



# Case Alert

## N.J. Appellate Court Applies Continuous Trigger Theory in Property Damage Case and Determines “Last Pull” for Coverage

The New Jersey Superior Court, Appellate Division, published an important decision addressing several fundamental issues regarding how a commercial general liability (CGL) policy applies to long-term property damage. The court held that: (1) a continuous trigger theory of coverage may be applied to third-party liability claims involving progressive property damage caused by an insured’s allegedly defective work; (2) the “last pull” (i.e., the cutoff point) of the continuous trigger is when the “essential nature and scope” of the property damage first becomes known or could reasonably be known; and (3) the “last pull” is *not* when the property damage is “attributed” to the insured’s faulty work.

The underlying action in *Air Master & Cooling Inc. v. Selective Ins. Co., et al.*<sup>1</sup> concerned property damage arising out of the construction of a seven-story, 101-unit condominium building in Montclair, New Jersey. The project’s construction manager hired Air Master & Cooling, Inc. (Air Master) to perform HVAC work on the project, including installing individual HVAC equipment in each resident’s unit from 2005 to 2008. In early 2008, unit owners began complaining about water infiltration and damage to their windows, ceilings, and other portions of their units. The general contractor and developer began assessing the damage and making repairs. Eventually, in April 2010, an expert consultant performed a moisture survey of the roof and discovered 111 areas that were damaged by water infiltration. The expert report indicated that “it [was] impossible to determine when [the] moisture infiltration occurred.”

Unit owners and the condominium association filed suit against the project developer and others asserting claims for property damage and the cost of remediation. The defendants asserted third-party claims against the various subcontractors who performed work on the project, including Air Master. Air Master tendered a claim for defense and indemnity to its CGL insurers over a series of successive policy periods. Air Master was insured by the following insurers from 2004 through 2015: Penn National Insurance Company (Penn National) from June 22, 2004 through June 22, 2009; Selective Insurance Company of America (Selective) from June 22, 2009 through June 22, 2012; and Harleysville Insurance Company from June 22, 2012 through June 22, 2015.

At issue in this case was whether the Selective policies provided coverage. Selective argued that the property damage to the building had already manifested before Selective’s first policy period.

The Appellate Division held that a continuous trigger theory of coverage may be applied to third-party liability claims involving progressive property damage caused by an insured’s allegedly defective work. Under a continuous trigger theory, multiple successive policies can cover a loss up until the point of “manifestation.” The court determined that the “last pull,” or end date, of the coverage trigger is when the “essential nature and scope of the property damage” first becomes known or should have become known.

In this case, if the damage began in January 2007 but progressively worsened until January 2010, both Penn National and Selective would be responsible for defending and possibly indemnifying Air Master, subject to allocation or apportionment between the policies. The court emphasized that the continuous trigger theory implicates more policies to help pay meritorious claims and maximize coverage for policyholders.

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1. Docket No. A-5415-15T3 (Oct. 10, 2017).

The court also noted that the continuous trigger theory encourages insurers to monitor “progressively-developing risks” and to charge commensurate premiums for those risks. The Appellate Division ultimately remanded the case to the trial court to determine factual issues regarding when the essential nature and scope of the water damage was known, or reasonably could have been known.

This case serves as a reminder to policyholders to put all insurance carriers that may be implicated in a progressive property damage claim on notice. The court’s decision is available [here](#).

For more information, please contact [K. Alexandra Byrd](#) at [kab@sdvlaw.com](mailto:kab@sdvlaw.com) or 203-287-2127.

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35 Nutmeg Drive, Ste. 140, Trumbull, CT 06611 • 203-287-2100 • [www.sdvlaw.com](http://www.sdvlaw.com)