

## The use and development of the phrase “each and every occurrence” in excess of loss reinsurance contracts

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**The use and development of the phrase  
“each and every occurrence”  
in excess of loss reinsurance contracts<sup>(1)</sup>**

*by*

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***Part 3. Man made occurrences***

254        Previously I have discussed the reinsurance of losses which arise from damage caused by cataclysms of nature. Other important risks, likely to be insured as part of or in conjunction with the fire policy are those of strikes, riots, civil commotions and malicious damage.

          In this instance also it is frequently the practice to define the occurrence by means of an hours clause, of which the following is a typical example:

**Clause No. 1**

As regards the risks of strikes, riots, civil commotions and malicious damage, the term “each and every occurrence” used in this Agreement shall mean the sum total of all losses of the Company arising out of such risks and happening during any period of 72 (seventy-two) consecutive hours within the confines of one city, town, village or administrative district. The Company may designate the moment from which the aforesaid period of 72 (seventy-two) consecutive hours shall be deemed to have commenced. The number of 72 (seventy-two) hour periods shall not be limited, but any such period shall not commence within the period of any previous such occurrence relating to the same city, town, village or administrative district.

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<sup>(1)</sup> *Assurances*: January and July issues (1980).

For the purpose of this clause a city or town shall be deemed to include adjoining suburban areas, notwithstanding that each such suburb may be under a separate local government administration.

If this clause is compared with the various clauses quoted in Part 2 of this study, it will be noted that in this instance there is a strict area limitation not found in those clauses, except for the reference to "one continent" in Clause No. 3.

There are likely to be differing opinions as to the justice of imposing such limitations. In the present day, organizations are widespread, whether such organization is a commercial company, an industrial undertaking or a labour union. Thus, it might be found that coordinated action taken against one particular industrial enterprise during a nationwide dispute resulted in damage being caused to several factories belonging to that enterprise, each being many miles, or hundreds of miles, one from another.

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If, as is probable, all the damaged factories are insured with the same company, the latter might well feel that all the damage resulted from a "series of occurrences arising out of one event", the event being the command by the union to its members ordering strike action. But until the facts in each case were known and authenticated, it might equally well be argued that a strike order was not an incitement to cause damage, but that in each case the damage resulted from local provocation.

In respect of riot or civil commotion, the event might be more clearly apparent, such as bringing into force a new law unpopular with some militant sections of the population. One can readily visualize the circumstances in which a relatively small amount of damage in several different towns might accumulate into a substantial loss to a company, no part of which loss could be recovered from the reinsurers because of the area limitation.

In the circumstances set out above, there would appear to be a case for saying that the company might be prejudiced in two ways by the application of the hours clause, as follows:

- a) by the time limitation, because each of the perils might operate for a fairly long duration.
- b) by the area limitation, because damage resulting from such perils might be very widely spread geographically.

256 However, notwithstanding these limitations, many companies may feel that in relation to the perils enumerated in the clause, the change from "one event" to a period of time is to be preferred. There might be difficulty in establishing a coordinated event at all, and particularly in the case of malicious damage it is possible that no proof would exist that the losses arose out of one event, or indeed, that one loss was in any way connected with another.

In my previous article, I referred to an amended hours clause recently issued by an important group of reinsurers. Such clause is intended to apply also to man made occurrences. The wording, which I believed might be ambiguous in respect of the cataclysms of nature, seems to be very much clearer when it applies to the perils now under consideration.

**The clause reads:**

**Clause No. 2**

The word "occurrence" shall mean all individual losses arising out of and directly occasioned by one catastrophe. However, the duration and extent of any "occurrence" so defined shall be limited to 72 consecutive hours and within the confines of one city, town or village as regards riots, civil commotions and malicious damage and no individual loss from whatsoever insured peril, which occurs outside these periods or areas, shall be included in that «occurrence».

The company may choose the date and time when such period of consecutive hours commences and if any catastrophe is of greater duration than the above period, the company may divide that catastrophe into two or more "occurrences", provided no two periods overlap and provided no period commences earlier than the date and time of the happening of the first recorded individual loss of the company in that catastrophe.

A company might, I believe, consider that this clause is very restrictive. If one had assumed that the hours clause was intended primarily to favour the company and to provide a clear definition of "occurrence" based on time instead of the immediacy of the event, then one is proved over-optimistic in the present instance, as examination of the following points will show. 257

- i) The risk of strikes is not referred to but possibly the intention is to treat any resultant damage as being within the term "malicious damage".
- ii) 'Losses arising out of and directly occasioned by one catastrophe'. Note the emphasis on ONE catastrophe. This had virtually the same effect as the standard definition of "each and every occurrence". Only losses arising out of one event can be included in the "occurrence". The question is raised immediately as to what is the definition of "one catastrophe". If a gang is on the rampage in a town, is the damage caused by members of the gang in one part of the town, the same catastrophe as damage caused in another part of the town? Must the company prove that all the losses were caused by the same persons or is it sufficient to show that all those involved belonged to the same gang or club or party?

This must be quite impossible, bearing in mind that when there is a confrontation between a gang and authority, other persons, quite unconnected with either, are likely to take the opportunity of attacking shops, stores, etc., for personal gain.

On the other hand, the company might argue with some justification, that the catastrophe arose when the gang came into town and caused a breach of the peace.

It seems that in practice, this clause does not in any way clarify what constitutes an "occurrence".

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- iii) 'Any "occurrence" so defined'. This is presumably intended to emphasize once again the phrase quoted in (ii) above, and is of little help when considering which losses may be included in the ultimate net loss, and which are excluded from it.
- iv) 'Limited to 72 consecutive hours and within the confines of one city, town or village'. This phrase clearly sets forth the double restriction as to time and place. This excludes the possibility, once and for all, that losses in various cities, towns or villages can be aggregated for the purpose of formulating a claim against the reinsurers.

What is more serious, perhaps, is that this phrase takes no account of any damage which may arise outside these strict confines. This excludes from the scope of the reinsurance vast suburban and rural areas. One would expect that some effort would be made to provide reinsurance protection for such areas, by reference to the administrative control of a borough or rural district council, or the area of an electoral riding or constituency.

- v) 'No individual loss... which occurs outside these periods or areas shall be included in that "occurrence"'. This certainly emphasizes the exclusion of losses which are not within a city, town or village. This exclusion is the more surprising at the present time, when the tendency is to site large buildings, such as supermarkets, factories and warehouses, in rural areas, probably in proximity to motorways or other main roads.

Bearing in mind the very serious losses which can arise from man made occurrences, a company which has a portfolio of this class of business will, no doubt, wish to ensure that the reinsur-

ance provides that the whole territory of each of the countries in which it operates, is included in any definition.

A consideration which applies to all excess of loss reinsurances which contain an hours clause, is with regard to the period which should be chosen. This, naturally, is a matter for negotiation with the reinsurers, and the company's preference will depend upon the amount of cover which it has.

Such cover may be in one contract or in two or more successive layers. Provided that the company has sufficient cover to meet the most unlikely contingency, the company will prefer the longest available period, which brings all losses into one ultimate net loss calculation, and so will require the company to bear only one deductible.

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On the other hand, the company which has only very limited protection will opt for a shorter period, so that in some circumstances, it could hope to apply its monetary limit more than once, even although this would mean bearing the deductible at least twice.

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### **De la qualité du réassureur.**

Un des points les plus importants de l'opération d'assurance, c'est la qualité du réassureur. C'est en songeant à cela qu'un collaborateur de la *Quarterly Letter* du Groupe N.R.G. d'Amsterdam, a écrit un article intitulé "How to judge the security of a reinsurance company?" dans le numéro de juin 1980. Nous y renvoyons le lecteur, en lui signalant cette phrase notamment:

In their judgment of reinsurers, ceding companies need to take many factors into account and only the very naïve will look favourably on a reinsurer merely because he offers the cheapest terms. An important aspect is the service, in the widest sense of the work, which the reinsurer can provide.