

# BINDING AUTHORITY

Insurance Coverage Decisions: Issued Today - Impact Tomorrow



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## Daily Double: New Jersey Appellate Division Issues Two Opinions on the Continuous Trigger

### *Court Answers When the Continuous Trigger Ends*

December 17, 2008

New Jersey's robust continuous trigger jurisprudence is one of my favorite things about the Garden State (others on the list are Springsteen, Sinatra, King of Pizza in Cherry Hill and James Saltwater Taffy).

Earlier today the New Jersey Appellate Division issued two lengthy opinions addressing the continuous trigger (one published and one not) (one addressing asbestos and one not).

Time does not allow me to say much about these opinions, other than that they are **must-reads** for anyone that handles latent injury/damage claims in New Jersey.

The Published opinion is *Polarome International v. Greenwich Insurance Co.* and it can be accessed here: <http://www.judiciary.state.nj.us/opinions/a0566-07.pdf>

*Polarome* (43 pages) addresses several aspects of the continuous trigger. The most significant is the Appellate Division's conclusion that the continuous trigger ends at the time of the initial manifestation of disease, even if bodily injury continues thereafter. The money graphs are as follows:

[T]he last pull of the trigger occurs with the initial manifestation of a toxic-tort personal injury. Upon initial manifestation, the "scientific uncertainties" that led to adoption of the continuous-trigger approach, Benjamin Moore, *supra*, 179 N.J. at 98, no longer exist. It is only "progressive indivisible injuries [that] 'should be treated as an occurrence within each of the years of a CGL policy.'" *Id.* at 101 (citing Spaulding, *supra*, 176 N.J. at 44). The sequelae of that initially manifested injury and all subsequent, related injuries are no longer indivisible simply because there has been an initial manifestation. It is only the undetectable injuries at and after exposure and prior to initial manifestation that are progressive and indivisible such that the occurrence of an injury cannot be known.

We find no error in the judge's conclusion that the last pull of the trigger is the initial manifestation of a diacetyl-related personal injury. The issue of scientific uncertainties as to the precise date when injury first occurs in a toxic-tort personal injury case was resolved by adopting the continuous-trigger theory, thus ending the debate over whether the injury occurred at first exposure, when the injury was manifested, or sometime between those two events. Once a diacetyl-related personal injury is initially manifest, the scientific uncertainties are laid to rest and subsequent CGL policies are not triggered.

*Polarome* at 30-31 (emphasis in original).

The Unpublished opinion is *Scottsdale Insurance Company v. Woolsulate Corporation* and it can be accessed here: <http://www.judiciary.state.nj.us/opinions/a4815-06.pdf>

*Woolsulate* (35 pages) addresses several issues concerning coverage for asbestos claims, including the continuous trigger.

Apologies for the lack of any commentary on these decisions. But if you handle latent injury claims in New Jersey, today's New Jersey twofer deserves your attention.

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