

NUMBER OF OCCURRENCES IN CONSTRUCTION DEFECT LITIGATION

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WHY ISSUE IS IMPORTANT

- CONTINUING INJURY RULE -- *LENNAR v MARKEL*
- AGGREGATE LIMITS -- *DON'S BUILDING v ONE BEACON INS.*
- SELF INSURED RETENTIONS -- *TRANSPORT INS. CO. v LEE WAY MOTOR FREIGHT*

CAUSE TEST

- **RULES ADOPTED BY COURTS:**
 - **CAUSE TEST- THE NUMBER OF OCCURRENCES IS DETERMINED BY THE NUMBER OF UNDERLYING CAUSE OR CAUSES OF THE INJURY, RATHER THAN BY REFERENCE TO THE NUMBER OF RESULTING INJURY OR DAMAGE CLAIMS**
 - ***MAURICE PINCOFFS CO. v ST PAUL FIRE & MARINE INS. CO***

EFFECTS TEST

- EFFECTS TEST -- FOCUSES ON THE EFFECTS OF THE EVENT, IN THAT IF DIFFERENT PARTIES ARE DAMAGED BY A SERIES OF EVENTS, THE DAMAGE TO EACH PARTY IS CONSIDERED A SEPARATE OCCURRENCE

UNFORTUNATE EVENTS TEST

- UNFORTUNATE EVENTS TEST -- THE NUMBER OF OCCURRENCES CORRESPONDS TO THE NUMBER OF “EVENTS OF UNFORTUNATE CHARACTER.”
- MAINLY USED BY NY AND CONNECTICUT

TEXAS RULE & PROGENY

*MAURICE PINCOFFS CO. v ST. PAUL FIRE &
MARINE INS. CO*

TEXAS CASES

- *LENNAR CORP v GREAT AM. INS. CO.*
- *WESTCHESTER SURPLUS LINES INS. CO. v MAVERICK TUBE CORP*
- *CARPENTER PLASTERING CO. v PURITAN INS. CO*

TEXAS CASES

- *TRAMMEL CROW RESIDENTIAL CO. v ST. PAUL FIRE & MARINE INS. Co.*
- *SATTERFIELD & PONTIKES v. U.S. FIRE*
- *TWIN CITY FIRE INS. CO. v ILL. NAT'L INS. CO.*

OTHER STATES

**FLA -- *MID-CONTINENT CAS. CO. v BASDEO*
(2012)**

**MASS -- *COLONIAL GAS CO. v. AETNA CAS. &
SUR. CO* (1993)**

**CAL -- *CHEMSTAR, INC v LIBERTY MUT. INS. CO.*
(1994)**

**ILL -- *HOUSEHOLD MFG. INC v LIBERTY MUT.
INS. CO* (1987)**

OTHER STATES

- WASH -- *CERTAIN UNDERWRITERS AT LLOYD'S LONDON v VALIANT INS. CO* (2010)
- INDIANA -- *IRVING MATERIALS, INC v ZURICH AM. INS. CO.* (2007)
- PENN -- *CINCINNATI INS. CO. v DEVON INT'L INC.* (2013)
- NEVADA -- *UNITED NAT'L INS. CO. v ASSURANCE CO. OF AM* (2015)

OTHER STATES

- NEW YORK -- *ARTHUR A. JOHNSON CORP v INDEM. INS. CO. OF N. AMERICA* (1959)
- CONN -- *HARLEYSVILLE WORCESTER INS. CO. v PARAMOUNT CONCRETE, INC.* (2014)
- OREGON -- NO TEST-POLICY LANGUAGE -- *CHARTIS SPECIALTY INS. CO. v AM. CONTRACTORS INS. CO*
- TENN -- *KUHN'S OF BROWNSVILLE v. BITUMINOUS CAS. CO.* (1954)
- LA -- *LOMBARD v SEWERAGE & WATER BD OF NEW ORLEANS* (1973)

PRACTICAL APPLICATION

- **“OCCURRENCE” MEANS AN ACCIDENT, INCLUDING CONTINUOUS OR REPEATED EXPOSURE TO SUBSTANTIALLY THE SAME GENERAL HARMFUL CONDITIONS”**

PRACTICAL APPLICATION

- **OWNERS/DEVELOPERS**
 - **ONE OCCURRENCE PER STRUCTURE IF SOLD TO DIFFERENT BUYERS. IF MULTIPLE STRUCTURES SOLD TO ONE BUYER THERE WILL BE ONE OCCURRENCE**

PRACTICAL APPLICATION

- **GENERAL CONTRACTORS**
 - **ONE OCCURRENCE ARISING OUT OF EACH CONTRACT THE GENERAL CONTRACTOR HAS WITH THE OWNER OF THE PROPERTY**
 - **IF THE WORK IS BROKEN UP INTO DISTINCT TEMPORAL PHASES, THE NUMBER OF OCCURRENCES MAY DEPEND ON THE NUMBER OF PHASES**

PRACTICAL APPLICATION

- **SUBCONTRACTORS**
 - **THERE WILL BE SINGLE OCCURRENCE FOR EACH CONTRACT THAT THE SUBCONTRACTOR HAS WITH THE GENERAL CONTRACTOR**
 - **IF WORK OF THE SUB IS BROKEN UP INTO DISTINCT TEMPORAL PHASES, THE NUMBER OF OCCURRENCES MAY DEPEND UPON THE NUMBER OF PHASES**