STATE OF MICHIGAN

COURT OF APPEALS

JOAN GRAHAM, JAMES C. NEFF
and SARA M. NEFF,

Plaintiffs-Appellants,

UNPUBLISHED
February 7, 1997

v

No. 182088
Oakland County
LC No. 94-471774

PROVIDENCE WASHINGTON
INSURANCE COMPANY, EMPLOYERS
COMMERCIAL UNION INSURANCE
COMPANY, ST. PAUL FIRE AND
MARINE INSURANCE, FEDERAL
INSURANCE COMPANY, UNITED
STATES FIRE INSURANCE COMPANY,
and INSURANCE COMPANY OF NORTH
AMERICA,

Defendants-Appellees,

and

ST. PAUL FIRE AND
MARINE INSURANCE and UNITED
STATES FIRE INSURANCE COMPANY,

Defendants.

Before: Reilly, P.J., and Sawyer and W.E. Collette,* JJ.

PER CURIAM.

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* Circuit judge, sitting on the Court of Appeals by assignment.

In this declaratory judgment action involving insurance coverage, plaintiffs appeal as of right the circuit court order granting summary disposition, pursuant to MCR 2.116(C)(8) and (C)(10), in favor of defendants Providence Washington Insurance Company, Employers Commercial Union Insurance Company, St. Paul Fire and Marine Insurance, Federal Insurance Company, United States Fire Insurance Company, and Insurance Company of North America (defendants). We affirm.

This case arose out of environmental contamination on Springbrook Farm, a 157-acre farm located in Lapeer County, Michigan. The contamination was caused by approximately 3,100 drums of various chemicals located on the farm. Although there was evidence that the drums were placed on the farm as early as 1968 and 1970, the Michigan Department of Natural Resources ("MDNR") did not discover the drums until December 12, 1979. In the early 1980s, the MDNR designated Springbrook Farm as a site budgeted for expenditure of response costs in connection with clean-up and removal of hazardous, toxic, and dangerous substances from the site, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC §9601 *et seq.*, and the Michigan Environmental Response Act, MCL 299.601 *et seq.*; MSA 13.32(1) *et seq.* The MDNR and various third parties filed federal CERCLA claims for clean-up costs and other damages against plaintiffs in the U.S. District Court for the Eastern District of Michigan. In response, plaintiffs filed a declaratory judgment action in Oakland Circuit Court seeking a declaration that defendants, insurance companies who issued casualty and liability insurance policies covering Springbrook Farm, had a duty to defend and indemnify plaintiffs on the actions brought against them relating to the contamination on the farm.[1] Defendants subsequently filed respective motions for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), asserting that plaintiffs failed to state a viable claim because the contamination on Springbrook Farm manifested itself outside each of defendants' policy terms. The trial court granted defendants' motions, concluding that defendants did not owe a duty to defend or indemnify plaintiffs under the insurance policies because the contamination manifested itself when it was discovered by the MDNR in December 1979, a time when none of defendants' insurance policies were in effect.

Plaintiffs first argue that the trial court erred in applying the "manifestation" test to determine when coverage for the contamination at Springbrook farm was triggered. We disagree.

There are four principal theories to determine whether coverage was "triggered" during a policy period:

> If coverage is triggered at the time that personal injury or property damage becomes known to the victim or property owner, the approach is identified as the "manifestation theory." If coverage is triggered when real personal injury or actual property damage first occurs, the approach is called the "injury in fact theory." If coverage is triggered when the first exposure to injury-causing conditions occurs, then the court is said to have chosen the "exposure theory." Finally, if coverage is triggered in a manner such that insurance policies in effect during different time periods all impose a duty to indemnify, then the approach is labeled a "continuous" or "multiple" trigger theory. [*Gelman Sciences, Inc v Fidelity & Casualty Co*, 214 Mich App 560, 564; 543

NW2d 38 (1995), quoting *Dow Chemical Co v Associated Indemnity Corp*, 724 F Supp 474, 478 (ED Mich, 1989).]

This Court, in *Transamerica Ins Co of Michigan v Safeco Ins Co,* 189 Mich App 55, 59; 472 NW2d 5 (1991), held that for purposes of triggering coverage, property damage occurs when the damage manifests itself (e.g. becomes known) to the party claiming to have been injured. Furthermore, this Court in *Gelman, supra,* held that the "manifestation" test listed in *Transamerica* applies to environmental contamination cases involving a lengthy interval between the act that actually causes the damage and the discovery of that damage. *Id.; Arco Industries Corp v American Motorists Ins Co (On Remand),* 215 Mich App 633, 637; 546 NW2d 709 (1996). The trial court, relying on *Transamerica*, held that none of defendants' insurance policies were triggered because the contamination at Springbrook Farm manifested itself in December 1979, when the MDNR discovered the contamination, a time when none of the policies were in effect. Under *Gelman* and *Arco, supra*, the trial court appropriately applied the "manifestation" test to determine whether the contamination at Springbrook Farm occurred within the terms of defendants' insurance policies.

Plaintiffs next argue that the trial court erred in holding that defendants conclusively showed that coverage under their insurance policies was not triggered. We disagree.

For purposes of triggering coverage, property damage occurs when the damage is detected by the party claiming to have been injured. *Gelman, supra,* at 568; *Transamerica, supra,* at 59. Plaintiffs' complaint alleged that "[o]n or about December 12, 1979, the Michigan Department of Natural Resources ("MDNR") located approximately 3,100 drums containing unknown chemicals on Springbrook Farm." The documentary evidence presented by the parties did not establish that the MDNR discovered the contaminants on Springbrook Farm at any time other than in 1979. Plaintiffs did produce evidence establishing that the drums were placed on Springbrook Farm in 1965, and between 1968 and 1970. This evidence, however, did not create a genuine issue of material fact. Under the "manifestation" test coverage is triggered when the party claiming injury discovers the contamination (property damage); coverage is not triggered when the contamination is discharged. See *Gelman, supra,* at 568. Based on *Gelman,* the "occurrence" occurred on or about December 12, 1979, because that was the date the complaining party discovered the property damage. Therefore, because there existed no genuine issue of material fact for the jury to determine, the trial court properly granted summary disposition pursuant to MCR 2.116(C)(10) in defendants' favor.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ David H. Sawyer
/s/ William E. Collette

[1] Providence Washington Insurance Company ("Providence") issued two consecutive three-year insurance policies that were in effect from September 19, 1963, through September 19, 1969. Employers Commercial Union Insurance Company ("Commercial Union") issued two consecutive three-year insurance policies that were in effect from September 19, 1969, through September 19, 1975. Insurance Company of North America ("INA") issued four consecutive one-year insurance policies that were in effect from September 19, 1980, through September 19, 1984. Federal Insurance Company ("Federal") issued a single three-year insurance policy that was in effect from October 1, 1982, through October 1, 1985. All of the insurance policies provided coverage for each occurrence of property damage. Providence's and Commercial Union's policies did not define "occurrence." INA's and Federal's policies defined "occurrence" as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured."