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Declaratory Judgment Actions in Faulty Workmanships Claim Submissions, Legal Intelligencer

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No matter how much lipstick claimants and policyholders put on claims arising from faulty workmanship, they still remain a nonoccurrence under CGL policies. Continuing into 2018, Pennsylvania state and federal courts have been expanding the Pennsylvania Supreme Court's Kvaernerruling in favor of finding no coverage for faulty workmanship claims under CGL policies of insurance. Courts have expanded their findings of no coverage to include not only the faulty workmanship but also damage to other property and work outside of that provided by the insured that was a reasonably foreseeable result. Recently, the U.S. Court of Appeals for the Third Circuit cemented this scope of coverage law to find that damages flowing from faulty workmanship were not an occurrence. Similarly, Pennsylvania courts are routinely rejecting bad faith claims when insurers deny coverage for faulty workmanship and related damages. Ultimately, insurers should issue all appropriate coverage determinations to the insured when claims of faulty workmanship are submitted from coverage and seek an immediate court declaratory judgment that defines the scope of coverage, if any, when warranted.

Since 2006, Pennsylvania law provides that there can be no finding of an occurrence under a general liability policy for faulty workmanship of an insured. This holds true for all claims of faulty workmanship asserted under claims of breach of contract and breach of warranty. Simply put, Pennsylvania law finds that such claims are not a fortuitous accident, and therefore, are not an occurrence.

Pennsylvania law is clear with respect to interpretation of the term "occurrence" in CGL policies. "The definition of 'accident' required to establish an 'occurrence' under the policies cannot be satisfied by claims based upon faulty workmanship," see Kvaerner Metals Division of Kvaerner U.S. v. Commercial Union Insurance, 908 A.2d 888, 899 (Pa. 2006). Claims based upon faulty workmanship "simply do not present the degree of fortuity contemplated by the ordinary definition of 'accident' or its common judicial construction in this context." Property damage to the work product itself arising from poor workmanship does not trigger the defense duty, (holding no duty to defend claims arising from damaged coke battery, interpreting "accident" within the meaning of "occurrence").