “multiple trigger” theory to property damage claims. In so doing, the Court held that a policy is triggered when an injury is reasonably ascertainable, irrespective of whether or not the injured party understands that she has a cause of action.

Appellants John D. St. John and Kathy M. St. John are dairy farmers in Chester County. They hired LPH Plumbing to install a new plumbing system to expand their dairy operation. In 2003, LPH Plumbing negligently installed the plumbing system, creating a situation where on-going seepage of gray water contaminated the dairy herd’s drinking water. In April 2004, the dairy herd began exhibiting health issues, including decreased milk production, salmonella poisoning, laminitis,

and various reproductive maladies. Some of these health issues are common to dairy farming, and attributable to a wide range of possible causes. Appellants began to suspect the plumbing installation as the cause of these injuries in March 2006, when the cows thrashed their heads and refused to drink the water.

Pennsylvania National Casualty Insurance Company (“Penn National”) issued four separate policies to LPH Plumbing. Three of those policies were CGL policies, for each of the three years between July 1, 2003 and July 1, 2006. The fourth policy was an umbrella policy applicable only to the third year (July 1, 2005 to July 1, 2006). Although the lower courts found that only the CGL policy for the first year (July 1, 2003 to July 1, 2004) had been triggered, the St. Johns sought to trigger coverage under policies applicable to the third year (both the CGL and umbrella policies), or alternatively, to all three years.

In *D’Auria v. Zurich Ins.*, 507 A.2d 857 (Pa. Super. 1986), the Pennsylvania Superior Court adopted the “manifestation” rule for determining when a CGL policy is triggered. According to that test, coverage is triggered “when the injurious effects of the negligent act first manifest themselves in a way that would put a reasonable person on notice of injury.” In this case, the St. Johns argued that this test is not satisfied unless the insured had sufficient information to associate an injury with a

negligent act; that is, the insured must be able to ascertain the cause of the injury as well as the injury itself. Here, although injuries started manifesting themselves in April 2004, the St. Johns were not aware until 2006 that these damages were caused by a negligent act (as opposed to the sort of veterinary, nutritional or other maladies to which all dairy farms are exposed) .

The Court rejected the St. Johns' argument. The Court found that knowledge of the cause of injury "has no special relevance to determining the date an insurance policy is triggered, unless specifically required by the language of the applicable policy of insurance." Instead, the Court relied on the "effects" test and found that coverage is triggered when injury or damage "becomes readily apparent." The Court further concluded that the St. Johns' property damage was not concealed or undiscoverable, but, to the contrary, became readily apparent in April 2004 when the insured experienced a drop in milk production and the herd started suffering from a variety of ailments. The discovery of a potential cause of action for that damage "has no bearing on our determination of which Penn National policy applies."

In the alternative, the St. Johns argued for application of the "multiple trigger theory," which was adopted in *J.H. France Refractories Co. v. Allstate Ins. Co.*, 626 A.2d 502 (Pa. 1993). *J.H. France* addressed the appropriate trigger of coverage in cases of asbestos-related disease. Based on medical evidence that bodily injury from asbestos occurred "from the moment of exposure until the manifestation of a recognizable disease," the Court held that all insurers whose policies were in effect at any time between the exposure to asbestos and the manifestation of disease were jointly and severally liable. The St. Johns argued that this "multiple trigger" theory should apply to cases involving "continuous, progressive property damage over successive policy periods," and asserted that the weight of authority from other jurisdictions supported this view.

The Court, however, rejected application of the multiple trigger theory under these circumstances.

Although the Court did not explicitly define the limits of the multiple trigger theory, it did make clear that the *J.H. France* decision "was predicated in large part on the special 'etiology and pathogenesis of asbestos-related disease.'" The Court also noted that part of the rationale for the multiple trigger theory was to account for the long latency period for disease and the possibility that knowledge of potential claims would impair the availability of insurance in the marketplace. These concerns were not present here.

The opinion, authored by Justice Baer, was joined by only two other justices (Castille, C.J. and Eakin, J.). Justice Saylor would have dismissed the appeal as having been improvidently granted, given the flaws in both parties' positions. He expressed a number of concerns with the majority opinion, based largely on the manner in which the appeal was presented to the Court. Justice Saylor noted that Penn National stipulated that property damage had occurred in each of the three years of coverage, and for that reason alone, the policy language would appear to provide coverage for each of the three years. He also was not persuaded that *J.H. France* was distinguishable and questioned why the multiple trigger theory could not be applied in cases such as this. Justice Todd also would have dismissed the case as improvidently granted, but did not author an opinion or join in Justice Saylor's opinion.

Although the view of only three justices, the *Penn National* case severely limits the circumstances under which the multiple trigger theory will be applied. Further, the decision provides clarity to policyholders and insurance carriers on how to apply the manifestation trigger. The claims process (and discovery) will need to focus on, among other things, the timing and nature of property damage to ensure that manifestation can be gauged by when the injury (not the cause of injury) was ascertainable through reasonable diligence. ♦

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