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## **Number of Occurrences under Texas Law: The Impact on Who Pays What**

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## **Number of Occurrences under Texas Law: The Impact on Who Pays What**

For a policyholder, simply establishing that a loss-causing event triggers coverage under its insurance policy can be easier said than done. But even upon establishing that a claim or event is an “occurrence” under an insurance policy, another question often arises: How many occurrences are there? The answer depends on interaction between the policy language, the facts, and the law—and coverage dollars can be gained or lost depending on the outcome.

Determining the number of occurrences arising out of a single claim, suit or loss under an insurance policy is important to a policyholder for several reasons.

First, to the extent the policy requires the insured to pay a deductible or self-insured retention (“SIR”), the number of occurrences determines how much the insured must pay before insurance funds kick in. For many claims, policyholders are best served by only paying one deductible or SIR.

Second, most policies contain a limit of liability for each “occurrence,” but a potentially higher aggregate limit may apply when multiple occurrences exist. If an insured’s loss exceeds its policy’s per-occurrence limit, the insured may prefer that multiple occurrences be found in order to access the aggregate limit. *See Don’s Bldg. Supply, Inc. v. OneBeacon Ins. Co.*, 267 S.W.3d 20, 24 (Tex. 2008) (“This limitation is sometimes important because the dollar limits of the policy include an aggregate limit and also a lower dollar limit per occurrence.”).

Third, a Texas insured that owns multiple policies covering an occurrence that spans several years is entitled to select the policy or policies the insured wishes to respond to the occurrence. *See Am. Physician’s Ins. Exch. v. Garcia*, 876 S.W.2d 842, 855 (Tex. 1994) (“If a single occurrence triggers more than one policy, covering different policy periods, then different limits may have applied at different times. In such a case, the insured’s indemnity limit should be whatever limit applied at the single point in time during the coverage periods of the triggered policies when the insured’s limit was highest. The insured is generally in the best position to identify the policy or policies that would maximize coverage.”). This right to select which polic(ies) apply to a loss has the potential to minimize the insured’s required contribution and greatly increase a policyholder’s available coverage—but only if the loss resulted from a single occurrence.

To determine how many “occurrences” are implicated, Texas courts first examine the language of the policy to determine the meaning of “occurrence” under the policy, then apply a cause analysis to determine the number of occurrences in the specific case. *See, e.g., Goose Creek Consolidated I.S.D. v. Continental Cas. Co.*, 658 S.W.2d 338, 340 (Tex. App.—Houston [1st Dist.] 1983, no writ). But courts have not always addressed the issue consistently. And, as detailed below, the “number of occurrences” analysis under liability and property policies is and should be considered separately.

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