

Ohio Court Refuses to Annualize Multi-Year Policies' Per Occurrence Limits

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White and Williams recently obtained summary judgment against an insured on behalf of an insurer and a guarantor, establishing that two multi-year insurance policies provide per occurrence limits on a per policy rather than a per year basis, which shielded potential exposure by over \$100 million.

The insured had previously sought and obtained coverage under two policies in connection with a single occurrence arising out of massive environmental contamination claims involving a large industrial site. The issue of whether the policies provide per occurrence limits on a policy term or annual basis was not resolved in this earlier litigation.

The first policy was effective for three years and provides per occurrence limits of \$40 million. The second policy was effective for up to three years and provides per occurrence limits of \$15 million.

In the current litigation, the insurer and insured filed cross-motions for summary judgment seeking declarations as to whether the policies provide term or annual per occurrence limits. The insurer contended that the policies' limits apply on a term basis such that the limits total no more than \$55 million. According to the insured, the policies' limits apply annually such that the limits of the first policy amount to \$120 million and the limits of the second policy amount to \$45 million, for total limits of \$165 million. While those summary judgment motions were pending, developments regarding the insurer caused the insured to bring the guarantor into the case. The guarantor and the insured then filed new competing motions for summary judgment on the issue of term versus annual limits.

In a May 2023 order, the court ruled against the insured, holding that "a plain reading of the unambiguous language in the insurance policies reveal the coverage applies per term, not per year." The court observed that, while the policies specify annual aggregate limits for certain claims, the policies do not specify annual per occurrence limits, and the underlying environmental claims undisputedly arose out of only one occurrence. Further, the court rejected the argument that limits must have been annual because the policies called for the annual payment of premiums, stating that "absent language indicating that policy limits are per year, the fact that one third of the premium was paid on a yearly basis did not convert the . . . policy occurrence limit, to an annual occurrence limit" for either of the policies.

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