

No Coverage for Post-Policy Period Claims Where Notice of Circumstances During Policy Period Was Insufficient

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The United States Court of Appeals for the Ninth Circuit, applying California law, has held that there is no coverage for post-policy period claims where an insured's notice of circumstances during the policy period was insufficiently specific. *Genesis Ins. Co. v. Magma Design Automation, Inc.*, 2010 WL 2782006 (9th Cir. July 12, 2010).

The insurer issued a directors and officers policy to the insured. Claims arose after the policy period, and the insured sought coverage under the policy. The insured contended that it had provided the insurer with notice of circumstances surrounding the claims during the policy period that was sufficient to trigger coverage for the post-policy period claims. The insurer disagreed, and coverage litigation ensued.

The Ninth Circuit held that the insured's notice of circumstances lacked the specificity that the policy's notice of circumstances provision required and, therefore, that there was no coverage for the post-policy period claims. The court also concluded that, because the insured's notice was insufficient, the insurer did not have a duty to investigate and could not be charged with constructive notice of any facts it would have discovered had it done so. The court also rejected the insured's assertion that the insurer had waived its right to challenge the sufficiency of the insured's notice of circumstances. In reaching this conclusion, the court noted that the insured had failed to show that the insurer intentionally relinquished its rights in this regard, that the insured had not alleged misconduct on the part of the insurer, and that the insured had failed to proffer evidence of its detrimental reliance. Finally, the court held that the policy's related claims provision did not trigger coverage because the provision "was not intended to provide coverage for post-policy period claims that related to an admittedly uncovered claim" made during the policy period.