

News & Alerts

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What Is Your Limit – Defining Coverage Limits in an Occurrence Policy

Occurrence-based policies are some of the most common insurance policies on the market. As denoted by the name, they insure the policy holder for a certain dollar figure for each occurrence (a defined term) under the policy. Sounds simple, right? But what if a single occurrence causes multiple injuries or injures multiple people? Or what if a claim is asserted against several of the insureds covered under the policy? Does the policy limit multiply for each injury? Does it multiply for each insured?

These answers were the subject of a tragic case decided on August 16, 2013 by the Supreme Court of Alaska in United Services Automobile Ass'n v. Neary, 2013 WL 4399129 (Aug. 16, 2013). In Neary, fifteen-year-old Kevin Michaud had two friends visiting him at his home after school. During this visit, Michaud took a revolver from his father's gun cabinet and placed a bullet in one chamber of the cylinder. Russian roulette followed. Michaud first pointed the gun at himself and fired. No bullet. He next turned the gun on his friend, fourteen year-old Aidan Neary, and pulled the trigger. This time the gun fired. The bullet passed through Neary, fatally wounding him, and struck fourteen-year-old Charles J. Schneider III in the spine – where the bullet remains to this day.

The parents of the two victims brought suit against Michaud and his parents for various claims, including negligence and negligent infliction of emotional distress. The plaintiffs also brought suit against United Services Automobile Association ("USAA"), the Michaud's insurance carrier, seeking declaratory judgment as to USAA's liability. USAA counterclaimed for a declaratory judgment limiting coverage.

The Declaration Page of the Michauds' policy, under the title "Coverages and Limits of Liability" provides: Personal Liability – Each Occurrence \$300,000." The definitions section of the policy defines the word "occurrence" as "an accident . . . which results, during the policy period, in: a. bodily injury; or b. property damage."

The Declarations Page, specifically defining the grant of coverage for "Personal Liability" states:

"If a claim is made or a suit is brought against an insured for damages because of bodily injury or property damage caused by an occurrence to which coverage applies, we will: 1. Pay up to our limit of liability for the damages which the insured is legally liable."

Under "Conditions" the policy sets forth:

"1. Limit of Liability. Our total liability under Coverage E for all damages resulting from any one occurrence will not be more than the limit of liability for Coverage E as shown in the Declarations. This limit is the same regardless of the number of insureds, claims made or

persons injured. All bodily injury and property damage resulting from any one accident . . . shall be considered to be the result of one occurrence.”

Finally, the policy stated, in “Severability of Insurance” as follows: “This insurance applies separately to each insured. This condition will not increase our limit of liability for any one occurrence.”

Based on the policy language, USAA moved for summary judgment in the superior court, arguing that, under the policy, the maximum exposure to the insurance company was \$300,000. The plaintiffs, however, argued that, despite only one gun-shot, there were multiple “occurrences” and, additionally, that since suit was brought against Michaud and his parents, which the policy limits applied to each person, individually, thereby bringing the actual coverage limits under the policy to \$900,000. The superior court made two rulings, first, that each of the three Michauds was entitled to a separate coverage limit of \$300,000 per occurrence, and second, that there was only one occurrence, meaning that the available limits under the policy was \$900,000.

The parties both appealed to the Supreme Court of Alaska. There, the Court held that the provisions of the insurance policy were not ambiguous, and that the Declarations Page clearly stated that the \$300,000 limit applies to “Each Occurrence” and that nothing suggested that the number would be increased depending on the number of insureds. To the contrary, the policy expressly prohibited such a construction. In the “Liability Coverages” the policy commits USAA to “pay up to [its] limit of liability for the damages for which the insured is legally liable” for covered liability claims. Furthermore, under “Conditions,” the policy further explains what is meant by “Limit of Liability”: “Our total liability under Coverage E for all damages resulting from any one occurrence will not be more than the limit of liability for Coverage E as showing in the Declarations.” Stating further, the policy notes that “This limit is the same regardless of the number of insureds, claims made or persons injured.”

The plaintiffs argued three points trying to overcome this policy language. First, they assert that the word “personal” implies that the coverage limit applies separately to each individual insured rather than to the insureds as a group. Next, the plaintiffs argue the policy commits USAA to “pay up to [its] limit of liability for the damages for which the insured is legally liable” arguing the term “the insured” in the singular, implies that the full limit of liability is available for the damages assessed against each individual insured. Finally, the plaintiffs argued the language in the Severability of Insurance paragraph states that “This insurance applies separately to each insured.”

The Court found these arguments unpersuasive and overturned the superior court’s prior holding. In the end, the Court held that USAA’s maximum exposure in this matter was \$300,000 – the limit per the plain language of the policy, and rejecting the notion of a multiplier based on the number of insureds or occurrences.

This holding – while not surprising given the full explanation of the policy language – is somewhat surprising given the tragic factual scenario surrounding the litigation. Ultimately, this ruling serves as notice to policyholders to determine the true extent of the coverage needed. The definition of “occurrence” can severely limit the amount of insurance available to insureds.

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