

## Texas Court Rules That Multiple Cases Of Food Poisoning Over Four-Day Period Are Subject To A Single Occurrence Limit

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A Texas federal district court ruled that 124 separate cases of food poisoning stemming from a single restaurant are subject to a single occurrence limit under a liability policy. *Travelers Cas. Ins. Co. of Am. v. Mediterranean Grill & Kabob Inc.*, 2020 WL 6536163 (W.D. Tex. Nov. 4, 2020).

Between August 29 and September 1, 2018, nearly 200 cases of food poisoning were reported by patrons of a restaurant. As a result, several lawsuits were filed against the restaurant, alleging negligent manufacturing and food preparation. Nearly 80 of the claims settled and Travelers offered the balance of its \$1 million “per occurrence” limit to settle the remaining claims. The restaurant rejected the offer, and Travelers sought a declaration that the remaining claims were a single occurrence for purposes of applying the policy’s per-occurrence limit. The court agreed and granted Travelers’ summary judgment motion.

Applying a cause-based test, the court held that “only one cause gave rise to [the restaurant’s] liability, and that is [the restaurant’s] allegedly contaminated food.” The court rejected the contention that multiple acts “such as a pause or interruption in business operations during the course of the negligent conduct,” due to cleaning or the closing of business during overnight hours means that there were multiple occurrences. In so ruling, the court emphasized that the restaurant failed to point to any “intervening tort or independent negligence which interrupted the proximate and continuing cause of the Claimants’ injuries.” Similarly, the court dismissed the assertion that there were multiple occurrences because the parties did not know which particular food products were contaminated. The court noted that its ruling was supported by Texas cases holding that damages arising from an insured’s manufacturing defects arise from a single occurrence, even where there are multiple incidents of damage.

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