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Toy Story: Insurance Lessons from Mattel Defect Case

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A Delaware court recently held in *Mattel, Inc. and Fisher Price, Inc. v. XL Insurance America, Inc., et al.*, that a series of product liability claims dating back to 2013 constituted a single "occurrence" under the toy manufacturer's and distributor's commercial general liability (CGL) policies.

The case stemmed from Mattel's request for defense and indemnity coverage in response to claims that certain toys caused bodily injuries to infants. The CGL coverage tower, which included policies issued by multiple primary, excess, and umbrella insurers, spanned from 2011 to 2020.

The primary policies defined "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." They also included a Lot or Batch Clause Endorsement with a "Deemer Clause," which deemed all injuries arising from a single "lot" of products as occurring whenever the injury in the first filed claim occurred. Under the endorsement, a "lot" was defined as "two or more discrete units of the same or substantially similar good or product" that shared a common harmful condition, defect, error or suspected deficiency.

The umbrella policies used a similar definition of "occurrence" and included an Occurrence Amendatory Endorsement. This endorsement aggregated distinct claims arising from the same alleged defect or hazard in substantially similar products into a single "occurrence." However, unlike the Lot or Batch Clause Endorsement, the Occurrence Amendatory Endorsement did not include a "Deemer Clause."

The toy manufacturer, along with one of its primary insurers, contended that the product liability claims should all be treated as a single "occurrence." In contrast, another insurer in the coverage tower argued that the issue was premature, asserting that the court first needed to determine the proximate causation of the alleged injuries before addressing the number of "occurrences."

The Delaware court ultimately held that the claims constituted a single "occurrence" under the applicable policies. It permitted allocation of the claims based on the year in which the injuries occurred. The court found that the claims arose from "the same or substantially the same 'hazard': the defective design of the [manufacturer's] products, including the incline angle, posed a hazard to the health of infants." It emphasized that the products were part of the same product line and shared common hazards, satisfying the policy's definition of a single "occurrence."

With respect to allocation, the court held that coverage under the excess and umbrella policies could only be triggered by a bodily injury that actually occurred during a particular policy's year. Significantly, the Occurrence Amendatory Endorsement in the excess and umbrella policies did not contain a "Deemer Clause"—unlike the Lot or Batch Clause Endorsement in the primary policies—which would have treated all injuries arising from a single "lot" of products as occurring at the time of the first claimed injury. As a result, the court concluded that the claims must be allocated to the policy in effect at the time each individual bodily injury occurred, rather than being grouped under a single policy year.

This decision underscores the critical importance of carefully reviewing the definition of "occurrence" in liability policies, including any endorsements that modify or clarify its application. Given that the number and timing of occurrences often plays a central role in the availability and extent of coverage, policyholders should consult experienced coverage counsel to help interpret policy language and ensure they maximize potential recovery under all applicable layers of insurance.

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