

Fuel Thieves Strike Again, and Again, and Again... 11th Circuit Concludes Each Fuel Theft Constituted a Separate “Occurrence”

In the case of Port Consolidated, Inc. v. Int’l Ins. Co. of Hannover, PLC, the Eleventh Circuit Court of Appeals recently held that an insurance claim involving repeated thefts of fuel from a singular scheme constituted multiple “occurrences” under the insurance policy at issue. Moreover, because none of the thefts exceeded the policy’s per occurrence deductible, the Court found that the insurer properly denied coverage.

The case involved a fuel distribution company, Port Consolidated, Inc. (Port), that operated a cardlock fuel facility wherein authorized customers could pump specified limits of fuel. Due to a programming error, one customer’s drivers circumvented the fuel limit thousands of times and pumped up to an extra 100 gallons of fuel per transaction, at no extra cost. Port tendered a claim to its property insurer, International Insurance Company of Hannover, PLLC (InterHannover), which denied coverage, prompting Port to file suit for breach of contract.¹

InterHannover asserted that the thefts were not occurrences, and even if they were, each alleged theft was a separate occurrence that fell below the \$1,000 per-occurrence deductible. Notably, the body of the Policy did not define the term “occurrence.” Still, a supplemental coverage endorsement did define the term, such that a series of related unauthorized uses constituted a single occurrence.

Port argued that the definition of “occurrence” in the supplemental coverages endorsement applied to the entire Policy and that such definition made clear that the related thefts constituted one occurrence, resulting in a sizeable recovery. The district court rejected Port’s argument and granted InterHannover’s motion for summary judgment, concluding that the endorsed “occurrence” definition did not apply to the claim at issue and, further, that each theft represented a “discrete occurrence.”

On appeal, the Eleventh Circuit affirmed the district court’s findings. The ultimate issue was how to define the term “occurrence,” where the Policy contained no applicable definition.² Looking to the Florida Supreme Court’s decision in Koikos v. Travelers Insurance Co., the Court observed that Florida adopted the “cause theory,” which defines “occurrence” by examining the cause of the injury.³ Thus, the Court held that an occurrence is defined by the “immediate injury-producing act,” in this case, the multiple fuel thefts. Because each theft was a separate and distinguishable act in time and space, each theft constituted a separate occurrence.

¹No. 19-13544, D.C. Docket No. 0:16-cv-60379-WJZ (11th Cir. September 8, 2020). Port’s lawsuit also contained two counts seeking declaratory relief and one count seeking reformation.

²The Court observed that the Policy must be construed according to its plain meaning. Likewise, the Policy was not ambiguous simply because it did not define a term. The Court rejected the notion that the definitions contained in the supplemental coverages endorsement should be applied to the whole Policy because doing so would render meaningless the absence of the term from the general definitions section of the Policy. In other words, the lack of a definition in the general Policy was intentional, and defining the term “occurrence” in the endorsement expanded the scope of the definition only under specific circumstances.

³849 So. 2d 263 (Fla. 2003) (holding that each shooting constituted a separate occurrence). Compare to the “effect” theory, followed in a minority of states, whereby the number of occurrences is calculated by analyzing the effects or injuries resulting from an event.

The decision reached by the Eleventh Circuit highlights the significance of the single occurrence versus multiple occurrences issue. In some cases, it is the difference between no recovery and nearly full recovery. The issue has become a frequent topic of dispute, with the interesting twist being that, unlike other disputes between insurers and policyholders, the respective positions change depending upon the amount of the loss, the available policy limits (per occurrence and aggregate), and the amount of the applicable deductible. Where deductibles and per occurrence limits are low, insureds often benefit from an interpretation of multiple occurrences, but where deductibles and limits are high, the opposite is true. The situation is reversed for insurance companies. Port Consolidated reminds policyholders to carefully examine their policies to evaluate policy limits, (per occurrence) deductible obligations, and how certain "occurrence" definitions that group certain acts together as a singular occurrence, or lack thereof, could impact coverage in the event of a loss.

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