

Pennsylvania High Court Rules First Manifestation Trigger Applies to Property Damage Claims

The Pennsylvania Supreme Court in *Pennsylvania Nat'l Mut. Cas. Ins. Co. v. St. John, et al.*, 2014 WL 7088712 (December 15, 2014), has affirmed that a first manifestation trigger applies to property damage claims under a CGL policy, triggering the single policy in effect when damage first manifests. St. John also confirmed that the multiple or continuous trigger adopted in *J.H. France Refractories v. Allstate Ins. Co.*, 534 Pa. 29 (1993), which triggers all policies on a risk from exposure through manifestation, is unique to claims involving asbestos or other similarly latent diseases.

In *St. John*, the claimants, owners of a dairy farm, hired LPH Plumbing (LPH) to install a new plumbing system to support the dairy herd and milking factory. The system required LPH to install a network of PVC piping that would transport fresh drinking water to the herd. LPH subcontracted the pipe's welding work to Stolfus Welding (Stolfus). The claimants began full dairy operations in July 2003 once the new system was complete.

Unknown to the claimants, the PVC piping was cracked and allowed contaminated water to flow to, and be consumed by, the herd. Beginning as early as April 2004, and with increased frequency over the next two years, the herd began to experience a variety of health and reproductive issues. Those issues included more commonplace problems in the dairy industry, such as reduced milk production, as well as more rare diseases, such as salmonella and laminitis. In March 2006, the claimants determined that the contractors' negligence in installing the plumbing system caused the herd's sickness.

The claimants successfully obtained a \$3.5 million verdict against LPH and Stolfus. Penn National Mutual Casualty (Penn National) defended LPH under three annual GCL policies in effect from July 1, 2003 through July 1, 2006. A fourth policy, in effect from July 1, 2005 to July 1, 2006, provided umbrella coverage. Penn National agreed to pay \$1.2 million of the verdict under the July 1, 2003 to July 1, 2004 policy, arguing that the property damage only triggered coverage available when the herd's injuries first manifested in April 2004.

Penn National subsequently filed a declaratory judgment action against LPH and the claimants, seeking a declaration that a first manifestation trigger applied. The claimants filed a counterclaim, arguing that coverage was available under the primary and umbrella policies in effect from July 1, 2005 to July 1, 2006 because the claimants discovered the cause of the damage in March 2006. Based on a stipulation by the parties that property damage occurred in all years between 2003 and 2006, the claimants alternatively argued that a continuous trigger applied under *J.H. France* to trigger each of Penn National's policies.

The trial court rejected the claimants' argument that a loss triggers the policy in effect when the cause of an injury is discovered. The court held, consistent with prior decisions of the Pennsylvania Superior Court, that the contamination of the herd was a single occurrence that triggered the policy year in which the effects of the insured's negligence manifested. The Superior Court affirmed in a divided opinion.

On appeal to the Pennsylvania Supreme Court, the claimants argued that if a first manifestation trigger applied, an injury does not manifest until "there are facts and circumstances sufficient to permit association of the injury or damage with something out of the ordinary course of events for which another party may bear responsibility. In other words, for an injury to be manifest, the **cause of the injury** must be sufficiently ascertainable." (emphasis added). The court disagreed, reasoning that coverage was triggered when the injury, and not the cause, was "reasonably apparent:"



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Here, the language of the Penn National policies does not support the Appellants' contention that coverage is triggered under the policies when both injury and its cause are reasonably ascertainable. The policy language plainly states that coverage is triggered when " 'bodily injury' or 'property damage' occurs during the policy period[.]" citations omitted

Accordingly, coverage is triggered under one of the Penn National policies when any of the following are reasonably ascertainable: physical injury to tangible property, loss of use of tangible property, bodily injury, sickness, or disease. The Penn National policies contain no language requiring the cause of injury to be identifiable before coverage is triggered.

On the facts before it, the court further held that property damage to the herd was reasonably apparent in April 2004 when the cows began to experience decreased milk production, and higher instances of metabolic disorders and other illnesses.

The court similarly rejected the claimants' argument that *J.H. France's* multiple or continuous trigger applied because progressive property damage occurred to the cows throughout each of Penn National's three policy years. *J.H. France* ruled that, based on the etiology and pathogenesis of asbestosis, a body suffers injury from exposure to asbestos fibers through manifestation, sufficient to trigger multiple policies. The court held that absent such unique medical facts, a multiple trigger is inappropriate.

St. John is significant for several reasons. First, by reaffirming the first manifestation trigger, the Pennsylvania Supreme Court limits an insured's recovery, and an insurer's exposure, in property damage cases to a defined year, even where progressive property damage occurs over consecutive policies. Second, *St. John* highlights that discovery in both the underlying action and declaratory judgment is critical to determining when damage was first "reasonably apparent" to a claimant. Third, *St. John* serves to further limit an insured's ability to rely on *J.H. France's* multiple trigger approach outside facts involving diseases like asbestosis and mesothelioma.

To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Deborah Minkoff at (215) 665-2170 or dminkoff@cozen.com or Samantha Evans at (215) 665-4106 or smevans@cozen.com.