

# Client Alert

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## General Liability Insurers in Pennsylvania Required to Defend Product Liability Claims

The Pennsylvania Supreme Court has rejected a liability insurer's attempt to overturn a Superior 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 that 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.

The insurer argued that there was no "occurrence"<sup>1</sup> 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 ruled there was no "occurrence" because the underlying complaint alleged only property damage from faulty workmanship to the work product itself. *Kvaerner* also was based on an underlying complaint that contained only claims for breach of contract and breach of warranty. The trial court concluded that *Kvaerner* barred coverage and granted summary judgment in favor of the insurer. Indalex appealed.

### The Pennsylvania Superior Court's Decision

Previously, 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 National Union's 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 there was an "occurrence." The court also found that product-liability-based tort claims were asserted against Indalex in addition to claims for breach of contract and breach of warranty. 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 *Kvaerner* did not bar coverage as *Kvaerner's* holding is limited to instances where the underlying complaints contain only breach of contract or breach of warranty claims that do not sound in tort<sup>2</sup> and seek only damages to the insured's work product itself. In contrast, *Indalex*

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<sup>1</sup> "Occurrence" was defined in the policy 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.

<sup>2</sup> 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).

broadly concerns tort claims alleging product failure that causes property damage, other than to the insured's product, and personal injury.

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 has never applied that doctrine in an insurance coverage context. The doctrine, the court ruled, 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). As the court explained, "[i]f a single claim in a multi-claim 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 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, which was denied by the Pennsylvania Supreme Court, 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* has 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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