

Product Defect Allegations Trigger Duty to Defend in Pennsylvania

The Third Circuit Court of Appeals recently concluded, in Nautilus Insurance Co. v. 200 Christian Street Partners, LLC., that a duty to defend is triggered when product-related allegations are pled in connection with a claim for defective construction.¹

In Nautilus, the coverage dispute arose out of two independent underlying lawsuits in which homeowners alleged that the homes built by 200 Christian Street Partners (“Christian Street”) were defectively constructed. Christian Street tendered the claim to its insurer, Nautilus Insurance Co. (“Nautilus”), for defense and indemnity.

Nautilus filed a lawsuit in the United States District Court for the Eastern District of Pennsylvania, seeking a declaration that it was not obligated to defend Christian Street in the underlying actions.² Specifically, Nautilus asserted that it was not required to provide a defense in the underlying actions because Pennsylvania law does not consider faulty workmanship to constitute an “occurrence” and, therefore, to trigger the policy’s insuring agreement and the insurer’s duty to defend.³

The District Court disagreed with Nautilus, finding that, even when faulty workmanship is alleged, there are two circumstances where a duty to defend can be triggered: (1) where faulty workmanship caused bodily injury or property damage to other property; and (2) when an insured’s product “actively malfunctions.”⁴ In evaluating the underlying complaints, the District Court concluded that both bodily injury and products-related claims were sufficiently alleged to trigger a duty to defend. Specifically, the complaints alleged that the homes were “negligently constructed” in a manner that presented a danger to the Owners and that the hazards were “life-threatening.”⁵ In addition, the complaints outlined specific concerns with certain products, including the windows, a door, the air conditioning system, and the moisture barrier.⁶ Based on these allegations, the District Court concluded that it could not “foreclose the possibility that Defendants used a third party’s product that actively malfunctioned in an ‘occurrence.’”⁷

¹2020 WL 1018309 (E.D. Pa. 2020). This decision is non-precedential, and therefore, should not be viewed as a significant departure from existing Pennsylvania law.

²Nautilus Insurance Co. v. 200 Christian Street Partners, LLC, et. al., 363 F. Supp. 3d 559 (3rd Cir. 2019).

³Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co., 908 A. 2d 888, 896 (Pa. 2006).

⁴Nautilus, 363 F. Supp. 3d at 565.

⁵Id. at 568-569.

⁶Id.

⁷Id.

Nautilus appealed to the Third Circuit Court of Appeals, which affirmed the decision of the District Court. The Third Circuit stated, "there is a distinction between a claim of faulty workmanship, for which an insurer does not have a duty to defend, and a claim of an 'active malfunction' of a product, for which an insurer does have such duty, since an active malfunction is sufficiently fortuitous as to constitute an occurrence."⁸

While this decision is not precedential, it is instructive to insureds seeking defense in construction defect matters. When a Complaint asserts products-related allegations, the duty to defend may be triggered.

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⁸Nautilus, 2020 WL 4018309 at *2.