

Applying Cause-Based Approach, Ohio Court Rules That Sale Of Defective Products Constitutes Multiple Occurrences

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An Ohio federal district court ruled that injuries allegedly caused by defective torches and/or improper fuel arose out of multiple occurrences, not a single decision to sell those products. *Big Lots Stores, Inc. v. American Guarantee & Liability Ins. Co.*, No. 2:14-cv-02635 (S.D. Ohio Mar. 2, 2017).

The coverage dispute arose out of lawsuits filed against Big Lots alleging personal injuries caused by tabletop torches sold in combination with a particular fuel. Some underlying complaints alleged that Big Lots was involved in the design and manufacture of the torches while others alleged only that Big Lots sold and distributed the torches. In one case, a Texas court ruled that Big Lots was a non-manufacturing seller of the torches. In the present suit, American Guarantee disputed its coverage obligations under umbrella policies issued to Big Lots. More specifically, the parties disagree as to whether Big Lots' primary policy has been exhausted – an issue that depends on whether the underlying claims allege a single occurrence or multiple occurrences.

Applying a cause-oriented analysis under Ohio law, the court concluded that the torch claims constituted multiple occurrences. The court reasoned that there was not “but one proximate, uninterrupted and continuing cause which resulted in all of the injuries,” as required by the cause test. The court rejected Big Lots' contention that its single “chain of business decisions” led to the underlying injuries. The court distinguished single occurrence-product defect cases on the basis that in those cases, the policyholder was the manufacturer (rather than the seller). Here, in contrast, each sale of a torch presented a “new exposure” and a separate “act from which liability arose.” The court also distinguished “failure to warn” cases, in which courts have found that numerous injuries arise from a single occurrence.

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