COUGHLIN DUFFY LLP

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NEW YORK COURT OF APPEALS HOLDS ASBESTOS BODILY INJURY CLAIMS PRESENT MULTIPLE OCCURRENCES

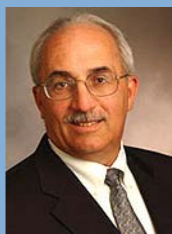
On February 15, 2007, the New York Court of Appeals decided Appalachian Ins. Co. v. General Electric Co., Slip Op., and held that asbestos bodily injury claims against General Electric Company ("GE") presented multiple occurrences under primary policies in effect between 1966 and 1986. Those policies did not contain aggregate limits of liability and defined the term "occurrence" as "an accident, event, happening or continuous or repeated exposure to conditions which unintentionally results in injury or damage during the policy period." Slip Op. at 4.

The Court of Appeals used the "unfortunate-event test" to determine whether there was a single occurrence or multiple occurrences, which focuses "on the nature of the incident giving rise to the damages", rather than the cause of such damages. Id. at 9, 13. It identified several factors relevant to the analysis, including whether there was a "close temporal spatial relationship between the incidents giving rise to injury or loss, and whether the incidents can be viewed as part of the same causal continuum, without intervening agents or factors." Id. at 10. The Court noted that "common causation is pertinent once the incident -- the fulcrum of our analysis -- is identified, but the cause should not be conflated with the incident." Id. at 10-11.

Applying this test, the Court identified the incident giving rise to liability as each underlying plaintiff's exposure to asbestos, and concluded that the asbestos bodily injury claims against GE were "unquestionably multiple occurrences" given "the lack of any spatial or temporal relationship" among them. Id. at 14. In doing so the Court rejected GE's argument that all the claims arose from a single act of negligence, i.e., GE's failure to warn of the dangers of asbestos insulation in its products, and thus constituted one occurrence. Id. at 5. As a result, GE's excess insurers do not have to respond to the asbestos bodily injury claims against GE until each claim has exceeded the per-occurrence limits of the GE primary policies.

The Court of Appeals acknowledged that parties to an insurance contract can include language setting forth an approach other than the unfortunate-event test, but noted that GE and its insurers had not done so. It also pointedly indicated that the "unfortunate-event" test does not "necessarily bar excess coverage in multi-plaintiff mass tort contexts" and that each mass-tort case must be analyzed to determine if that "test may well allow the grouping of some or all of the claims for purposes of satisfying the per-occurrence limit…." Id. at 15.

If you would like further information about this decision, please contact Kevin E. Wolff of our New Jersey office or Justin N. Kinney of our New York office.



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