

Ninth Circuit Holds Renewal Constitutes Separate and Distinct Policy

December 2003

In an unreported decision, the United States Court of Appeals for the Ninth Circuit, applying California law, has held that the renewal of an existing insurance policy creates a new policy for purposes of determining the timeliness of a notice of potential claim. *St. Paul Fire & Marine Ins. Co. v. "K" Line Am., Inc.*, 2003 WL 22508197 (9th Cir. Oct. 31, 2003).

In 1992, the insurer issued a one-year, claims-made insurance policy to the policyholder company. The policy provided coverage for "claims or suits brought against the Insured during the policy period provided the Insured had no knowledge or could not have reasonablel[y] foreseen that such negligent act, error, or omission whenever occurring could be the basis of a claim or suit, at the time this policy took effect." The company renewed the policy annually through 1998.

The company provided notice of a potential claim in 1998; however, the trial court had held that the insurer could deny coverage because the company should have given the insurer notice of the potential claim by at least 1997. On appeal, the Ninth Circuit affirmed the lower court's decision and rejected the company's argument that the timing of the notice was irrelevant because it had purchased a single, continuous policy of insurance from 1992 to 1998. The court held instead that a renewal constitutes a "separate and distinct contract for the period of time covered by the renewal." Accordingly, the court concluded that the policy barred coverage because the insured had failed to make its claim during the policy period when it first became aware of the claim.

For more information, please contact us at 202.719.7130.