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Many Claims, Many Occurrences

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The Tenth Circuit recently addressed whether multiple injuries allegedly resulting from an institution's failure to prevent sexual abuse constitute one "occurrence" or several. In *Church of Jesus Christ of Latter-day Saints v. National Union Fire Insurance Co. of Pittsburgh, PA*, the court held that the relevant policy language found in many general liability policies was ambiguous and must be construed in favor of the policyholder.

The decision shows that determining the number of occurrences depends not merely on the number of claimants, injuries, or time between injuries, but on the policy language and the alleged cause of liability. That distinction may affect whether coverage applies when a policy includes a per-occurrence self-insured retention or deductible.

Background

I. The Underlying Action

The underlying claims arose from alleged sexual abuse by Michael Jensen of several children in Martinsburg, West Virginia, between 2007 and 2011. Jensen's alleged victims and their families sued Jensen's parents, church officials, and the church in West Virginia state court. They alleged that the church failed to take reasonable precautions to prevent the abuse, including by failing to report suspected abuse, properly supervise or train personnel, and warn families about Jensen's prior conduct. The church settled those claims.

II. The Coverage Dispute

The church sought coverage for its defense and settlement costs from National Union Fire Insurance Company of Pittsburgh, PA and ACE Property and Casualty Insurance Company. The policies required the church to satisfy a retained limit for each "occurrence" before coverage attached.

No individual settlement exceeded the applicable retained limit, but the settlements collectively did. The church argued that its alleged failure to prevent Jensen's abuse created a single harmful condition—and thus one occurrence. The insurers argued that each instance of abuse was a separate occurrence because it involved a different victim, time, or location.

The Utah district court agreed with the insurers and granted summary judgment in their favor because no individual settlement exceeded the retention.

Tenth Circuit's Decision

The Tenth Circuit reversed. Applying Utah law, the court held that the policies' definitions of "occurrence" were ambiguous and that the church's interpretation was reasonable. Because Utah law construes ambiguous insurance provisions in favor of coverage, summary judgment for the insurers was improper.

The National Union policy defined an occurrence as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions," and stated that all such exposure would be deemed to arise from one occurrence. ACE used substantially similar language, while adding that repeated exposure would constitute one occurrence "regardless of the frequency or repetition thereof, or the number of claimants."

The church reasonably read this language to encompass the alleged harmful condition created by its failure to take precautions against Jensen's abuse. Under that interpretation, the victims' repeated exposure to that condition could constitute one occurrence despite the different victims, locations, and times involved.

The court did not hold that the church's interpretation was the only reasonable one. Rather, it concluded that both the church's and the insurers' competing interpretations were plausible. That was sufficient to establish ambiguity under Utah law.

The Tenth Circuit also noted that other courts have reached differing conclusions in institutional sexual-abuse cases, with some viewing alleged systemic negligence as one occurrence and others treating each act of abuse as a separate occurrence. This conflicting authority reinforced the court's conclusion that the policy language was susceptible to more than one reasonable interpretation.

Finally, the court rejected the insurers' argument that construing the policy in the church's favor would permit policyholders to take inconsistent positions depending on whether they sought to avoid multiple retentions or access multiple limits. The relevant question, the court explained, was whether the insurers drafted language subject to more than one reasonable interpretation. Because they did, the ambiguity had to be resolved in favor of coverage.

Key Takeaways

This decision offers several important reminders for policyholders.

First, multiple claims need not necessarily constitute multiple occurrences. Where claims arise from an alleged common harmful condition, practice, or failure to act, parties should evaluate whether the policy language supports treating them as a single occurrence or multiple occurrences.

Second, the precise occurrence definition matters. It matters a great deal. The ACE policy's additional reference to the "number of claimants" strengthened the church's argument that the claims could be aggregated. Policyholders should closely examine provisions addressing "continuous or repeated exposure," "general harmful conditions," and similar aggregation language.

Third, governing law may be outcome-determinative. The Tenth Circuit's decision turned on Utah's rule that ambiguous insurance language is construed in favor of coverage. Parties should account for the applicable jurisdiction's approach to the occurrence analysis and insurance-policy interpretation when evaluating coverage and litigating disputes.

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