

INSURANCE UPDATE

February 21, 2007

Issue No.78

Juan C. Araneda

Jennifer A. Becker

David P. Borovsky

Robert J. Buccieri

Chip B. Cox

Kim O. Dincel

Kathleen M. Ewins

Howard M. Garfield

Jason A. Geller

J. Michael Higginbotham

John B. Hook

Jessica R. MacGregor

Joseph P. McMonigle

Douglas J. Melton

Glen R. Olson

Jordan Rojas

Steven Sharafian

Ann L. Strayer

John B. Sullivan

Jennifer W. Suzuki

Jeanette Traverso

Beth A. Trittipio

Karen L. Uno

Seth E. Watkins

Kevin Whittaker

Irene K. Yesowitch

Liability Insurance – Definition Of “Occurrence”

“Occurrence” Meant Individual Claimants’ Exposure To Insured’s Asbestos Containing Products—Not The Manufacture Of Such Products

London Market Insurers v. Superior Court (Truck Insurance Exchange) - 07 C.D.O.S. 309, California Court of Appeals, Second District, January 11, 2007

By David P. Borovsky and Howard M. Garfield

Kaiser manufactured products containing asbestos, and by 2004, had been sued by thousands of individuals for asbestos exposure. Truck Insurance Exchange, Kaiser’s primary insurer in the 1970’s, defended and indemnified Truck for the majority of these lawsuits. Many of the policies contained no aggregate limit, and obligated Truck to pay up to \$1 million per occurrence.

After paying over \$50 million to indemnify Truck in various suits, Truck filed a declaratory relief action, seeking a declaration that they owed no further obligations to Kaiser under the subject policies. Truck argued that this was because there was only one “occurrence” per policy period, because all of the asbestos exposure claims had the same underlying cause: the design, manufacture and distribution by Kaiser of the asbestos-bearing products. The subject policies contained a standard definition of “occurrence”: “an event, or continuous or repeated exposure to conditions which results in personal injury or property damage during the policy period.”

The trial court granted Truck’s motion, but the Court of Appeals, Second District, reversed. Focusing on the terms “event” and “exposure to conditions” in the definition of “occurrence”, the appellate court concluded that the manufacture of asbestos bearing products was neither. Instead, the more logical reading of the policy language was that the “event” or “exposure to conditions” resulting in the subject injuries was each claimants’ exposure to asbestos bearing products. Thus, each individual claimant’s exposure was a separate “occurrence”.

This is an important decision because it is one of first impression under California law. No California court had previously interpreted the meaning of “occurrence” in a commercial general liability policy as applied to bodily injuries caused by exposure to asbestos. Although policy definitions of “occurrence” may differ from that at issue in this case, it remains instructive as to how a California court will view the general issue.