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New California Supreme Court Stacking Case

In *State of California v. Continental Insurance Company*, the California Supreme Court ruled that in a case of continuing loss, all insurers have a duty to indemnify up to their policy limits if any of the property damage occurred during the policy period. Specifically, the Court reasoned that under the “all sums” language contained in the policies, “the grant of coverage does not limit the policies’ promise to pay ‘all sums’ of the policyholder’s liability solely to sums or damage ‘during the policy period.’” The Court further seized on the arguments made by the State in noting that “the ‘during the policy period’ language does not appear in the ‘Insuring Agreement’ section of the policy and therefore is neither ‘logically nor grammatically related to the ‘all sums’ language in the insuring agreement.’”

In addition, the California Supreme Court has definitively adopted the stacking of policy limits in what it has termed the “all sums with stacking rule.” The Court reasoned that under the “all sums with stacking rule,” an insured has immediate access to the insurance it purchased. The Court explained that such a rule acknowledges the uniquely progressive nature of long-tail injuries that can cause progressive damage throughout multiple policy periods. In adopting this rule, the Supreme Court rejected the *FMC* Court’s anti-stacking ruling and specifically disapproved *FMC*. Thus, absent an anti-stacking provision in the policy, or any applicable statute to the contrary, the Supreme Court has ruled that allocation of indemnity amounts should be determined with stacking.

In light of the foregoing, the key in determining exposure is to review the policy for any possible “anti-stacking” or “deemer” language. Absent such language, all limits where any loss is proven by the insured must be considered.

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