

## White and Williams Secures Summary Judgment in Dispute Over Coverage for Breach of Contract Claims

5.3.18

In *Sapa Extrusions, Inc. v. Liberty Mutual Insurance Company, et al.*, the US District Court for the Middle District of Pennsylvania held that Gerling-Konzern Allgemeine Versicherungs-AG (Gerling) and several other insurers had no obligation to defend or indemnify their insured, Sapa Extrusions, for breach of contract claims arising from Sapa's failure to manufacture its aluminum window extrusions in accordance with the representations and warranties made to its customer, a window manufacturer. The underlying complaint alleged that, as a result of Sapa's failure to conform its extrusions to the agreed upon specifications, over time, the extrusions began to bubble and crack, causing the window manufacturer to undertake an extensive, costly repair and replacement project. Relying heavily on the Pennsylvania Supreme Court's decision in *Kvaerner Metals v. Commercial Union Insurance Company*, 589 Pa. 317 (2006), and the Pennsylvania Superior Court's decision in *Millers Capital Insurance Company v. Gambone Brothers*, 941 A.2d 706 (Pa. Super. 2007), the court asserted that contractual claims against Sapa for faulty workmanship do not constitute "the active malfunction needed" to trigger an "occurrence" under the occurrence-based liability policies at issue. The court distinguished the underlying facts from *Indalex Inc. v. National Union*, 83 A.2d 418 (Pa. Super. 2013), asserting that the faulty window extrusions originated squarely from Sapa's contractual breach, not by virtue of an accident or defect giving rise to negligence and/or strict liability tort claims.

In denying Sapa's claims for coverage, the court also rejected the notion that "products-hazard completed operations" and "insured contract" provisions in a liability policy could act as affirmative grants of coverage in the absence of an "occurrence." The court asserted that the "occurrence" requirement in a liability policy is "paramount, and it illuminates the remainder of the [policy] language." Without an "occurrence," the court maintained, there could be no coverage.

White and Williams lawyers Shane Heskin, Patti Santelle and Zachery Roth represented Gerling in this case.

