

# Client Alert

A report  
for clients  
and friends  
of the Firm     January 2009

## Policyholders Prevail in Landmark Opinion

On January 5, 2009, the California Court of Appeal issued its long-awaited decision in the *Stringfellow* insurance coverage case. The court held that a policyholder facing long-term property damage or personal injury claims may be entitled to indemnity under all years of insurance policies that were in effect while the damage took place. *State of California v. Continental Ins. Co.*, 09 Cal. Daily Op. Serv. 161. The court also disapproved precedents in California and elsewhere that have limited policyholders to collecting only one year's policy limits for continuing injury claims.

This landmark decision, which is likely to influence courts around the country, potentially multiplies the amount of insurance that policyholders can use to pay for claims under standard general liability policies. It is especially significant for policyholders (such as manufacturing, chemical, pharmaceutical, construction, and waste disposal companies) that routinely face claims for progressive property damage or personal injuries that might have started years ago.

The case started in 1993, when the State of California sought indemnity from its insurers for its estimated \$700 million cost to clean up industrial waste near the Stringfellow acid pits in Riverside County, California. The State demanded coverage up to the combined limits of all its liability policies that were in effect during all the years when the contamination took place and continued to migrate offsite. Following an earlier Court of Appeal decision in *FMC Corp. v. Plaisted & Cos.*, 61 Cal. App. 4th 1132 (1998), the trial court finally ruled in 2004 that the State could not "stack" or combine its successive years of policy limits as it sought to do, but instead had to pick one year's policies and demand payment under them. This ruling meant that the State could not collect more than the maximum (\$48 million) in insurance limits it had purchased in any one policy year.

When the State appealed, Proskauer Rose Partner Reynold Siemens intervened as an *amicus curiae*. In a decision that closely follows the reasoning set forth in his *amicus* brief, the Court of Appeal reversed the trial court's ruling on the "stacking" issue, and held that the State could collect the combined limits of all policies in effect when the contamination occurred and while it continued to migrate offsite. Noting that the standard language in each of the State's liability policies promised to pay "all sums" for any "occurrence" that caused property damage or bodily injury during the policy period, the court held that each policy had an independent contractual liability to pay – regardless of whether the State had purchased similar policies in other years that might also be obligated to pay. In so holding, the court disapproved of *FMC* and other "anti-stacking" cases, in which courts have ignored the literal language of the standard liability policies and tried to impose limits on the number of policies under which an insured can collect.

**"This landmark decision, which is likely to influence courts around the country, potentially multiplies the amount of insurance that policyholders can use to pay for claims under standard general liability policies."**

BOCA RATON • BOSTON • CHICAGO • HONG KONG  
LONDON • LOS ANGELES • NEWARK • NEW ORLEANS  
NEW YORK • PARIS • SÃO PAULO • WASHINGTON, D.C.

### Client Alert

Our Insurance Practice Group advises clients on all aspects of insurance risk management, including policy wordings, program structure, captives, and the use and application of virtually every line of coverage. We also represent policyholders in coverage disputes, recovering billions of dollars for our clients.

For more information, please contact:

**Reynold L. Siemens**  
310.284.5676 – [rsiemens@proskauer.com](mailto:rsiemens@proskauer.com)

Proskauer Rose is an international law firm that handles a full spectrum of legal issues worldwide.

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

© 2009 PROSKAUER ROSE LLP. All rights reserved. Attorney Advertising.

You can also visit our Website at [www.proskauer.com](http://www.proskauer.com)