

Military Housing Developer's Lawsuit Over PEX Piping Survives Dismissal

Mealey's (January 30, 2020, 8:29 AM EST) -- OKLAHOMA CITY — A federal judge in Oklahoma on Jan. 28 refused to dismiss a second amended complaint filed by the developer of housing for service members stationed at the Tinker Air Force Base (AFB) against the manufacturer of cross-linked polyethylene (PEX) tubing that allegedly prematurely ruptured and caused more than 200 water leaks in 2017, finding that the developer's allegations are not untimely or barred by the economic loss doctrine (*AMC West Housing LP v. Nibco Inc.*, No. CIV-18-959-D, W.D. Okla., 2020 U.S. Dist. LEXIS 13840).

(Order available. Document #09-200207-011R.)

U.S. Judge Timothy G. DeGiusti of the Western District of Oklahoma also held that AMC West Housing LP sufficiently stated a claim against Nibco Inc. for breach of express warranty. The judge explained "that the warranty does not include any language limiting the warranty's reach to only manufacturing defects" and that under Oklahoma law, the identification of an existing defect is not essential to recovery under the claim.

Leaking Pipes

In 2008, AMC retained Balfour Beatty Construction Co. Inc. to build 398 homes that AMC would then lease to service members stationed at Tinker AFB. Balfour's subcontractor, Horizon Plumbing, purchased Nibco's plumbing products based on the manufacturer's assurances and representations. The plumbing systems installed in properties at Tinker AFB included PEX Tubing, PEX Fittings and PEX Clamps.

AMC initially sued Nibco on Oct. 1, 2018. The plaintiff filed an amended complaint on Oct. 25, 2018, alleging causes of action for breach of express and implied warranty, products liability, negligence, fraud and violation of the Oklahoma Deceptive Trade Practices Act, 78 Okla. Stat. § 54. Nibco moved to dismiss the amended complaint on Nov. 12, 2018, asserting that the applicable statutes of limitation barred the plaintiff's claims. Judge DeGiusti granted the motion and dismissed AMC's claims without prejudice. AMC was given leave to amend its complaint and filed a second amended complaint on Oct. 9, 2019.

Timely Claims

In its second amended complaint, AMC asserts claims for breach of express and implied warranty, products liability, and negligence.

Nibco moved to dismiss the second amended complaint on Oct. 23, again arguing that the developer's negligence and product liability claims were barred by the two-year statute of limitations because leaks from the pipes began occurring in 2009. The manufacturer further argued that AMC's claims were barred by the economic loss doctrine and that the plaintiff failed to state a claim for breach of express warranty. Moreover, Nibco contended that the second amended complaint did not contain any new information about the alleged defects in the pipes.

Judge DeGiusti noted that Oklahoma applies the discovery rule to toll the statute of limitations and that AMC sufficiently alleged that it did not associate a relationship between the leaks and the pipes until 2017, when 205 leaks occurred during the year. The judge pointed out that AMC said in its earlier filings that four leaks occurred in 2009 and that 30 leaks occurred in 2016.

"Accepting the well-pled allegations in the Second Amended Complaint as true, Plaintiff has pled sufficient facts from which the Court may reasonably infer that Plaintiff was not aware of the alleged defects in the PEX Products until 2017," the judge wrote. "That is sufficient at this stage of the proceedings to allow Plaintiff's pleading to stand."

Judge DeGiusti also ruled that AMC's warranty claims were timely because they are subject to a five-year statute of limitations.

Economic Loss Doctrine

Nibco also contended that AMC's claims were barred by the economic loss doctrine because the only damages that occurred were to the pipes. AMC countered that the homes that experienced leaks also sustained damage.

"Because Plaintiff asserts injury to other property in addition to the allegedly defective PEX Products, the Court finds that Oklahoma's economic loss doctrine is inapplicable," Judge DeGiusti wrote.

Finally, the judge overruled Nibco's argument that AMC failed to state a claim for breach of express warranty.

Counsel

AMC is represented by Alexandra B. Cunningham of Hunton & Williams in Richmond, Va., Daniel G. Webber and Chance L. Pearson of Ryan Whaley Coldiron Jantzen Peters & Webber in Oklahoma City and Lori E. Jarvis and Elizabeth A. Reese of Hunton Andrews Kurth in Richmond.

Jared R. Boyer of HB Law Partners in Norman, Okla., is counsel for Nibco.

(Additional documents available: Amended complaint. Document #09-200207-012C. Nibco's motion to dismiss. Document #09-200207-013M. AMC's opposition brief. Document #09-200207-014B. Nibco's reply brief. Document #09-200207-015B.)