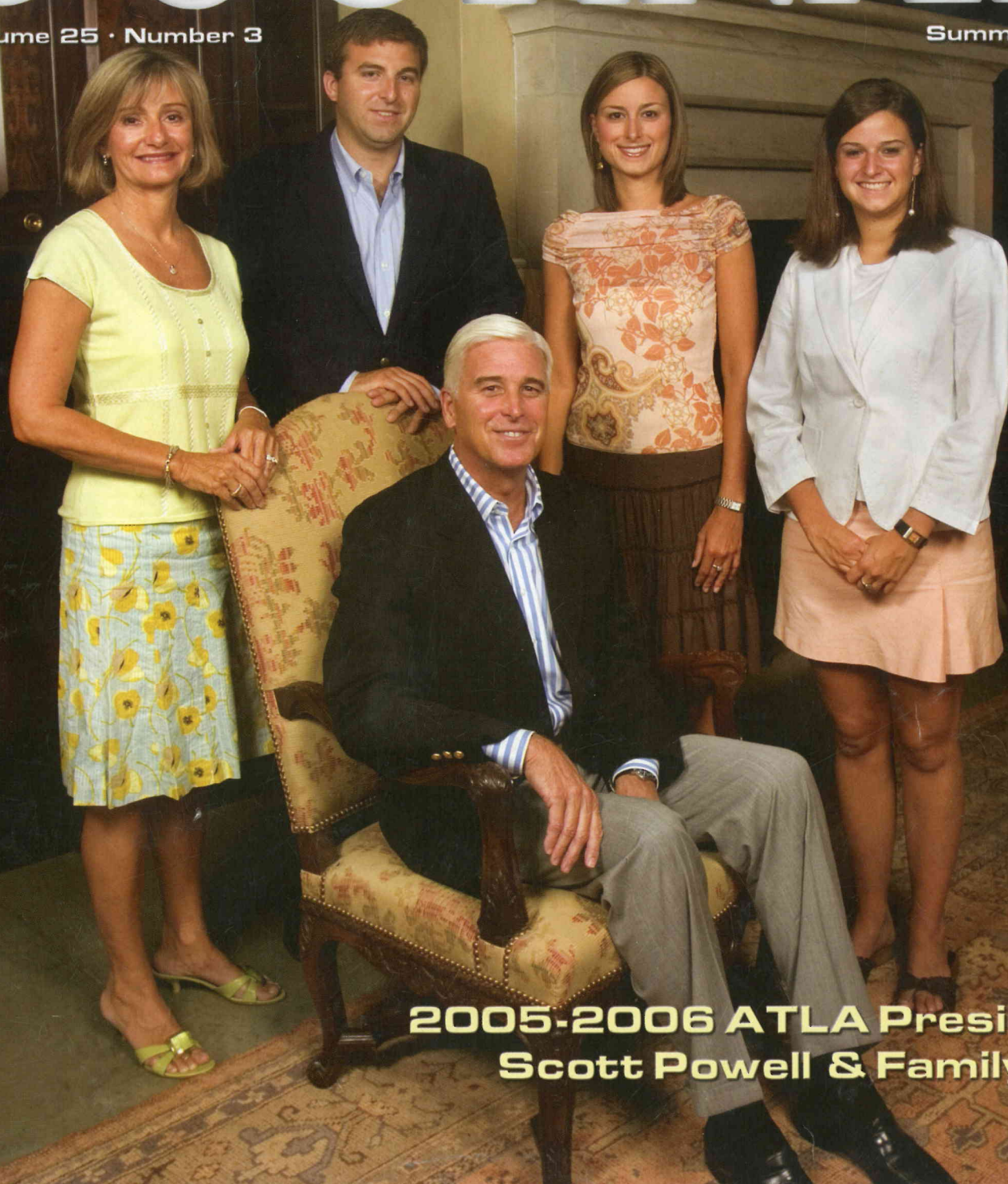


# ALABAMA TRIAL LAWYERS JOURNAL

Volume 25 • Number 3

Summer 2005



**2005-2006 ATLA President  
Scott Powell & Family**



# DOUBLE COVERAGE: Obtaining Multiple "Occurrences" in a Motor Vehicle Collision Case

*by Christopher D. Glover and Randall S. Haynes*

**I**t is possible . . . the law is there. When multiple losses attributable to the same covered cause occur, a problem exists in determining the scope of a liability policy's coverage. In such a situation, it is sometimes difficult to determine whether there has been one occurrence or multiple occurrences. The difference can mean a full recovery for your client or a split of policy limits between multiple parties.

Liability insurance provides coverage for legal liability imposed upon the insured as a result of unintentional and unexpected personal injury or property damage. Until 1966, coverage was keyed to the word "accident," which was

defined as "a sudden and unforeseeable event." Courts have always struggled with the term accident, and have defined accident in different ways. However, there is a common theme in these definitions, which is that an accident is an unforeseen, unexpected, and unintended event that results from some cause, either known or unknown, whether it arises in property, personal, or liability insurance. In 1966, the standard liability policy was revised to key the coverage to the word "occurrence." As of 1973, the standard CGL policy defined "occurrence" as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage nei-

ther expected nor intended from the standpoint of the insured." Under the plain language of the clause, a repeated exposure to conditions was one accident, meaning that the policy limits apply once, regardless of the number of losses.

## **"CAUSE-ANALYSIS" DOCTRINE**

Suppose a driver loses control of an automobile, strikes one car, bounces off this car, and strikes another car. Now suppose a driver loses control of an automobile, strikes one car, bounces off this car, but then either regains control or had an opportunity to regain control prior to striking another car, albeit only feet or seconds away. Has there been one

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or multiple occurrences? The difference depends on the facts of each case, but under the second scenario a court could likely find two occurrences.

Alabama has adopted the majority "cause analysis" rule in determining the number of occurrences. The "cause analysis" rule depends upon the number of "proximate causes" for the accident. Under this rule, there is only one cause if there "was but one proximate, uninterrupted, and continuing cause which resulted in all of the injuries and damage."<sup>1</sup> Likewise, the "cause analysis" rule will permit a finding that multiple collisions constitute multiple "occurrences" if multiple "proximate causes" lead to the loss.<sup>2</sup> If a time interval separates two events, a court might conclude multiple causes existed, meaning that multiple occurrences resulted. Other factors are important as well in motor vehicle accidents.

This "cause analysis" was adopted in an early Washington state case addressing the application of a liability insurance clause limiting liability to "one occurrence."<sup>3</sup> In *Truck Ins. Exchange v. Rohde*, the Washington Supreme Court asked if "[t]here was but one proximate, uninterrupted, and continuing cause which resulted in all of the injuries and damages." Since the *Rohde* decision, the majority of courts across the nation have adopted the "cause" theory of analysis.<sup>4</sup> One state court explained further that if the cause is interrupted or replaced with another cause, the chain of causation is broken and more than one accident or occurrence has taken place."<sup>5</sup>

## TIME, DISTANCE AND CONTROL

Other jurisdictions, like Alabama, have examined this issue using the "cause" analysis. A Florida case, *Liberty Mutual Ins. Co. v. Rawls*, applying the "cause analysis" provides specific application of this doctrine to an automobile collision.<sup>6</sup> In *Rawls*, the court was asked to determine whether there were one or two occurrences arising out of impacts occurring "2 to 5 seconds apart and 30 to 300 feet apart."<sup>7</sup> The court noted, "[t]here is no evidence that the Bess automobile went out of control after striking the rear end of appellees' automobile."<sup>8</sup> The court held that these were two occurrences providing full policy limits coverage for each one.<sup>9</sup> The three determinative factors in *Rawls*, time, distance and control, are all factors in determining if your multiple collision accident merits policy limits from multiple occurrences.

In a Delaware case, *Ennis v. Reed*, a negligent driver struck the first car from the rear, and then struck the second car.<sup>10</sup> There was a 15 to 20 feet distance between impacts, and several seconds passed between the impacts. From the evidence presented, the court concluded the negligent driver stopped after he hit the first car and then attempted to drive away from the scene and in doing so, struck the second car. The court applied the "cause" analysis and held two occurrences took place.

Another case addressing this topic under the "cause" analysis is *Illinois Nat. Ins. Co. v. Szczepkowicz*.<sup>11</sup> In that case, the negligent driver stopped his tractor trailer with his rear portion effec-

tively blocking both northbound lanes of traffic.<sup>12</sup> The first car hit the tractor trailer.<sup>13</sup> The tractor trailer then moved forward approximately 12 feet "almost immediately" after the collision leaving his vehicle in one lane without losing control of the vehicle.<sup>14</sup> The court held there was no single force, or an unbroken or uninterrupted continuance, existed, once set in motion, that caused multiple injuries.<sup>15</sup>

One court analyzing these cases and others stated:

*The common element of those cases finding that one accident or occurrence took place is that the time span was two seconds or less. Additionally, in most of the cases, the fact the negligent driver never regained control over the car was an instrumental factor.*<sup>16</sup>

The multiple occurrence scenario recently played itself out in the form of a declaratory judgment action in Jefferson County. In that case, the defendant truck driver drove his tractor trailer approximately 900 feet through eight vehicles prior to pulling his vehicle off the side of the road. The collision sequence took approximately 19 seconds from start to finish.

In analyzing the case, the court split the collisions into two occurrences. The court found that the proximate cause of the first occurrence was the defendant *not being in control of his truck at a point in time when he could have applied his brakes to slow his*

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vehicle and instead failed to apply his brakes and steered his vehicle into the right hand lane which was then occupied by a slowing or stopped vehicle then being operated by Ms. Esdale and struck her.

The proximate cause of the second occurrence was founded in an omission to act. In other words, the defendant's failure to avoid subsequent collisions, despite the ability to do so, was the proximate cause of those collisions and con-

stituted a second occurrence for policy purposes. Subsequent occurrences were not found because of a loss of mechanical control of the vehicle.

The attorney seeking a finding of multiple occurrences must begin building the case from the initial client interview. Fact witness depositions should be focused on the time, distance, and control factors. Vehicle black boxes can be downloaded in order to determine the total time of the collision sequence. More importantly, the black box in many vehi-

cles can create a timeline showing what actions or omissions the defendant driver was taking during each phase of the collision. For instance, braking, clutching, and accelerating all are actions that are recorded by many black boxes and can be key evidence in determining whether the driver remained in control of the vehicle.

It is possible to interpret a liability policy to provide multiple occurrences in an automobile case. The facts of each collision sequence control. Was there adequate space between each vehicle to avoid the next vehicle? Did the defendant have time to avoid the next collision? Did the defendant regain control or have the opportunity to regain control prior to the second collision? ■

## REFERENCES

- <sup>1</sup> *Michigan Chem. Corp. v. American Home Assur. Co.*, 728 F.2d 374 (6th Cir.1984).
- <sup>2</sup> *Home Indemnity Co. v. City of Mobile*, 749 F.2d 659 (11th Cir.1984).
- <sup>3</sup> *Truck Ins. Exchange v. Rohde*, 49 Wash.2d 465, 471, 303 P.2d 659, 662 (1956)
- <sup>4</sup> *See*, A.L.R.2d 1300 (1957).
- <sup>5</sup> 8A Long, *Insurance Law and Practice* § 4891.25 at 18 (1981); citing, *Olsen v. Moore*, 56 Wis.2d 340, 202 N.W.2d 236 (1972).
- <sup>6</sup> *Liberty Mutual Insurance Co. v. Rawls*, 404 F.2d 880 (5th Cir.1969).
- <sup>7</sup> *Rawls*, 404 F.2d at 880.
- <sup>8</sup> *Id.*
- <sup>9</sup> *Id.*, at 881.
- <sup>10</sup> *Ennis v. Reed*, Del.Super., 467 C.A.1977 (April 4, 1978) (Letter Opinion)
- <sup>11</sup> *Illinois Nat. Ins. Co. v. Szczepkiewicz*, 185 Ill. App.3d 1091, 542 N.E.2d 90, 134 Ill. Dec.90 (1989).
- <sup>12</sup> *Id.*, at 1093.
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.*
- <sup>15</sup> *Id.*, at 1096.
- <sup>16</sup> *McCoy v. Draine*, 1991 WL 18071 at \*4 (Del. Super 1990).

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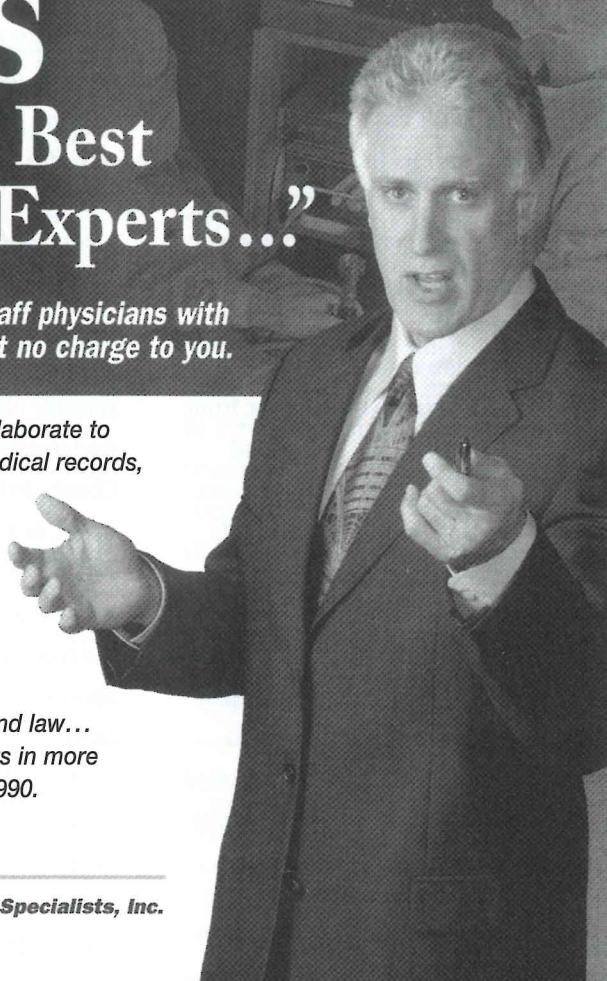
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