IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MTD PRODUCTS, INC.	)	**CASE NO. CV 13 810198**
	)	
Plaintiff,	)	**JUDGE JOHN P. O'DONNELL**
	)	
vs.	)	**JUDGMENT ENTRY GRANTING THE PLAINTIFF'S MOTION FOR PARTIAL SUMMARY DECLARATORY JUDGMENT ON THE NUMBER OF OCCURRENCES AND DENYING THE DEFENDANTS' MOTION**
ALLIED WORLD ASSURANCE CO., *et al.*	)	
	)	
Defendants.	)	

John P. O'Donnell, J.:

Plaintiff MTD Products, Inc. is a manufacturer of snow blowers and other lawn and garden equipment. MTD is suing ten[1] of its commercial general liability insurers for money damages and declaratory relief over a dispute concerning when the insurance policies' self-insured retention limits have been paid, thus triggering the obligations of the defendant-insurers to defend and indemnify MTD against product liability injury claims arising from the use of an MTD snow blower model that its injured users allege is defective.

MTD has moved for partial summary judgment seeking a declaration that no matter how many personal injury claims are made against it, the allegedly defective design and manufacture of its snow blowers constitutes a single occurrence as that term is defined in the insurance

[1] The original complaint named thirteen defendants but the first amended complaint includes only ten. Any motions for summary judgment or briefs in opposition filed before the filing of the amended complaint on August 2, 2016, are construed as relating to the first amended complaint.

policies. The defendants have filed a cross-motion for summary judgment on the same issue, seeking a declaration that each personal injury claim should be considered a separate occurrence.

The defendants also moved for summary judgment on the basis that MTD does not have standing to bring this lawsuit. That motion was denied in a previous judgment entry.

The cross-motions for summary judgment on the definition of "occurrence" are fully briefed and this entry follows.

The underlying injury claims

MTD manufactured its 300 Series snow blowers at its Kitchener, Ontario plant from June 1, 2004, to December 31, 2005. Unique to the 300 Series were wheels with plastic rims that were both designed and manufactured by MTD. They were sold from July 2004 through March 2006 under three brands – Troy-Bilt, Yard Machines and Craftsman – in various retail outlets.

The 300 Series machines were sold with two different types of tires, one with a specified maximum air pressure of 20 pounds per square inch and the other with a maximum of 24 psi. The operator's manual recommended keeping the tire pressure between 10 and 15 psi and included warnings that personal injury was possible if the tires were over-inflated.

In September 2004 a distributor reported to MTD that the rims on two separate 300 Series snow blowers had shattered while the machines were sitting on display. In response, MTD's quality control department conducted tests on the 300 Series by deliberately overinflating the tires until the plastic rims shattered. The results showed that the plastic rims only fractured after the tire pressure exceeded 90-100 psi. Because the rims failed only when the tires on them were inflated to six or more times the recommended pressure, MTD was satisfied that the rims were not defective.

In February 2005 a customer was injured while inflating the tires on his Series 300 snow blower. MTD settled the customer's injury claim for about $1,300. Considering this injury and the showroom incidents the previous year, MTD placed notices on the snow blowers' plastic rims stating a maximum pressure rating of 30 psi and included a warning in the operator's manual that the tires should not be inflated beyond 30 psi under any circumstances.

In February 2006 MTD received several claims regarding the 300 Series snow blowers that involved the plastic wheel rims shattering when the tires were inflated above a certain pressure, resulting in multiple and varying injuries. About eight months later MTD initiated a voluntary recall of the 128,630 units of 300 Series snow blowers sold to consumers. Despite MTD's recall efforts, hundreds of similar claims have been asserted against MTD.

MTD's insurance structure

For all relevant time periods, MTD had multiple layers of commercial general liability insurance through the defendant-insurers.[2] The policies would provide coverage – both indemnity and a defense – for injury claims arising from the allegedly defective 300 Series snow blowers, but only after MTD exhausted its self-insured retention. The self-insured retention – referred to by the parties using the acronym SIR – was $1.5 million per occurrence and $8 million in the aggregate annually. Those limits were applicable to all product liability claims for the policy years starting on November 1 of each year from 2005 through 2007.

As the number of claims for injury rose, the policies in force beginning November 1, 2008, provided for a separate self-insured retention applicable only to claims arising out of the 300 Series snow blower wheel rims of $1.75 million per occurrence. The policies kept a $1.5

[2] There were at least four layers of commercial general liability insurance for each year from November 1, 2005, until November 1, 2013, above MTD's self-insured retention. A chart outlining the policies in effect for each year was attached as Exhibit 1 to James Maddox's affidavit in support of MTD's motion for summary judgment on the issue of occurrences.

million per-occurrence retention for all other product liability claims. The aggregate annual limit was increased to $10 million, and a "maintenance SIR" was added to require MTD to pay $250,000 per occurrence for snow blower liability once the $10 million annual aggregate limit was exhausted.

Beginning in the policy year incepting November 1, 2009, the maintenance SIR was eliminated and the limits for the separate self-insured retention applicable to the rim claims increased to $2 million per occurrence with an annual aggregate solely for the rim claims of $5 million, in addition to the $10 million annual aggregate for all other product liability claims.

MTD used a captive insurer, Summit Insurance Company of America, to manage its self-insured retention obligations until July 2013.[3] Summit was MTD's wholly-owned subsidiary and was incorporated in Colorado. Summit's purpose was to provide product liability coverage exclusively for MTD and its affiliates. MTD paid premiums to Summit and Summit handled the claims[4] against MTD by providing for a defense and paying settlements[5] until MTD's self-insured retention under the applicable defendants' policies was satisfied. MTD and Summit both treated each injury claim that came in as a separate occurrence and therefore subject to a separate per-occurrence self-insured retention. A defendant-insurer was only put on notice of a particular injury claim if there was a risk that the individual claim might exceed the per-occurrence self-insured retention or if the total injury claims in an annual policy year might exceed the annual aggregate self-insured retention.

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[3] Summit was officially dissolved in March 2014.
[4] MTD would only submit claims to Summit in excess of $5,000. Claims under $5,000 were handled with no involvement by Summit or the other insurers.
[5] As of the time the briefs were filed, the snow blower claims had not resulted in any trials or judgments.

The insurance agreements and the definition of "occurrence"

Except for differences that will be detailed only as necessary to correctly decide the pending motions, each insurance policy provided the same basic coverages and had the same basic definition of "occurrence."

The coverage is provided through the "insuring agreement" in each policy. The insuring agreement in the Federal Insurance Company policy effective November 1, 2005, is representative of all the defendants' insuring agreements. That policy says:

> We will pay, on behalf of the **insured**, covered damages the **insured** becomes legally obligated to pay by reason of liability imposed by law . . . because of **bodily injury** . . . which takes place during the policy period of this policy and is caused by an **occurrence**. (Emphasis in bold from original.)[6]

Thus the essential prerequisites for an insurer's obligation to provide coverage – before taking into account whether other enumerated conditions have been met or exclusions apply – are 1) bodily injury during the policy period 2) caused by an occurrence.[7] The first condition of bodily injury during the policy period is universally understood and not part of the controversy here. The issue in this case is the meaning of "occurrence" as that term is defined in the policies.

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[6] Exhibit 2 to affidavit of James Maddox, page 53 of the .pdf version of the Federal Insurance policy.

[7] See also Exhibit 3 to the Maddox affidavit, the Arch Insurance Company policy, at page 1 of 17: coverage for bodily injury liability only if: (1) The "bodily injury" . . . is caused by an "occurrence" [and] (2) during the policy period; Exhibit 14, the Westchester Surplus Lines policy, at page 1 of 9: We will pay those sums that the insured becomes legally obligated to pay as damages because of bodily injury . . .(1) caused by an occurrence (2) during the policy period; Exhibit 24, the Torus policy, at page 1 of 23: We will pay on behalf of the insured those sums . . . that the insured becomes legally obligated to pay as damages by reason of . . . bodily injury, only if (1) the bodily injury is caused by an occurrence [that] occurs during the policy period; and Exhibit 29, the Allied World Assurance policy, at page 1 of 25, is the same as the Torus policy

For a bodily injury claim, the policies define occurrence as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."[8]

The parties' positions

MTD and the defendant-insurers all agree that at least one "occurrence" exists here. The difference is that MTD posits that only one occurrence arose, so that every individual claim of an injured snow blower user springs from a single occurrence, while the insurers argue that each incident where a user sustained bodily injury because of an exploding tire rim constitutes a separate occurrence.

The insurance policies at issue in this case provide that the "Self-Insured Retention shall apply separately to each 'occurrence' covered under this policy." Accordingly, MTD seeks a declaration that, despite the parties' historical treatment of each injury claim as a separate occurrence, all Series 300 snow blower rim injury claims arise out of a single occurrence. If MTD is correct, then the company would have satisfied its self-insured retention obligations once the total amount paid to investigate, defend and settle all individual injury claims reached the per-occurrence self-insured retention amount. MTD claims it reached that limit on June 3, 2008, when it paid a settlement to Gennaro Vuono for severe eye, jaw and hand injuries. MTD seeks reimbursement from the defendant-insurers of over $21 million it has paid since then to investigate, defend and settle individual injury claims.

The insurance companies take the opposite position: each personal injury claim represents a separate occurrence and the per-occurrence self-insured retention is satisfied, and

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[8] Exhibit 2, the Federal policy, p. 18 of the Declarations section, p. 67 of the .pdf version; Exhibit 3, the Arch policy, p. 15 of 17; Exhibit 14, the Westchester policy, p. 8 of 9; Exhibit 24, the Torus policy, p. 21 of 23, with the added language that "all such exposure to substantially the same general harmful conditions will be deemed to arise out of one occurrence"; and Exhibit 29, the Allied policy with the same language as the Torus policy, p. 22 of 25.

coverage triggered, only if MTD expends more than $1.5 million[9] on a single personal injury claim.

Insurance policy interpretation

Where parties to an insurance contract dispute the intended meaning of its terms it is up to the court to decide the meaning since an insurance policy is a contract whose interpretation is a matter of law. *City of Sharonville v. Am. Emplrs. Ins. Co.*, 109 Ohio St. 3d 186, 2006-Ohio-2180, ¶6. A policy of insurance is a contract and like any other contract is to be given a reasonable construction in conformity with the intention of the parties as gathered from the ordinary and commonly understood meaning of the language employed. *Dealers Dairy Products Co. v. Royal Ins. Co.*, 170 Ohio St. 336 (1960), paragraph one of the syllabus. Where provisions of a contract of insurance are reasonably susceptible of more than one interpretation, they will be construed strictly against the insurer and liberally in favor of the insured. *Lane v. Grange Mut. Cos.*, 45 Ohio St. 3d 63, 65 (1989).

Decisional authority: one defective product is one occurrence

MTD argues that an analysis of how many occurrences, as defined in the insurance policies, happened must use the "cause test" which requires a court interpreting the policy to "focus on the underlying *circumstances* which resulted in the personal injury and claims for damage rather than each individual claimant's *injury*." *Parker Hannifin Corp. v. Steadfast Ins. Co.*, 445 F. Supp. 2d 827, 832 (N.D. Ohio 2006) (emphasis in original).

In *Parker Hannifin*, the plaintiff manufactured a gasket that was incorporated into projection TVs made by Zenith. Buyers of the televisions had fires caused by the defective gaskets, and Zenith sued Parker Hannifin to recover several million dollars in anticipated costs to

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[9] Or $1.75 million or $2 million, depending on the policy year.

recall, repair and replace the televisions and settle damage and injury claims. The two companies agreed to settle the lawsuit for a $3,000,000 lump sum payment and 30% of Zenith's losses incurred after March 31, 2000, up to a cap of $2,000,000. The settlement did not extinguish Parker Hannifin's future liability for property damage or bodily injury claims. Parker Hannifin then filed a suit against its liability insurer, Steadfast, to recover the amount it paid in settlement over a single self-insured retention of $2 million and for a declaration that any other lawsuits for fire and smoke damage arise out of a single occurrence under Steadfast's insurance policy. Steadfast defended on the basis that each fire damage claim was subject to a separate $2 million self-insured retention.

In concluding that "the malfunction of Parker gaskets" was the single occurrence from which all TV users' damages arose, the district court relied on *Associated Indem. Corp. v. Dow Chem. Co.*, 814 F.Supp. 613 (E.D. Mich. 1993) for the proposition that "in identifying the causes of . . . damage for the purpose of determining the number of occurrences, the causes of the . . . damage must be determined from the insured's point of view." *Parker Hannifin*, supra, 832.

Associated Indem. Corp. considered a claim by Dow Chemical that Dow's production and sale of a defective pipe resin was the single cause of claims by 38 different end users for damages incurred to replace leaky pipe. The parties briefed on summary judgment the question of how many occurrences there were under the applicable general liability policy and the district court set forth three principles for determining the number of occurrences with respect to a claim or claims:

> (1) The number of occurrences is determined by reference to the cause or causes of the damage rather than by reference to the number of claims or settlements.

(2) All property damage which results from one, proximate, uninterrupted and continuing cause stems from a single occurrence.

(3) If the continuous production and sale of an intrinsically harmful product results in similar kinds of property damage, then all such property damage results from a common occurrence.

The third principle is a guideline for the application of the second. *Id.*, 621.

Applying these principles, the district court decided, first, that the resin sold by Dow was intrinsically harmful because all pipe extruded from it was deficient for its intended use. The court went on to conclude that the "production of defective resin was the sole, proximate, uninterrupted, and continuing cause of all of the property damage in the case for which Dow Canada could be responsible" and there is "absolutely no basis on the record before the court to rule that the damage to each [end user] stemmed from a separate occurrence." *Id.*, 623.

MTD also points to *Owens-Illinois, Inc. v. Aetna Cas. & Sur. Co.*, 597 F. Supp. 1515, 1525 (D.D.C. 1984) and *Int'l Surplus Lines Ins. Co. v. Certain Underwriters & Underwriting Syndicates at Lloyd's of London,* 868 F. Supp. 917, 921-922 (S.D. Ohio 1994) as precedential authority in support of the position that there is one occurrence in this case.

In *Owens-Illinois* the plaintiff faced thousands of lawsuits for injuries and death from exposure to Kaylo, an asbestos-containing product which Owens-Illinois had manufactured and sold from 1948 through 1958. The injuries alleged did not manifest themselves until 20 years or more after a claimant's exposure. The company sued Aetna for coverage under policies similar to those at issue here: per-occurrence limits subject to a deductible, which is virtually indistinguishable from a self-insured retention. Aetna argued that each claimant's injury was a separate occurrence and Owens-Illinois sought the opposite declaration, i.e. that the manufacture

and sale of an asbestos-containing product was a single occurrence. The court focused on whether there was one proximate, uninterrupted and continuing cause which resulted in all of the injuries and damage and held that there was: Owens-Illinois's manufacture and sale of a hazardous asbestos containing product.

The posture of *Int'l Surplus Lines* was a little different. The plaintiff there was Owens-Corning's insurer. When Owens-Corning was faced with over 85,000 personal injury claims from exposure to its asbestos-containing products it sought coverage from International Surplus on the basis of a single occurrence, namely the decision to manufacture and sell products containing asbestos. The insurer agreed with its policyholder's interpretation of the policy that only a single occurrence had happened and then adjusted and settled claims on that basis. When International Surplus sought coverage from its reinsurers, the reinsurers argued that coverage should have been provided as if each individual claimant's injury were a separate occurrence. Although the court decided the case in International Surplus's favor partly on the basis that reinsurers are required to indemnify for payments reasonably within the terms of the original policy, even if not technically covered by it – an issue not present here – it did so after reviewing the state of the law concerning the number of occurrences and concluding that a manufacturer's corporate decision to manufacture and distribute asbestos-containing components constituted a single occurrence even where there were multiple claims for injury from different exposures to the product.

And MTD goes on to describe at least 12 other cases in Ohio and across the country with consistent holdings: the manufacture and distribution of an inherently defective product is a single occurrence no matter how many individual injury claims arise from its use.

Decisional authority: each incident of injury is an occurrence

For their part, the insurers cite to case law to the effect that an occurrence as defined by the policy happens every time one of the defective snow blowers injures a person. In *Luk Clutch Sys., LLC v. Century Indem. Co.*, 805 F. Supp. 2d 370 (N.D.Ohio 2011), the plaintiff sought a declaratory judgment concerning coverage owed by its insurers for asbestos-related bodily injury claims. Luk Clutch made automobile clutches containing asbestos between 1977 and 1988. The company was later named as a defendant in more than 750 product liability personal injury lawsuits. In the declaratory judgment action Luk Clutch and the insurance companies disputed the number of occurrences under policies with nearly the same definition of occurrence as in this case.

Luk Clutch argued that the single occurrence was its decision in the late 1970s to use asbestos in its products. The district court, looking to the language of the policy, noted that the definition of an occurrence was "an accident . . . *which happens during the policy period*" and causes injury. (Emphasis in italics added.) As the court said:

> Clearly a decision made in the 1970s did not happen during either the 1985 or 1986 policy periods [when the claimants were exposed to asbestos]. . . [I]t is impossible that a decision made in the 1970s took place in 1985 or 1986 and resulted in personal injury. *Id.*, 378.

But the policies in this case, unlike those in *Luk Clutch*, do not limit coverage to an occurrence that happens during the policy period.

Nor do the policies here contain another provision important to the *Luk Clutch* court in deciding the number of occurrences, namely conditions on product liability coverage that "the occurrence occurs after possession of such goods or products has been relinquished to others by"

Luk Clutch and that the "occurrence occurs away from [Luk Clutch's] premises." In short, the policy terms in *Luk Clutch* are not similar enough to the policy terms in this case for the decision to be of much use in reaching the correct result here.

Cincinnati Ins. Co. v. ACE INA Holdings, Inc., 175 Ohio App. 3d 266, 2007-Ohio-5576 (1st Dist.), involved insurance for Flexo, a company that manufactured masks used to filter silica and other harmful particles. Users of the masks filed lawsuits alleging that because the masks didn't work they were injured through exposure to asbestos and other unfiltered pollutants. Flexo's primary insurer, ACE, argued that under the cause test, the company's manufacture and sale of the defective masks constituted the single accident or occurrence giving rise to the lawsuits. The appellate court disagreed, holding that each individual injury-causing exposure to asbestos was a separate occurrence. In so holding, the court relied on the reasoning from a case known as *Babcock & Wilcox Co. v. Arkwright-Boston Mfg. Mut. Ins. Co.*, 53 F.3d 762 (6 C.A. 1995). But at issue in *Babcock & Wilcox Co.* was a definition of occurrence different from the one here: "one happening or a series of happenings arising out of or resulting from one event taking place during the term of this policy." Similar to *Luk Clutch*, this definition requires that the event constituting the occurrence happen during the policy period, a connection absent from the policies of the defendant-insurers here.

It's worth mentioning that the *ACE INA* court was ultimately trying to maximize coverage for Flexo, distinguishing it from *Int'l Surplus*, supra, stating:

> The *Internatl. Surplus* court held that numerous product-liability suits involved one "occurrence" for purposes of a $1 million deductible. In this case, we interpret "occurrence" not for the purpose of deciphering a deductible, but rather to determine the scope of ACE's liability. *ACE INA*, supra, ¶48.

In other words, the term "occurrence" is to be construed in favor of the policyholder and against the insurance company.

The insurance companies also cite to *Westfield Ins. Co. v. Continental Ins. Co.*, No. 1:13CV02367, 2015 U.S. Dist. LEXIS 45437 (N.D. Ohio Apr. 7, 2015) in support of the argument that the design and manufacture of a defective product is not an accident and thus not an occurrence. *Westfield* was another coverage dispute arising from asbestos claims. Mahoning Valley Supply Company was a supplier of products that had asbestos. It was sued by many plaintiffs alleging injury from the products made by others but sold by MVS. Continental Insurance Company, MVS's insurer, filed a motion for summary declaratory judgment that the cause test should be applied, so that MVS's distribution of asbestos-containing products was the single occurrence giving rise to all of the injury claims.

Prefatory to deciding the issue, the district court boiled down what was at stake:

> If [there is a single occurrence], the per occurrence limitations of the applicable insurance policies are near exhaustion. If the Court finds multiple occurrences, policy limits have not been reached and coverage is still available to MVS. *Westfield*, supra, *2.

Like the First District Court of Appeals in *Cincinnati Ins.*, supra, the district court in Westfield was intent on maximizing the policyholder's coverage – or, to put it another way, minimizing the policyholder's exposure – when interpreting the policy term. Accordingly, the court concluded that the distribution of products could not be an occurrence because "the decision to launch a product, and the distribution of that product into market, is an intentional act," not an accident. *Westfield*, supra, *12.

The maintenance self-insured retention and changes to the policies specific to snow blower claims

The insurance companies support their interpretation of the language in the policies with evidence of amendments to the contracts' self-insured retention provisions and per-occurrence product liability limits that were made after the insurance companies knew the injury claims from the plastic rims were starting to pile up.

The first change, in the Westchester policy effective November 1, 2008, was to add a separate self-insured retention, i.e. deductible, of $1,750,000 each occurrence "applicable to claims or losses arising out of" snow blowers listed on a schedule in the policy. For all other occurrences – those not involving the snow blowers at issue – MTD had a $1.5 million self-insured retention. The second amendment, at the same time, was the inclusion of a "maintenance" self-insured retention as follows:

> The **MAINTENANCE SIR** (***which is applicable after the exhaustion of the Annual Aggregate SIR***) in item 5 of the Declarations Page is as follows:
>
> $250,000 applicable on an EACH OCCURRENCE basis to claims or losses arising out of Snow Blower products listed in the Schedule below.

According to the defendants, these provisions make it clear that MTD understood that an "occurrence" under the policy was the equivalent of a claim by an injured snow blower user because the companies were refusing to provide liability coverage at all if MTD did not agree to accept additional risk. Yet the creation of a separate self-insured retention for snow blower claims did expose MTD to larger payouts before triggering the companies' obligation to pay than under the prior policies regardless of whether the deductibles are applied to all snow blower claims as a single occurrence or to each individual claim as a discrete occurrence. The same can be said for the "maintenance" self-insured retention: that term of the Westchester policy imposed

extra financial responsibility on MTD – namely, $250,000 beyond the annual aggregate deductible for all occurrences – that didn't exist in the policies without it. Moreover, while the insurance companies point to the new separate self-insured retention for snow blower claims as context for their interpretation of what "occurrence" means, the policies' definition of occurrence itself went unchanged and context cannot be used to modify the meaning of an expressly defined policy term.

Still, the insurance companies assert that it would be ludicrous for them to even consider insuring MTD after the defects became known:

> No insurance company in the world would agree to insure a company that, prior to the inception of the policy, disclosed that it had already incurred aggregate losses that exceeded the agreed upon self-insured retention amount.[10]

Whether that's true or not might never be known, but it's worth remembering that insurance is, in effect, a wager, and what's to keep insurance companies from betting that their policyholder would continue to unquestioningly assent to the companies' one-sided interpretation of the term "occurrence," under which they were virtually assured of incurring no liability?

The record is bare of evidence demonstrating that the contracts of insurance with separate snow blower claim per-occurrence limits include a mutually agreed change in the definition of occurrence to mean injury claim. The opposite is true: like most insurance contracts their terms were dictated by the companies without any opportunity for the policyholder to negotiate the definitions of policy provisions. Without such evidence I cannot find, as a matter of law, that MTD agreed to an unfavorable definition of occurrence simply through buying policies that

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[10] Torus Specialty's joinder brief, p. 15.

included, at the companies' insistence, a separate "per occurrence" deductible for snow blower claims.

An occurrence happens when the policyholder does something wrong

The construction of written contracts and instruments is a matter of law for a court to decide. *Long Beach Ass'n v. Jones*, 82 Ohio St. 3d 574, 576 (1998). A court's goal when interpreting a contract is to determine the intention of the parties to the contract, and that intention is typically found in the language used in the agreement. *Sunoco, Inc. (R&M) v. Toledo Edison Co.*, 129 Ohio St. 3d 397, 2011-Ohio-2720, ¶37. Here, the term "occurrence" is defined as an accident. An accident is something unintended, unanticipated, unplanned or mistaken. It connotes an error. MTD's accident – as alleged by those who have sustained injury – was producing a defective product. For the purposes of the pending motions it doesn't matter that the injured users have alleged different conduct by MTD that made the snow blowers defective, it only matters that the end result of one or more mistakes in design, manufacture, testing or labeling was injury to ultimate users of the product because those errors, taken together, constitute MTD's single tortious act, or accident: the placement of a defective, dangerous product into the stream of commerce where it might cause injury.

The insurance companies want to yoke the occurrence giving rise to coverage to the event where the injury happens. But the policy language imposes no such requirement that the occurrence and the injury be contemporaneous. The policy doesn't even require the occurrence to take place in the policy year, much less at the same time as the injury. All it requires for coverage is an occurrence – i.e., accident – giving rise to an injury.

To put it another way, coverage exists only where there is some actionable conduct, such as negligence, plus causation and damages, without any necessity that the tortious conduct and

the damages be close in time and no restriction on the number of injuries any single occurrence can cause. Consider a snow blower user injured by an exploding wheel on the first day of 2010, more than four years after MTD last produced a defective machine. When that person sues MTD on a product liability claim, will he try to prove MTD did something wrong in 2010, years after it had last touched the machine? Of course not. Instead, he will endeavor to show that MTD created a defective product somewhere from design through distribution and long before the event where the injury happened. All prior plaintiffs will try to prove the same, as will all subsequent plaintiffs, because they will all have been hurt as a result of MTD's initial faulty conduct and not as a result of a mistake repeated by MTD each time another person is injured. Liability insurance exists to protect against the legal consequences of mistakes through carelessness, and MTD's mistake here – its accident – happened only once, thus all claims for damages because of that mistake arise from a single occurrence.

Conclusion

Plaintiff MTD Products, Inc.'s motion for a summary declaratory judgment on the issue of the number of occurrences is granted, and, pursuant to sections 2721.03 and 2721.04 of the Ohio Revised Code concerning declaratory judgments, I declare that all claims brought against MTD alleging injury caused by the fracturing of plastic wheel rims on MTD's 300 Series snow blowers arise out of a single occurrence. Accordingly, the defendants' cross-motion for summary declaratory judgment that each of the underlying snow blower rim explosions constituted a separate and distinct occurrence is denied.

IT IS SO ORDERED:

Judge John P. O'Donnell

1/31/2018
January 31, 2018

SERVICE

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