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# PA Superior Court Provides Clarification on Definition of CGL "Occurrence" When Property Damage Is Caused by Faulty Building Conditions

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The standard for an "occurrence" under a commercial general liability (CGL) insurance policy has been addressed on several occasions by Pennsylvania courts when an insured has allegedly performed faulty workmanship on a construction project. Specifically, in Pennsylvania, a claim for damages arising from an insured's performance of faulty workmanship pursuant to a construction contract, where the only damage is to property supplied by the insured or worked on by the insured, does not constitute an "occurrence" under the standard commercial general liability insurance policy definition. But what about the circumstance when the insured has failed to perform contractual duties where the claim is for property damage to property not supplied by the insured or unrelated to the service the insured contracted to provide? The Pennsylvania Superior Court recently addressed this question in *Pennsylvania Manufacturers Indemnity Co. v. Pottstown Industrial Complex LP*, No. 3489 EDA 2018, 2019 Pa. Super. 223, 2019 Pa. Super. LEXIS 729* (Pa. Super. 2019).

*Pottstown Industrial Complex* arose out of an underlying dispute between a landlord and a commercial tenant who had leased space to store its product inventory. The tenant alleged that the landlord was responsible under the lease for keeping the roof "in serviceable condition in repair." Notwithstanding this responsibility, the tenant alleged that the landlord failed to properly maintain and repair the roof, resulting in leaks and flooding during four separate rainstorms, destroying over $700,000 in inventory. The tenant specifically alleged that the floods were caused by poor caulking of the roof, gaps and separations in the roofing membrane, undersized drain openings, and accumulated debris and clogged drains.

The insurer filed a declaratory judgment action, seeking a determination that there was no coverage under a commercial general liability policy issued to the landlord. Following a motion for judgment on the pleadings, the trial court entered an order in favor of the insurer, holding that allegations of inadequate roof repairs were claims for faulty workmanship and were not covered under *Kvaerner Metals Division of Kvaerner U.S., Inc. v. Commercial Union Insurance Co.*, 908 A.2d 888 (Pa. 2006) and *Millers Capital Insurance Co. v. Gambone Brothers Development Co.*, 941 A.2d 706 (Pa. Super. 2007).

In its opinion, the Superior Court reversed the decision of the trial court, holding that the tenant had alleged a covered "occurrence" under the commercial general liability policy.[1] The Superior Court noted that *Kvaerner* and *Gambone* only precluded the finding of an "occurrence" where a claim is for damage to property supplied by the insured, where the only property damage is the product or property that the insured supplied or on which it worked, or where the damages sought are for the insured's failure to deliver the product or perform the service it contracted to provide. The Superior Court distinguished *Pottstown Industrial Complex* from *Kvaerner* and *Gambone* on the grounds that those cases only

alleged damage to the property that the insured had worked on or supplied, while the *Pottstown Industrial Complex* underlying plaintiffs sought to recover for damage to their own property, stored on the ground of the insured's facility, rather than damage to the insured's faulty roof. The Superior Court held that this interpretation of the term "occurrence" was consistent with *Kvaerner*'s rationale that the term "occurrence" was not to be construed to "convert [a commercial and general liability policy] into a performance bond," but rather, to provide insurance for the risk of "damage the insured causes to another person's property."

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[1] "Occurrence" is defined as "an accident"