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## Case Bulletin: Insurance Law

### PENNSYLVANIA SUPREME COURT ADOPTS “CAUSE” TEST TO IDENTIFY AND QUANTIFY “OCCURRENCE”

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Donegal Mutual Insurance Company v. Richard Baumhammers, et al.  
Pennsylvania Supreme Court Nos. 18-33 WAP 2006  
Filed December 27, 2007.

On December 27, 2007, the Pennsylvania Supreme Court issued its decision in the Baumhammers insurance coverage case. The underlying case arose out of a shooting spree by mentally disturbed Richard Baumhammers, which resulted in the deaths of five people, and serious injury to a sixth person. At the time of the incident, Richard Baumhammers lived with his parents. At issue in the coverage case was whether and to what extent the parents’ homeowner’s policy provides coverage for their alleged negligence in failing to take the gun away from their mentally disturbed son and/or alert authorities about their son’s dangerous propensities.

In this case of first impression, the Supreme Court held that the homeowners’ insurer was required to defend the parents against the plaintiffs’ claims of negligence, even though their alleged negligence led to the intentional acts by the son. The court also determined that, from the perspective of the insureds (the parents), the claims asserted by the plaintiffs present the degree of fortuity contemplated by the ordinary definition of “accident” and thus satisfy the “occurrence” requirement under the policy. All justices joined in these conclusions, but determining the number of occurrences proved to be more divisive.

Writing for the majority, Justice Baldwin discussed the competing “cause” and “effect” approaches for identifying and quantifying the number of occurrences under an insurance policy. The court endorsed the adoption of the “cause” test, and concluded that in determining the number of occurrences, the focus must be on the act of the insureds that gave rise to their liability. The majority concluded that because the parents’ liability was predicated on their negligence and inaction, that single, undivided cause was a single occurrence that resulted in injury to six individuals.

Chief Justice Cappy filed a Concurring and Dissenting Opinion stating that the proper focus for determining the number of occurrences should be on the number of events that were unexpected by the insureds. There were six individuals shot, unexpectedly from the standpoint of the parents. Thus, under Chief Justice Cappy’s approach, there would be six separate occurrences.

Justice Baer also filed a Concurring and Dissenting Opinion, which viewed the number of events from the perspective of the four separate locations where the son shot his six victims. Justice Baer wrote that each location should constitute a separate occurrence, resulting in four occurrences.