Insurance 101-Insights for Young Lawyers: What Counts? Determining the "number of occurrences" under General Liability Insurance Policies

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I. Introduction

Multiple plaintiffs sue a blood bank for exposing them to HIV-infected blood. The blood bank's liability insurer maintains that the applicable policy's per-occurrence limit of $1 million must be spread among all of the claims. A federal district court disagrees, holding that each act of distributing the infected blood constitutes a separate occurrence and triggers a separate $1 million limit.[1]

Multiple plaintiffs sue a petting zoo for exposing them to *E. coli* bacteria. The petting zoo's liability insurer maintains that the applicable policy's per-occurrence limit of $1 million must be spread among all of the claims. A federal district court agrees, holding that all of the exposures to *E. coli* constitute a single occurrence and trigger only a single $1 million limit.[2]

A defective plumbing system damages 19 buildings in an apartment complex. The apartment complex's insurer maintains that 19 per-occurrence deductibles apply. A federal appeals court agrees, holding that the damage to each building constitutes a separate occurrence implicating a separate deductible.[3]

Defective paneling damages 1,400 houseboats, house trailers, motor homes and campers. The paneling manufacturer's insurer maintains that 1,400 per-occurrence deductibles apply. A federal appeals court disagrees, holding that the damage to all the vehicles constitutes a single occurrence implicating a single deductible.[4]

"Number of occurrences" can be a knotty issue for courts and coverage counsel

How have these courts, applying the same interpretive doctrine to the same policy language, reached results that are so ... *harmonious*? As we will see, these apparently conflicting decisions are principled and consistent. At the same time, however, they illustrate just how knotty the issue of "number of occurrences" can be for courts and coverage counsel.[5]

II. The Pertinent Policy Language

In determining the number of occurrences, courts must look first at the declarations page, which typically provides the limit of coverage and applicable deductible (or self-insured retention) for "each occurrence." This directs the court to the definition of "occurrence," which is found in Section V of the standard policy and states: " 'Occurrence' means an accident, including continuous or repeated exposure to substantially the same general harmful conditions."[6] The last stop is Section III, which states in pertinent part:

> The Limits of Insurance shown in the Declarations and rules below fix the most we will pay regardless of the number of:
>
> a. Insureds
> b. Claims made or "suits" brought; or
> c. Persons or organizations making claims or bringing "suits[.]"[7]

III. Cause vs. Effect

In interpreting the standard policy language, the vast majority[8] of courts count the causes rather than the effects of the harm allegedly attributable to the insured to determine the number of occurrences. "In determining whether there was a single occurrence or multiple occurrences, we look to the cause of the property damage rather than to the effect."[9]

For example, a car crash caused by a single act of negligence is a single occurrence under the "cause test," even if it resulted in eight deaths.[10] Under the "effects test," on the other hand, the harm to each of the eight victims would be a separate occurrence.[11] Courts have sometimes found this principle easier to assert than to apply, however, because virtually all occurrences have a host of "causes," specific and overarching, immediate and remote.[12] If one follows the chain of causation far enough back, in fact, every tort has a single cause: human fallibility.[13]

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IV. Immediate Cause vs. Overarching Cause

Seeking to limit their exposure to a single policy period or a single per-occurrence limit, insurers in product liability cases frequently argue that all the damage attributable to a particular defective product resulted from a single cause: the policyholder's general failure to manufacture nondefective products. That's not much better than blaming human fallibility. And it's contrary to the great weight of authority, which holds that courts must look at the *specific* act of the insured that *immediately* precedes the harm and *directly* led to liability.[14]

The blood bank case mentioned above[15] is instructive. The issue was whether the Red Cross's distribution of tainted blood constituted one occurrence, as the primary insurer maintained, or multiple occurrences, equivalent to the number of separate acts of distribution, as the policyholder and excess insurers argued. Applying the "cause test" to the occurrence policy language, the court framed the question as whether "there was but one proximate, uninterrupted and continuing cause which resulted in all of the injuries and damages."[16] The court, in ruling for the policyholder, reasoned:

> Defendant Travelers argues that the underlying cause of the HIV-contaminated blood claims was plaintiff's general, negligent practice in handling HIV-contaminated blood. The facts do not support the suggestion that plaintiff engaged in a single, negligent practice that could be considered "one cause." Rather, plaintiff made many decisions with regard to its handling of the blood.... Each of these decisions independently may have affected whether bodily injury would result from a transfusion. Moreover, negligence with regard to screening, testing, or notification could not result in injury until a particular unit of contaminated blood was provided to an entity which would administer the transfusion. Thus, the Court declines to resort to the level of generality urged by defendant Travelers in applying the cause test. Instead, the Court finds that the proximate cause of the injuries was the distribution itself of HIV-contaminated blood. Accordingly, each act of distribution of contaminated blood constitutes an "occurrence" for purposes of applying the $1 million per occurrence limit.[17]

The court in the petting zoo case mentioned above applied the same principles but reached a different conclusion.[18] A number of fairgoers became ill after being exposed to *E. coli* bacteria at a petting zoo operated by the policyholder at the 2004 North Carolina State Fair.[19] The court determined there was a single occurrence because there was a single cause of all claimants' illnesses: the presence of *E. coli.* Unlike in the blood bank case, there were not multiple acts of negligence that caused the harm. There was no causative act or event other than the mere presence of animal feces containing *E. coli.* The only way the court could have found multiple occurrences would have been to apply the effects test rather than the cause test.

To determine the number of occurrences, courts must look at the specific act of the insured that immediately precedes the harm and directly led to liability

If separate outbreaks had occurred at, say, the 2004, 2005, 2006 and 2007 fairs, however, the court presumably would have found four separate occurrences. The next factor in the analysis shows why.

V. Time and Space

There is a single occurrence only when the damage or injuries "occur close in time with no intervening agent."[20] Courts in cases involving underlying

asbestos claims have routinely applied this reasoning to hold that each individual claimant's asbestos exposure is a separate occurrence because, although the claims "shared a common cause" (*i.e.*, injurious asbestos fibers), there was no "spatial or temporal relationship" among the exposures.[21]

Insurers sometimes rely on the "continuous or repeated exposure to substantially the same general harmful conditions" language in the standard policy's definition of "occurrence" to argue that a long-tail claim should be a single occurrence. Courts interpreting such policy language, however, "have rejected attempts by insurers to characterize seemingly discrete events as emanating from a single, ongoing cause."[22]

In fact, the inclusion of the phrase "continuous or repeated exposure" actually serves to expand rather than restrict coverage.[23] In a 2003 case, the Supreme Court of Florida, which applies the majority "cause test" to determine number of occurrences, was faced with the question of whether a shoot-out at a fraternity party that left several people injured was a single occurrence or multiple occurrences under a CGL policy incorporating the standard definition of "occurrence."

The policyholder, who was the owner of the restaurant where the melee occurred, argued there were two occurrences because two separate shotgun blasts caused the injuries. Relying on the "continuous or repeated exposure" clause, the insurance company argued there was a single occurrence: the policyholder's overarching failure to provide adequate security. As it was a case of first impression in Florida, the court went to great lengths to analyze decisions from around the nation, as well as the drafting history of the pertinent policy language, in reaching its holding. The decision, consequently, deserves quoting at length:

> The "continuous or repeated exposure" language was intended to broaden coverage.... [T]he restrictive definition of accident as "an event happening suddenly" [in pre-1966 CGL policies] proved to be unsatisfactory to the policyholder, the public and the courts. As a result, in 1966 and again in 1972, changes were made to standard comprehensive general liability policies by substituting the word "occurrence" for "accident," and by defining "occurrence" to mean "an accident, including continuous or repeated exposure to conditions, which result[s] in bodily injury or property damage neither expected nor intended from the standpoint of the insured." ...
>
> We conclude that the inclusion of the "continuous or repeated exposure" language does not restrict the definition of "occurrence" but rather expands it by including ongoing and slowly developing injuries, such as those in the field of toxic torts. Therefore, we reject [the insurer's] reliance on the "continuous or repeated exposure" language as a basis for concluding that [the policyholder's] negligent failure to provide security constitutes a single occurrence under the terms of the policy. The victims were not "exposed" to the negligent failure to provide security. If the victims were "exposed" to anything, it was the bullets fired from the intruder's gun.[24]

The "continuous or repeated exposure" language in the standard liability policy was intended to broaden coverage

The court then analyzed which potential cause or causes it should count in determining the number of occurrences. "[The policyholder] argues that the focal point for determining the number of occurrences is the 'immediate cause' of the injury—the gunshots. However, [the insurer] argues that the focal point is the 'insured's underlying activity' "—*i.e.*, its failure to provide security.[25] The court reviewed the case law and concluded that the immediate "*act which causes the damage constitutes the occurrence* ... not the insured's underlying negligence."[26] It further concluded "that using the number of shots fired as the basis for the number of occurrences is appropriate because each individual shooting is distinguishable in time and space."[27] Importantly, the court found the insuring grant to be ambiguous, and the result may well have been influenced by the truism that, in the presence of ambiguity, the interpretation supporting the greater indemnity will prevail.

The court noted that if the insurer had intended to avoid this outcome, "it could have drafted clear policy language to accomplish that result."[28] Some insurers have in fact adopted clearer language, specifying, for example, that a single occurrence shall include "all losses or damages that are attributable directly or indirectly to one cause or *to one series of similar causes.* All such losses will be added together and *the total amount of such losses will be treated as one occurrence irrespective of the period of time or area over which such losses occur.*"[29]

VI. New Cases: Single Occurrence

Decisions issued in the past year in which courts have applied these analytical principles and held that there was a single occurrence include:

- ***E.I. du Pont de Nemours & Co. v. Stonewall Insurance Co.***[30]

DuPont, the policyholder, manufactured and sold a resin known as Delrin, which was used by third

parties to mold fittings for plumbing systems. Those systems were installed in millions of homes. All of the Delrin was made in the same DuPont plant. Between 1989 and 2007, DuPont incurred more than $239 million in liabilities from thousands of claims filed by homeowners alleging that the plumbing systems had caused water damage to their homes. DuPont's insurer argued that the damage at each individual house constituted a separate occurrence, triggering a separate deductible. After a lengthy analysis of a collection of cases from across the nation, the Delaware court wrote: "[T]here are few industrial torts that do not involve multiple causes of property damage. The proper focus for **insurance** coverage purposes, however, is the underlying cause of the property damage, *from the point of view of the insured.*"[31] The court concluded that, viewed from the policyholder's perspective, the damage giving rise to DuPont's liabilities all arose from a single occurrence—Delrin's lack of suitability for use in the plumbing systems.

- ***Liberty Mutual Insurance Co. v. Pella Corp.***[32]

The policyholder, a window manufacturer, sought a declaration that it was covered in regard to class actions filed by various plaintiffs who alleged defects in windows they bought for their homes. Because the policy contained a per-occurrence deductible, the policyholder argued—successfully—for a single occurrence. Applying Iowa law, the court wrote that it

> agrees with Pella that the damages alleged by each of the plaintiffs in the Underlying Lawsuits arise from the 'the continuous or repeated exposure to the same general harmful conditions'—that is, to the design, manufacture, and allegedly fraudulent sale of a product containing the same latent defect. Accordingly, the Court finds that the Underlying Lawsuits allege damages arising from a single 'occurrence.' "

- ***State of California v. Continental Insurance Co.***[33]

The State of California sued its insurers seeking coverage for its liability to the federal government for the costs of cleaning up a hazardous-waste site. The state argued that multiple per-occurrence limits applied because there were at least three occurrences, namely:

1. The escape of contaminants through fractured rock, caused by the State's failure to discover the fractures;
2. The escape of contaminants through a barrier dam, caused by the State's use of some natural materials, rather than all concrete, in the construction of the dam; and
3. The escape of contaminants through an underground streambed, caused by the State's failure to discover the streambed.

The appeals court, applying California law, affirmed the trial court's decision that there was only one occurrence. In so doing, the appellate court relied heavily on a Third Circuit decision, *Flemming v. Air Sunshine, Inc.*,[34] which it discussed as follows:

> [In *Flemming*], the plaintiff's husband had died after a plane crash. The plaintiff argued that there had been multiple occurrences, including (1) the plane crash itself, (2) the failure to provide a preflight safety briefing, and (3) the failure to notify passengers of the impending crash and to provide emergency safety instructions. The appellate court disagreed: "[The plaintiff]'s allegations of pre-crash negligence, including failure to provide a safety briefing and failure to provide warning of the crash, do not meet the policy definition of 'occurrence' because they simply cannot be seen as 'accidents' independent from the crash itself. Any pre-crash acts of negligence cannot be termed proximate causes of [the decedent]'s death because the crash intervened and the pre-crash negligence would not have caused any injury absent the crash."[35]

- ***Allstate Property & Casualty Insurance Co. v. McBee***[36]

The policyholders' dog escaped from their yard and bit two joggers, Steven and Kristi McBee. The insurer argued that it was a single occurrence, to which a single per-occurrence limit applied. The court, applying Missouri law, agreed. "[T]he injuries sustained by each of the McBees[ ] are the result of continuous exposure to substantially the same harmful condition, the failure to prevent the dog's escape, considered as a single incident. Under the causation approach I conclude there was one occurrence."

- ***Dutch Maid Logistics, Inc. v. Acuity***[37]

An employee of the policyholder drove a company truck into a line of stopped traffic on an interstate, killing two people and severely injuring three others. Although five claims were filed, the insurer maintained that there was only one accident and that, therefore, only one $1 million per-accident limit

applied. The policyholder argued that bodily injury must necessarily happen to a person, and since there were five claims resulting from bodily injuries, there were five accidents. Holding for the insurer, the Ohio court concluded: "A simple, plain reading of the contract reveals that its drafters included 'cause' language in it, not 'effect' language. The trial court did not err in applying the meaning of that language to limit the policy to $1 million in the aggregate."

- ***Kinney-Lindstrom v. Medical Care Availability & Reduction of Error Fund***[38]

The parents of twins born with a chorioamnionitis infection won a $13.15 million malpractice verdict against their doctor. In the ensuing coverage case, the Pennsylvania court granted the doctor's insurer summary judgment that there was only one occurrence. "[T]he failure of Dr. S. to promptly perform an amniocentesis, or consult a specialist, to determine whether a chorioamnionitis infection was present in the uterus of Parent constitutes a single occurrence."

VII. New Cases: Multiple Occurrences

Decisions issued in the past year in which courts have held that there were multiple occurrences include:

- ***Plastics Engineering Co. v. Liberty Mutual Insurance Co.***[39]

The insurer argued that there was one occurrence—the policyholder's act of selling asbestos-containing products without warning of their dangers. The Wisconsin Supreme Court disagreed, holding that each individual victim's exposure to the asbestos-containing products constituted an occurrence. The court rejected the notion, however, that an individual victim who had multiple exposures to the products could account for multiple occurrences. "[E]ach individual claimant's injuries stem from *the continued and repeated exposure* to asbestos-containing products."[40]

- ***Evanston Insurance Co. v. Ghillie Suits.com, Inc.***[41]

The policyholder manufactured and sold a type of military camouflage apparel known as "ghillie suits."[42] Two Marines, Ehart and McClanahan, suffered severe burns while wearing the suits during a training exercise. Ehart's suit was ignited by a flash from the firing of his weapon. McClanahan's caught fire while he was trying to put out the flames rising from Ehart's suit. Both Marines sued. The manufacturer's insurer argued that the injury of both men constituted a single occurrence and that, therefore, only a single per-occurrence limit applied. The court, applying California law, disagreed, holding that the injury to each Marine was a separate event, separated in time and space, with a separate cause.

> "[I]t is undisputed that the first occurrence (and accident) was the ignition of Ehart's supposedly fireproof suit.... Once Ehart's suit ignited and the flames began to spread, McClanahan still was far from the zone of danger and not 'continuous[ly]' exposed to 'substantially the same' conditions as Ehart. Only after McClanahan made the independent decision to help Ehart was he exposed to a harmful condition, one that was much different from the spark that ignited Ehart's suit, as the initial spark had now turned into a substantial fire."

- ***Addison Ins. Co. v. Fay***[43]

Two teenaged boys died of hypothermia after becoming trapped overnight in an excavation pit on the policyholder's property. The policyholder's insurer agreed to settle the claims of the boys' estates for the policy limits. The insurer then filed this declaratory action to determine whether one or two per-occurrence limits applied. The Illinois Supreme Court held that there were two occurrences, reasoning:

> From the evidence presented at trial, we can infer that the boys did not become trapped simultaneously. We can also infer that Hodgins became trapped after Carr, in an attempt to free Carr from the sand. Beyond these basic facts and inferences, there is little evidence to support Addison's claim that the injuries suffered by these two boys were the result of a single occurrence. The police investigators could not determine how closely in time the boys became trapped. They suggested it could have been seconds or minutes apart, but acknowledged that there was no way to know. Nor could the medical experts give a time of death with certainty, or indicate how closely in time the two boys had died. Any opinions on these issues of timing would be inappropriately speculative....
>
> The substantial uncertainty on this issue persuades us that Addison cannot meet its burden of proving that the two boys' injuries were so closely linked in time and space as to be considered one event. Because Addison cannot meet its burden, we hold that the injuries to Carr and Hodgins constitute two occurrences.[44]

VIII. Conclusion

From the foregoing analysis, we can extract a principle: Courts find multiple occurrences when (1) separate acts or events attributable to the insured are the immediate, as opposed to remote, causes of harm and/or (2) the acts or events are separated by time or space. Conversely, there is a single occurrence when (1) a single act or event can be isolated as the immediate cause of the damage, when viewed from the insured's perspective, and/or (2) the acts or events are continuous in time or space.

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[1] Am. Red Cross v. Travelers Indem. Co. of R.I., 816 F. Supp. 755 (D.D.C. 1993).

[2] Western World Ins. Co. v. Wilkie, No. 5:06-CV-64-H (3), 2007 U.S. Dist. LEXIS 81677 (E.D.N.C. Nov. 2, 2007).

[3] U.E. Texas One-Barrington, Ltd. v. Gen. Star Indem. Co., 332 F.3d 274 (5th Cir. 2003).

[4] Champion Int'l Corp. v. Continental Cas. Co., 546 F.2d 502 (2d Cir. 1976).

[5] The analysis is further complicated by the fact that when courts are determining the number of occurrences, they are justified in deciding close calls differently depending upon whether limits or deductibles are at issue. "It is a well recognized rule of construction and interpretation of contracts for insurance that the contract or policy must be liberally construed in favor of the insured so as not to defeat, without plain necessity, his claim to the indemnity which, in making the contract of insurance, it was his purpose and intention to obtain." Inter-Ocean Cas. Co. v. Hunt, 189 So. 240, 242 (Fla. 1939); *accord* Carey Canada, Inc. v. Aetna Cas. & Sur. Co., CIV. A. Nos. 84-3113 JHP, 85-1640 JHP, 1988 U.S. Dist. LEXIS 8997 (D.D.C. Mar. 31, 1988).

[6] ISO Form CG 00 01 12 04 (2003).

[7] ISO Form CG 00 01 12 04 (2003). The substance of the provision has changed little in the various iterations of the standard ISO policy issued since 1973 (ISO Form GL 00 01 01 73). *See* SUSAN J. MILLER & PHILIP LEFEBVRE, 1 MILLER'S STANDARD INSURANCE POLICIES ANNOTATED 421.7 (5th ed. 2008).

[8] *See* 64 A.L.R. 4TH 668 § 2 (a) (1988, updated weekly); 2 Allen D. Windt, INS. CLAIMS & DISPUTES, § 11:24 (5th ed. 2008); M. Jane Goode, LAW & PRACTICE OF INS. COVERAGE LITIG. § 6:18 (2008).

[9] Gaston County Dyeing Mach. Co. v. Northfield Ins. Co., 524 S.E.2d 558, 565 (N.C. 2000); *accord* H.E. Butt Grocery Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 150 F.3d 526, 530 (5th Cir. 1998) (the number of occurrences is determined by examining the "events that cause the injuries and give rise to the insured's liability, rather than on the number of injurious effects"); Mich. Chem. Corp. v. Am. Home Assur. Co., 728 F.2d 374, 379 (6th Cir. 1984) ("The vast majority of courts . . . have concluded that although injury must be suffered before an insured can be held liable, the number of occurrences for purposes of applying coverage limitations is determined by referring to the cause or causes of the damage and not to the number of injuries or claims."); Liberty Mut. Ins. Co. v. Pella Corp., 631 F. Supp. 2d 1125, 1135–36 (S.D. Iowa 2009) ("The majority of courts . . . appear to answer this question based on the 'underlying cause' of the property damage alleged."); Colonial Gas Co. v. Aetna Cas. & Sur. Co., 823 F. Supp. 975, 983 (D. Mass. 1993) (holding that "consistent with the rule in the majority of states, . . . the number of occurrences turns on the underlying cause of the property damage, and where . . . there is a single cause . . . there is a single occurrence"); Chemstar, Inc. v. Liberty Mut. Ins. Co., 797 F. Supp. 1541, 1546 (C.D. Cal. 1992) ("A majority of courts determines the number of occurrences based on the underlying cause of the property damage."); Owens-Illinois, Inc. v. Aetna Cas. & Sur. Co., 597 F. Supp. 1515, 1525 (D.D.C. 1984) ("the calculation of the number of occurrences must focus on the underlying circumstances which resulted in the personal injury and claims for damage rather than each individual claimant's injury"); Koikos v. Travelers Ins. Co., 849 So. 2d 263, 273 (Fla. 2003) ("We look not to the number of injuries or victims, i.e., we do not apply the 'effect theory,' but rather we focus, under the 'cause theory,' on the independent *immediate* acts that gave rise to the injuries and [the policyholder's] liability.").

[10] Aetna Cas. & Sur. Co. v. Clayton, 56 F.3d 60 (4th Cir. 1995).

[11] Anchor Cas. Co. v. McCaleb, 178 F.2d 322, 324–25 (5th Cir. 1949).

[12] *See 2* Allen D. Windt, INS. CLAIMS & DISPUTES, § 11:24 (5th ed. 2008) ("A difficult question, rarely expressly addressed by the courts outside the context of coverage for third party claims, is whether the 'cause' of a loss for the purpose of determining the number of occurrences is the general overarching cause or the more immediate cause."); Society of Roman Catholic Church v. Interstate Fire & Cas. Co., 26 F.3d 1359, 1364 (5th Cir. 1994) ("The meaning of 'occurrence,' as used in the insurance policies, can be perplexing in application.").

[13] *See, e.g., U.E. Texas One-Barrington, Ltd.*, 332 F.3d at 278 ("[T]o look this far back would render any damage . . . occurring at any time related to the plumbing as arising from the same event."). *See also* THOMAS WOLFE, LOOK HOMEWARD, ANGEL (1929), which explored the boundlessness of causation in its opening paragraphs:

> Each of us is all the sums he has not counted: subtract us into nakedness and night again, and you shall see begin in Crete four thousand years ago the love that ended yesterday in Texas.
>
> The seed of our destruction will blossom in the desert, the alexin of our cure grows by a mountain rock, and our lives are haunted by a Georgia slattern, because a London cutpurse went unhung. Each moment is the fruit of forty thousand years.

[14] *See U.E. Texas One-Barrington, Ltd.*, 332 F.3d at 278 ("In determining the number of 'occurrences,' we should not focus on the alleged overarching cause, but rather on the specific event that caused the loss."); Flintkote Co. v. Gen. Accident Assurance Co., 410 F. Supp. 2d 875, 891–93 (N.D. Cal. 2006) (each "event that causes and immediately precedes an injury giving rise to liability" is a separate occurrence); London Market Insurers v. Superior Court, 53 Cal. Rptr. 3d 154, 172 (Cal. Ct. App. 2007) (courts should look to the immediate, not the remote, cause of harm to determine the number of occurrences); Nicor, Inc. v. Associated Elec. & Gas Ins. Servs., Ltd., 841 N.E.2d 78, 85 (Ill. App. Ct. 2005), *aff'd*, 860 N.E.2d 280 (Ill. 2006) ("[W]here each asserted loss is the result of a separate and independent intervening human act, either negligent or intentional, each loss arises from a separate occurrence.").

[15] *See supra* note 1.

[16] *Am. Red Cross*, 816 F. Supp. at 761 (quoting Appalachian Ins. Co. v. Liberty Mut. Ins. Co., 676 F.2d 56, 61 (3d Cir. 1982)).

[17] *Am. Red Cross*, 816 F. Supp. at 761 (internal citations omitted).

[18] *Western World Ins. Co.*, 2007 U.S. Dist. LEXIS 81677.

[19] The opinion does not indicate the number of victims, but a December 23, 2005, report by the U.S. Centers for Disease Control placed the number at 108. *See Outbreaks of* Escherichia coli *O157:H7 Associated with Petting Zoos—North Carolina, Florida, and Arizona, 2004 and 2005*, available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5450a1.htm.

[20] *See* Appalachian Ins. Co. v. Gen. Elec. Co., 863 N.E.2d 994, 1001 (N.Y. 2007); *accord* Flemming v. Air Sunshine, Inc., 311 F.3d 282, 295 (3d Cir. 2002). *See also* Guideone Elite Ins. Co. v. Old Cutler Presbyterian Church, Inc., 420 F.3d 1317, 1332 (11th Cir. 2005) ("acts . . . were separated by sufficient 'time and space' so as to constitute separate occurrences").

[21] *See* In re Prudential Lines, Inc., 158 F.3d 65, 81 (2d Cir. 1998) (harm to each asbestos claimant constituted a separate occurrence because they were exposed at different points in time). *But see* Liberty Mut. Ins. Co. v. Treesdale, Inc., 418 F.3d 330, 339 (3d Cir. 2005).

[22] Worchester Ins. Co. v. Fells Acres Day School, Inc., 558 N.E.2d 958, 973 (Mass. 1990). *See Am. Red Cross*, 816 F. Supp. at 761 n.8 (criticizing the "result-oriented approach" in "cases holding that all injuries resulting from sales of a uniformly defective product constitute continuous and repeated exposure to a general condition").

[23] *Koikos*, 849 So. 2d at 267–73.

[24] *Koikos*, 849 So. 2d at 267–73 (citations and punctuation adapted).

[25] *Koikos*, 849 So. 2d at 269.

[26] *Koikos*, 849 So. 2d at 270 (emphasis in original).

[27] *Koikos*, 849 So. 2d at 272. *See* Lexington Ins. Co. v. Travelers Indem. Co. of Ill., 21 Fed.Appx. 585, 589–90 (9th Cir. 2001) (arson fires at four different courthouses set by same person constituted four separate occurrences).

[28] *Koikos*, 849 So. 2d at 272. *See* Pardee Constr. Co. v. Ins. Co. of the West, 92 Cal. Rptr. 2d 443, 456 (Cal. Ct. App. 2000) ("the insurers' failure to use available language expressly excluding [a specific type of] coverage implies a manifested intent not to do so").

[29] SR Int'l Bus. Ins. Co. v. World Trade Ctr. Props., LLC, 222 F. Supp. 2d 385, 398 (S.D.N.Y. 2002) (emphasis added).

[30] E.I. du Pont de Nemours & Co. v. Stonewall Ins. Co., No. 99C-12-253 (JTV), 2009 Del. Super. LEXIS 235 (Del. Super. Ct. June 30, 2009).

[31] *E.I. du Pont de Nemours & Co.*, 2009 Del. Super. LEXIS 235 (emphasis in original).

[32] Liberty Mut. Ins. Co. v. Pella Corp., 631 F. Supp. 2d 1125 (S.D. Iowa 2009). For the factual background of the case, *see* Liberty Mut. Ins. Co. v. Pella Corp., 633 F. Supp. 2d 714 (S.D. Iowa 2009).

[33] California v. Continental Ins. Co., 88 Cal. Rptr. 3d 288 (Cal. Ct. App. 2009). This decision is awaiting review by the California Supreme Court. California v. Continental Ins. Co., 203 P.3d 425 (Cal. 2009).

[34] Flemming v. Air Sunshine, Inc., 311 F.3d 282 (3d Cir. 2002).

[35] *California*, 88 Cal. Rptr. 3d at 316 (internal citations omitted).

[36] Allstate Prop. & Cas. Ins. Co. v. McBee, No. 08-0534-CV-W-HFS, 2009 U.S. Dist. LEXIS 35158 (W.D. Mo. April 27, 2009).

[37] Dutch Maid Logistics, Inc. v. Acuity, Nos. 91932, 92002, 2009 Ohio App. LEXIS 1512 (Ohio Ct. App. Apr. 16, 2009).

[38] Kinney-Lindstrom v. Med. Care Availability & Reduction of Error Fund, 970 A.2d 1206 (Pa. Commw. Ct. 2009).

[39] Plastics Eng'g Co. v. Liberty Mut. Ins. Co., 759 N.W.2d 613 (Wis. 2009).

[40] *Plastics Eng'g Co.*, 759 N.W.2d at 623 (emphasis added).

[41] Evanston Ins. Co. v. Ghillie Suits.com, Inc., No. C 08-2099 JF (HRL), 2009 U.S. Dist. LEXIS 22256 (N.D. Cal. Mar. 19, 2009).

[42] "A ghillie suit is a form of camouflage that typically consists of an abundance of shredded material attached to pants and a jacket and is designed to give the wearer a three-dimensional appearance that will blend in with surrounding vegetation." *Evanston Ins. Co.*, 2009 U.S. Dist. LEXIS 22256.

[43] Addison Ins. Co. v. Fay, 905 N.E.2d 747 (Ill. 2009).

[44] *Addison Ins. Co.*, 905 N.E.2d at 756–57.