

Ninth Circuit Finds No Coverage for Claims First Made Prior to Policy Issuance

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A federal circuit court has held that a claims-made insurance policy affords no coverage for alter ego and promoter liability claims in an action filed during the policy period because the same claims were made in an arbitration that commenced prior to the issuance of the policy. *Juszkiewicz, et al. v. Federal Insurance Co.*, No. 98-16335, 1999 U.S. App. LEXIS 30127 (9th Cir. Nov. 17, 1999).

Relying on the plain language of the policy, the court held that the definition of a "claim" includes a "written demand for monetary damages." The court determined that a demand letter that formally initiated the arbitration proceedings constituted a "claim." The court also determined that the definition of claim plainly focuses on the initiation of a proceeding rather than its completion. Because the claimant complained of the same wrongful acts in each proceeding, the court concluded that the subsequent lawsuit was not covered by the policy. The court found irrelevant that the two proceedings were premised on different theories of recovery. Further, the court held that the fact that the claimant alleged additional facts in the later case to support the alter ego and promoter liability theories did not transform those allegations into a "new" claim under the policy.

The court also rejected the argument that this interpretation of the insurance contract violated public policy, noting that a claims-made policy does not provide unlimited retroactive coverage. Instead, such policies only provide coverage for claims "first made" within the policy period. The court concluded that, as long as the language of the policy is clear and unambiguous, it is not against public policy to enforce the contract as bargained.