

## Texas Court Treats 124 Separate Food Poisoning Cases as Single “Occurrence”

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In this month’s [Recall Roundup](#) on the Hunton Andrews Kurth [Retail Law Resource](#) blog, Hunton insurance attorneys Syed S. Ahmad and Geoffrey B. Fehling weighed in on a recent food contamination insurance coverage dispute, *Travelers Casualty Insurance Co. of America v. Mediterranean Grill & Kabob, Inc.* (W.D. Tex. Nov. 4, 2020), which dealt with single versus multiple “occurrences” under an insurance policy, a common issue in recall and contamination-related claims.

In *Mediterranean Grill*, a federal judge in Texas [granted an insurer’s motion](#) seeking to treat 124 separate cases of food poisoning as a single “occurrence” under a commercial general liability policy because all cases arose from the restaurant’s allegedly contaminated food. Over a one-month period in 2018, nearly 200 cases of food poisoning from salmonella were reported after customers ate at Pasha’s Mediterranean restaurant in San Antonio, Texas. The illnesses led to seven separate lawsuits alleging that the restaurant was negligent in manufacturing and preparing its food, which led to food poisoning. The restaurant sought coverage from its insurer, Travelers, under a policy with a \$1 million “per occurrence” coverage limit and a \$2 million “aggregate” limit.

Travelers accepted the claims and began making payments to resolve the lawsuits, but when its offer to settle the remaining claims for the remainder of the \$1 million per-occurrence limit was rejected, Travelers filed a coverage lawsuit attempting to limit its total exposure to \$1 million for a single “occurrence.” In opposition, the restaurant argued that the food poisoning resulted in multiple “occurrences” because the parties did not know precisely which products were contaminated and the salmonella poisoning appears to have more than one cause.

The court disagreed with the restaurant, ruling that a single “cause”—the allegedly contaminated food—gave rise to the restaurant’s liability for the lawsuits, which meant that there was only a single occurrence. The court also relied on prior decisions finding that a restaurant’s “ongoing preparation of contaminated food” supports a single occurrence, even if the exact source of the contamination is unknown. Because additional discovery to determine how the food was contaminated would not change this analysis, the court denied the restaurant’s request to defer resolution of the motion until after further discovery had occurred.

The single “occurrence” issue in *Mediterranean Grill* was significant, as Travelers would have had to

pay over \$1.5 million if the food poisoning cases had been counted as 124 separate “occurrences.” Similar issues, such as how many deductibles or retentions apply based on the number of “claims,” can arise in a variety of contamination or recall-related coverage disputes. Policyholders evaluating possible coverage for those kinds of exposure should carefully review key insurance provisions related to “per occurrence” or “per claim” limits to understand how they may impact total recovery under a policy in the event of a recall or contamination event.

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