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California Adopts "All-Sums-With-Stacking" Doctrine for Continuous and Progressive Property Damage Liability Claims

By Andrew B. Downs

Last week, the California Supreme Court issued its long-awaited ruling in *State of California v. Continental Insurance Company*, --- P.3d ----, 2012 WL 3206561 (Aug. 9, 2012). The court adopted an "all-sums-with-stacking" allocation rule for determining insurers' indemnification obligations in a general liability environmental contamination claim. The court also expressly provided that insurers may contract out of future indemnification obligations enunciated in its holding, which is significant because the case involved only policies in force from 1964 to 1978. Also, the court based its ruling entirely on the language of the particular policies, not on any actual or perceived "public policies."

This case represents the latest chapter in the long running litigation concerning the Stringfellow Acid Pits in Southern California, a toxic waste site developed with the active participation of the State of California in the 1950's. This decision involved policies issued to the State of California in force from 1964 to 1978. The Stringfellow site was in operation from 1952 to 1972. In 1998, a federal court found the State liable for all past and future cleanup costs relating to contamination from the site. California subsequently sought indemnity from its insurers for the cleanup costs. In previous proceedings, the insurers had already been found to have provided coverage for the state's liability. The issue before the Supreme Court in this instance was whether the State was limited to recovering for a single policy period, and whether it could stack unexhausted policies in applying the "continuous trigger" doctrine of *Montrose Chemical Corporation v. Admiral Insurance Company*.

The Court began its analysis by holding that the insurers are obligated "to pay all sums for property damage attributable to the Stringfellow site, up to their policy limits, if applicable, as long as some of the continuous property damage occurred while each policy was 'on the loss.'" In reaching this conclusion, the court noted that the all-sums language of the coverage grant did not restrict the insurers' indemnity obligations to the policy period. The policy language did not "contemplate such a limited result." Thus, the insurers were responsible "for the entirety of the loss." The court believed this rule best reflected the insurers' indemnity obligations, "the insured's expectations, and the true character of the damages that flow from a long-tail injury."

Next, the court examined the issue of stacking to determine whether an insured is entitled to recover the policy limits of multiple policies. Of importance was the policies' lack of anti-stacking language. Accordingly, the court adopted an "all-sums-with-stacking" allocation principle, noting that it provides the insured an "'uber-policy' with a coverage limit equal to the sum of all purchased insurance policies." In adopting this rule, the California Supreme Court rejected *FMC Corporation v. Plaisted & Companies*, which precluded insureds from stacking. According to the court, the "all-sums-with-stacking" rule is advantageous because it is equitable, "comports with the parties' reasonable expectations," and allows the insured to "recover up to the combined total of the policy limits." In short, the court found "nothing unfair or unexpected in allowing stacking in a continuous long-tail loss."

As is the case with many recent coverage decisions by the California Supreme Court, the Court focused heavily on the particular language of the policies at issue. Because the last of those policies expired in 1978, when the policy language generally in use was substantially different than it is today, the long term impact of this case may be greatest in its reaffirmation of the primacy of policy language. In the short to medium term, it will have a significant impact on



those claims still pending under policies issued decades ago.

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