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Wisconsin Supreme Court Holds Fire Damage Resulted from Single Occurrence

BY: Brian Margolies

In its recent decision in *Secura Ins. v. Lyme St. Croix Forest Co., LLC* 2018 WI 103 (Oct. 30, 2018), the Wisconsin Supreme Court had occasion to consider whether a forest fire that caused damage to several homes and properties should be considered a single or multiple occurrences.

Secura insured Lyme St. Croix Forest Company under a general liability policy. Of relevance was the policy's \$500,000 sublimit of coverage for property damage due to fire arising from logging or lumbering operations, subject to a \$2 million general policy aggregate limit. Lyme St. Croix sought coverage under the policy for a fire that resulted from its logging equipment. The fire lasted for three days, burning nearly 7,500 acres and causing damage to numerous homes and businesses.

Lyme St. Croix argued, and the trial and appellate courts agreed, that there was a separate occurrence each time the fire spread to a new piece of real property, and that as such, Secura was required to pay up its policy's full \$2 million aggregate rather than a single \$500,000 limit of liability. The appellate court based its decision, in part, on the 2014 Wisconsin Supreme Court decision in *Wilson Mut. Ins. Co. v. Falk*, 857 N.W.2d 156 (Wis. 2014), where the Court considered the issue of number of occurrences in a situation involving manure runoff from a farm that resulted in contamination of numerous drinking wells. The *Falk* Court rejected the argument that the spreading of manure as a fertilizer was the occurrence, instead concluding that there was an occurrence each time a unique well was contaminated by manure running off of the insured's property.

Revisiting its decision in *Falk*, the Wisconsin Supreme Court drew a distinction between runoff that contaminates several wells over a lengthy period of time with a forest fire that consumes multiple properties over a short duration of time. The Court reasoned that in determining number of occurrences questions, "we must take into account elements of time and geography" and that as such, a single occurrence takes place if the "cause and result" are "so simultaneous or closely linked in time and space" as to be considered a single event by the "average person." The Court drew a distinction between loss scenario in *Falk*, which involved seepage of manure over an unspecified period of time, with that of a three-day fire, explaining:

A three-day fire in a discrete area caused by a single precipitating event would reasonably be considered by the average person to be one event. Regardless of how many property lines the fire crossed, the damage closely follows the cause in both time and space.