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Thu, 6/24 2:00AM 54:31

SUMMARY KEYWORDS

claims, occurrence, statute, victims, state, limitations, policy, criminal statute, materials, sexual abuse, sex abuse, court, perpetrator, act, coverage, determine, age, diocese, file, based

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Hello everyone. My name is florina Altschuler, I am a partner with the law firm of Russo and toner litigation farm in the tri state area in New York, New Jersey, Connecticut, and I am going to be addressing sexual abuse and the child victim act, implications for liability and coverage today.

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With the me to movement as everyone is familiar, there is greater attention to victims of sexual abuse and sexual assault. There has been a lot of media coverage with a focus on conduct that was allegedly pervasive and misconduct. So as the public demanded that time restrictions known as the statute of limitations on both criminal and civil actions be either stayed or lifted, different states have imposed those lifting of the restrictions. With child sex abuse, there is a delayed disclosure. And that is one of the basis for the argument that the statute of limitations should be lifted. And that is one of the basis as to why many states have lifted the statute of limitations. So what we know about child sexual abuse is that most victims miss the statute of limitations because of the disclosure delay, which is very common among child sex abuse victims, statistically, about 1/3 of the victims of child sexual abuse, disclose it as children, and another 1/3 of them absolutely never disclose, which means that there's the other third that discloses that delayed as adults, studies show that the average age to disclose is actually 52 years old, but the median age of 48. So when you have a statute of limitations in play, and when we have child sex abuse victims who are disclosing this behavior decades later, they would effectively be preempted from filing suit because by the time they disclose the statute expired. So there are reform laws, many of which became enacted in the late 2018 19. Summer starting now in 2020. I'm going to focus on some of the laws that across the country that became effective in 2019. So in Montana, they eliminated the criminal statute of limitations for felonies and misdemeanors. They extended their civil statute of limitations against perpetrators and institutions to the earlier age of 27, or

three years after discovery that the injury was caused by childhood sexual abuse. So what that means is, if there's the discovery of childhood sexual abuse at age 57, you still have three years from that time to pursue litigation. They also open the one year revival window on May 7 of 2019. So that window just expired this past May, against institutions and perpetrators who are alive and have been convicted of or admitted to the abuse. So that is Montana's legislative changes to the statute of limitations. Utah had a lot of changes as well. In the state of Utah, they eliminated the criminal statute of limitations for felony human trafficking of the child. This includes trafficking for sexual exploitation of the child. They also extended the criminal statute of limitations for felony crimes where the statute of limitations had run as of May 5 2003. And no charges have been filed by extending the time from one to four years that a prosecution must be commenced after a perpetrator has been identified by dna evidence. So now it's not based on age or time it's time that starts to run once there's DNA identification, and then that time is now four years. They also waived governmental immunity for civil claims of negligence or injury resulting from sexual battery against a student by a school employee in a position of trust, who's criminally charged that the school knew or should have known was a sex offender. And they extended the civil statute of limitations for claims against a governmental entity or its employee to two years after a claim arises, or after the discovery of that claim. Now, if we look at Washington State, they eliminated the criminal statute of limitations for felony rape, sexual misconduct, among other crimes and extended The criminal statute of limitation to 20 years from the offense for rape and indecent liberties, regardless of the victim's age. They also extended the criminal statute of limitations for felony sex offenses.

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When the statute begins to run to two years from identification of the perpetrator by DNA, regardless of the victim's age, so the major changes that we're seeing across the country with regard to criminal cases is now it's no longer each based. The statute simply begins to run. Once there's DNA identification, it doesn't begin to run from the time of the crime, it begins to run from the time of the identification of the perpetrator in Washington, DC eliminated their criminal statute of limitations for felony sex abuse, child sex abuse, sexual abuse of a minor and insist they also extended the civil statute of limitations where the victim was under age 35 to age 40. With a five year discovery rule, they also opened a two year survival window. In North Dakota, they extended their criminal statute of limitations for felony and misdemeanor sex offenses to 21 years from the date of the offence. In New Jersey, there's legislation extending the statute of limitations in both civil and criminal actions and civil actions. They extended it from two years to seven years. parties who would still be time barred under the new law would have a two year window from the statutes effective date, which was December of 2019. to file claims. The measure also allowed any institutions or person who knowingly permitted sexual abuse or protected a sexual abuser to be held civilly liable. But you open the window to a whole host of civil litigation. In addition, if an incident of sexual assault occurred before the victim turned 18, that person would

be able to file a claim up to seven years after the assault was discovered, or up until age 55. So again, it's not from the date of the assault, it's from the time that it was discovered. New York State passed their own child victims act by Governor

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And with that civil suits stemming from sexually based offenses came in the hundreds. They've exposed academic institutions, religious institutions, employers, as well as municipal entities and their the allegations tend to be negligent hiring, supervision and retention of the alleged perpetrators. In New York, the criminal statute was also extended, specifically for felony charges by five years. It was not retroactive. And it's extended now until the victim turns each 28 criminal statutes of limitations across the country. Have I've mentioned some states they've changed. Going back earlier, California changed in 2017, where they just eliminated the statute of limitations entirely for rape and some other sex assault charges. In June of 16, Colorado double the time of the time available to prosecute sexual assault. From 10 to 20 years, Nevada in 2015, extended its time limit from four to 20 years, there's 41 states in total, who have eliminated the criminal statute of limitations and child sex abuse claims. And all of this, for the most part started back in the early 2000s. There was an investigation by the Golden Globe by the Boston Globe rather, which revealed but widespread child sex abuse in the Catholic Church back in 2002. From there, there was the me to movement, obviously, there was a lot of media attention on celebrities who committed sexual abuse and sexual assault. And there's the Bill Cosby trial. And from there, many states across the country have changed their statute of limitations, both for purposes of criminal prosecution and also for civil litigation. So now, there's no criminal statute of limitations in a whole host of states for at least some sexual based offenses. And I have in the slides as you look through them the list of states in alphabetical order with what their statute of limitations is or isn't aware, they've effectively eliminated it. I also have if you look through the slides, the state specific statutes of limitations for purposes of criminal prosecution And also for civil. So there's some focus on individual states, specifically, those that have changed their statutes of limitations. I have a list of the jurisdictions that no longer have any criminal statute of limitations for at least some crimes in alphabetical order, and then the listing of what the statute of limitations is, if any, for whichever crimes, and focusing specifically on the New York State child victims act and civil lawsuits. What happened with the New York State specific child victims act is an open a one year one time window, which began on August 14 2019. for victims to seek compensation regardless of the abuse date. Now in August of 2020, that one time window had been extended for another year. So it was due to expire this August of 2020. And now it's extended through 2021. The look back period afforded attorneys and victims time to come forward, regardless of when the abuse

happened. So there are claims that were made from 1959 1618 70s. Now, in 2020, the statute of limitations was expanded so that any victim under the age of 55 could sue, no matter how long ago it happened. So once that window closes, so long as you're under the age of 55. Even with the look back window closed, you can still file a claim. This allowed civil relief against abusers and enabling institutions until victims turn age 25, which expanded significantly the earlier five year statute of limitations. Under the one year look back provision, which started August 2019, a person can sue if they're over the age of 55. So the look back window basically opens wide open for anybody to come forward with any sex abuse claim, regardless of age or time. Once that look back window closes,

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there's a new statute of limitations in place in New York, which allows anyone under the age of 55 to come forward. So the statute of limitations is based on age, not length of time since allegations and the age that it's based on is the age of the victim. I have in the slides for you the specific language from the New York cplr Law Section 214, subsection G, which is the amended or legislatively amended new language that is going to apply to the statute of limitations for these sex based offenses, specifically, with regard to actions against municipalities, as most of you are familiar, there's a 90 day notice of claim requirement. And you might say, well, it doesn't matter, that the statute of limitations is expanded. I'm representing a municipality, I'm defending the municipality, I'm entitled to a notice of claim, there's still a 90 day requirement for the plaintiff to bring this notice of claim they didn't do that timely, I have a defense. Well, not anymore, you don't. Under this new legislation, they've removed the 90 day notice of claim requirement for bringing claims against municipalities and school districts specifically for child sexual abuse claims. All other claims, you still have your notice of claim requirement. But if the nature of the allegation is child sex abuse related, then there's no 90 day notice of claim. And I have in the slides for you New York cplr, section 208, Subsection B with the specific new language as it's been amended to remove the filing of the notice of claim requirement, and it has very specific language with regard to what types of claims this applies to. You also have New York General Municipal Law, section 50 e, Subsection B, that's in your materials as well. And you have the very specific language from that section, which I urge all of you to take a look at if you're either bringing forward a claim or in the position of having to defend one of these claims. Now, nationwide, states like California, Minnesota, Delaware, Hawaii have looked back windows or at least had look back windows, some of them may close by now, which enabled victims to file civil lawsuits against institutions such as churches, youth groups, anyone that bore some responsibility for sexual abuse of children. I have in the materials for you a list again an alphabetical order of all of the jurisdictions that have no civil statute of limitations for at least some claims. And you'll find it interesting how, for civil cases, there are quite a few states, Alaska, Connecticut, Delaware, Florida, and so on, that either have no civil statute of limitations, or no statute of limitations, so long as the victim is under the age of 18, or in some cases under the age of 16. I also have for you

a list, again, in alphabetical order of jurisdictions that revived expired civil statutes of limitations with a waiver of the statute of limitations for a set period of time or up to a certain age, and then the material you'll see the effective time periods and the Windows based on the specific state. Now, what does all of this mean, practically speaking? Well, a good state to look at as an example would be California, because they suspended their statute of limitations A while ago back in 2003. And so many of the claims that were brought have now been settled and resolved. And we can look

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at what happened in the state of California to get an idea of what may be happening in some of the other states that are newly enacting these suspensions, or look back when those are just eliminating the statute altogether. So in California, they suspended their statute of limitations for one year, which allowed child sexual abuse lawsuits to be filed in 2003. Regardless of when the ad the incidents allegedly took place. What happened as a result where there were about 850 Catholic clergy abuse victims and another 150 other churches that were sued, the Boy Scouts are sued. And there were institutions who employed known molesters who were sued. The US Supreme Court actually struck down California's windows for criminal prosecution. They said that that was unconstitutional and you can't have this look back window. But the window was upheld for purposes of civil lawsuits. So anyone who's thinking in your state paid this look back window, this suspension for civil lawsuits is unconstitutional. The Supreme Court did look at this issue and they said yeah, for criminal purposes unconstitutional if you challenge it, but for civil lawsuits, they said that it was upheld. So by the end of the year 2003. In California, the Archdiocese of La was hit with more than 500 lawsuits, they settled about 570 total claims of abuse against 221. priests, brothers, teachers, and other church employees spanning a period of seven years. They had quite a bit of payouts to settle this abuse allegation. There were five diocese including San Diego's that had to file for bankruptcy protection. At least 10 bishops and Archbishop's resigned over their alleged involvement in the sexual abuse cases or in covering up the abuse of others. parishes were terminated schools were shuttered. And there were programs that were shut up. If we look at another state, similar situation, Delaware, which had a look back window which closed they became the first state to follow California. So California had all these lawsuits back in 2003 and following, and then Delaware was the next state that had a look back window and an elimination of the statute of limitations temporarily. Their window was a two year window to file suits, and they abolish the civil statutes of limitation and child sex abuse cases. So during the open window, there were 1175 civil cases in the state of Delaware. After settling victim lawsuits for $77 million. The Wilmington diocese had to file for bankruptcy protection in 2009 led to layoffs property sales near liquidation of a fund that was used to defray capital costs for local churches. The bankruptcy did not require parishes to close in Delaware. One other state to look at Minnesota, and you have this in your slides as well. There were more than 850 child sex abuse claims which included about 500 against the Minnesota Catholic clergy. In Minnesota they had a three year window which

closed in 2016. Their diocese across the state had declared bankruptcy. five of the six Catholic Diocese and men Sodo home to about 1.2 million Catholics turn to chapter 11 federal bankruptcy protection to settle hundreds of claims of sexual abuse at the hands of their priests. The diocese filed for Chapter 11 bankruptcy. They reorganized and then they rien reemerged as leaner new operations. Hawaii had a statute of limitations that had a look back window extended on three different occasions. Since 2012, which was the initial period most of the claims were connected to the Diocese of Honolulu. There is also a psychiatrist who was exposed for sexually molesting boys in the local schools for a period of 30 years, ending in the 1980s.

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The Hawaii Preparatory Academy also settled a court claim, Pennsylvania had changed their law for victims to be able to raise criminal complaints until they are the age of 50 and civil complaints until they are aged 30. From 2013. Through 2018, the Pennsylvania Catholic Conference spent more than $3.7 million on lobbying, according to state records, and the insurance federation of Pennsylvania, spent more than $9.7 million in its efforts. As a result, there was no look back window enacted in Pennsylvania, the only thing that happened in the state of Pennsylvania is the change of age. Although if you look comparatively, it's not that significant. And that civil complaints can now be filed until the victim is age 30. That's still pretty young. And as I mentioned earlier, more victims are coming forward in their 40s and even into their 50s. So if we look at the evolving constitutionality of reviving expired statutes of limitations, as I mentioned earlier, was brought all the way up to the US Supreme Court. And it's been determined that it's unconstitutional to revive a criminal statute of limitation so you can have one moving forward, you just can't look back and revive old claims. However, with regard to civil claims, it's permissible under the due process clause clause of the 14th. amendment to the US Constitution. And I have citations to cases for you. There's two leading decisions from the US Supreme Court, you can take a look at Campbell, and you can also look at chase securities Corporation. I have those cases in the slides for you. They basically held that a defendant does not have a vested property right in a statute of limitations defense, such that a legislative change reviving and otherwise time barred cause of action violates the defendants rights under the due process clause of the 14th amendment. So it effectively does not sell violate, you have to look to the state constitution. And if in your state, you wanted to argue that this revival of the statute of limitations or revival of the claims is unconstitutional, you would have to argue that it's unconstitutional based on the state specific constitution. Sometimes states may have for defendants greater protection against retroactive revival than the Federal Constitution does. And that's going to be state specific. Generally speaking, the courts have 18 different states now follow the federal approach. It's been litigated in, in 18 different states where they argued pay our state constitution is going to afford the defendant greater rights. And the courts have said in those 18 states, no, we're going to follow the federal approach. And we're going to decide that we're going to allow this retroactive expansion of the statute of limitations to revive otherwise time lapse, great claims. Of those

states. There's three specifically Iowa, West Virginia and New Mexico, who don't squarely ground their decisions in any particular state or federal constitutional provision. Georgia grounds its leading decision if you want to look at the Canton textile mills decision, which is in your materials, and then interpretation of that state's constitutional provision prohibiting retroactive legislation. And then there's 14 different states listed in the materials that hold the retroactive expansion of the statute of limitations to revive time barred claims is not a violation of a defendant's substantive due process rights.

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Because there's no vested right to a statute of limitations defense as a matter of state constitutional law. So many states have already litigated this and decided Did it it is possible that you're in a state where this has not yet been litigated. And I encourage you to look through the materials. Now, there are courts in 24 states who do support the position that legislation that retroactively amends a statute of limitations in a way that remark revives a time barred claim is per se invalid. Of those states. There are seven that ground their holdings in independent state constitutional provisions, which prohibit retroactive legislation, Vermont specifically grounds they're holding in the state statutes, prohibiting retroactive legislation. There's five other states that don't cite a source for the vested right, but they also determine that they're not going to find this to be constitutional. And then there's 11 other states that have rejected the us supreme court's approach to this issue in the Campbell decision, and they're saying that the retroactive expansion of the statute of limitations which revives this otherwise time lapse claim is an is not something that's going to be allowable based on the vested property rights, that amounts to a per se violation of substantive due process. So again, very state specific, hotly contested issue right now, as this is newly changing. So I recommend if you have one of these cases, that involves a child sex abuse claim that goes back decades, that's outside of the statute of limitations, I definitely encourage you to go ahead and take a look at what your state specific statute is going to say about that. Now, if we take a look at what happened with us gymnastics, we had sex based accusations which created a particularly significant exposure and the ability to mitigate the associated costs really can determine whether or not an organization is going to survive. So in 2018, USA Gymnastics had to declare bankruptcy in response to litigation over Larry Nasser's sex abuse of young female athletes, and this is something that was litigated in Michigan, there was a 90 day window which was opened specifically for Larry Nasser's victims, and it revived expired claims as a result of all of the claims that were then brought forward, USA Gymnastics filed for bankruptcy. sexual abuse allegations in the US Catholic Church amount for hundreds of substantiated claims that are determined to be true. And then you also have some claims, a very, very small percentage that are unsubstantiated or determined to be false. And I have charts in the materials for you if you would like to take a look at the statistics on that. There's also a chart in the materials for what sexual abuse allegations have cost, specifically the US Catholic Church, the total spending just from 2004 through 2012. So this is in the early stages of these look back

windows were $2.6 billion 75% of that spend was on settlements, and 15% was on attorney cost. The rest was on therapy for victims support for offenders and some other costs. But as you can see, the vast majority of the spending is in settlement, money and litigation money and sex abuse settlements in 2007. With regard to the Archdiocese of La resulted in $660 million. This is just in Los Angeles just for the 2007 claims for 508 people who accused priests of sexual abuse. There's more than 114 million

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that was promised in previous settlements, bringing the total liability for clergy misconduct in the LA archdiocese to more than 774 million. In 2005. Orange County, California paid out $100 million to 90 alleged victims who filed lawsuits. As part of the settlement the diocese released 1000s of documents indicating a high level of cover up of priest abuse. City of Boston settled its claims for 157 million dollars involving the Boston archdiocese scandal where the victims faced charitable immunity laws that limited the amount of financial damages that they could recover. Portland, Oregon settled for $129 million. So those are just some examples of prior cases and they foreshadowing of what may be in store. For those states who are newly enacting these look back windows and have some younger claims coming forward. The fiscal impact that would be projected for New York state based on their child victims Act would result in potentially $875 million in settlement payouts. And if you would like to take a look at the slides, I have some numbers and some studies based on costs and payouts that would impact New York State specifically, the economic burden of child maltreatment in the US and implications for prevention was featured in the child abuse and neglect publication back in 2012, which addressed estimated average lifetime economic costs per victim of non fatal child maltreatment. And in very conservative numbers, the actual economic costs, forget pain and suffering are those intangible values, just the actual economics are at around $210,000. This is in 20 $10. And this is not accounting for pain and suffering damages. And this is a victim. That just takes into consideration childhood healthcare costs, adult medical costs, productivity losses, Child Welfare costs, Criminal Justice costs, special education costs, it does not consider all of the other recoverable damages. And again, this is per victim, someone's you've multiplied the number of victims by the hundreds, the values become rather significant. So with this pattern of liability insurance companies denying coverage for sexual assault claims. Often there's this theory that the act alleged is intentional in nature, and therefore not an occurrence, which could trigger coverage. There has been a lot of litigation recently on this issue. And I'm going to go ahead and discuss you where the settlements coming from and where are these payouts going to come from? So obviously, there needs to be coverage. If there's no coverage, then you need a money defendant. And if you don't have either, then it does not matter that there's a claim that's revived, there's not going to be any sort of settlement or payout. So many insurance policies adopt the definition of occurrence, which requires that a claim arise from an accident. Whether allegations of sex based offenses are encompassed by that term accident under the policies is going to determine whether or not

there's coverage. New York State courts have long held that the injuries alleged to have been caused by sex abuse of minors is inherent in the nature of the acts alleged so that the injuries are as a matter of law intentionally caused by the perpetrator precluded coverage under most liability insurance policies. And I have the case law cited in the materials if that's something that you want to go ahead and take a look at. The issue is when you look at intentional act, the exclusion scope varies with the circumstances and jurisdictions interpreting those policies. So the very first thing you need to do is you need to identify the policy that's going to be impacted and look at the policy language and look at the exclusion language and look to see what specifically is excluded from that policy. Many policies have sexual molestation exclusions, it's often presumed to be an act of intentional harm, subjective intent not withstanding, and so oftentimes, it would be excluded as an intentional act. Newer policies now are specifically excluding not just intentional acts, but by name sexual molestation. However, since these claims are coming forward from the 70s 80s, and so on, we're not looking at a policy in place now today, we're looking at policies from back when the occurrence happened. Of course, you need to know whether the policy in place is a claims made policy or an occurrence based policy. So if it's a claims made policy, then The date when the claim is made. Now in 2020, would be the policy that's affected. If it's an occurrence based policy, then the policy from the date of the occurrence is what would control the date of occurrence might be 1974. So you would need to find the policy back in 1970. Before see whether it's an occurrence based policy back in 1974. And then that would be the policy that controls you could have a claims made policy back in 1974. With a claim that's made now in 1920,

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that policy would no longer apply, because the claim was not made back that. So again, policy language is super important. And that would be your first step in figuring out where there may be coverage. New York Court of Appeals, pulled the holdings of those earlier cited cases into question and it's possible that coverage may exist for sex abuse another intentional torts, even when a policy's definition of occurrence requires there to be an accident. So whether an intentional act is attributable to the employer is going to be very incident specific. The way the New York Court of Appeals has decided this issue based on the fact is they're going to look at whether or not the employer specifically instructed directed or controlled the actions of the perpetrator. So if the employer, for example, instructs security guards to use force and performing their duties, then the employer may be liable for patrons injuries, which result from the intentional use of force. If, however, the facts demonstrate that an employee was not furthering the purpose of the entities business, then the employer will not be liable for the intentional harm, which was caused and the case that went up to the court of appeals involved a physical violence act, not a sexual act. So in an attempt to circumvent this intentional act exclusion, what plaintiff's attorneys are doing is seeking to blame those in a supervisory capacity for negligently hiring, retaining or handling the offender. Under that theory, it's no longer an intentional theory, and now you can be

well within the policy. So policies drafted more recently contains specific exclusion for claims of sexual molestation, physical abuse and sexual harassment. Again, we're not necessarily looking at the policies drafted more recently, we may be looking at the policy in place back when the act occurred. And these older policies include exclude act based upon the actor status. newer ones focus on the acts themselves, regardless of who the actor is. If you look at the 2004 RJC decision in your materials from the New York Court of Appeals, it looks at whether or not a policy covers an accident. And I go ahead and analyze that in the materials included. There's also the more recent 2013 Roman Catholic Diocese decision in your materials, where the New York, New York Court of Appeals addressed insurance coverage for sexual abuse claims, what was really important, there was a question of how many occurrences there were implicating one or more policy limits. And of course, if you have, let's say, 10 different occurrences and a $2 million policy, now there's $20 million of play. If it's a single occurrence, then all bets there is $2 million makes a big difference. I encourage you to take a look at the materials and take a look at those decisions to see how the court handled that. So the subject act of sex abuse in New York, where we're determined to constitute multiple occurrences under New York's unfortunate events test, because they occurred over many years at different times and at various locations. So the Court of Appeals held in that case that I have cited in the materials that the diocese is required to exhaust, separate $250,000 si RS for each commercial general liability policy. And there's more coverage available per occurrence. That also rejected the diocese argument in that case, but the policies definition of occurrence should be construed as permitting it to aggregate the multiple acts of sex abuse as a single occurrence. Again, it's the policy language that's going to control and that's going to be super important. So What you want to do is you want to take a look at the policy first and foremost, and then you want to take a look at whether the courts in your specific state have already looked at whether or not occurrence is going to be defined as a singular occurrence or whether based on time place location, it's going to be broken up into multiple occurrences. So, obviously, if you could, as a plaintiff argue that there's multiple occurrences, there's going to be more coverage. And obviously, as a defendant, if you argue that it's a single occurrence, you can protect your client from having to pay either multiple si Rs,

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or if it's the insurance carrier having to pay out the policy multiple times per occurrence.

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So the first time that the court addressed the meaning of occurrence in the context of claims based on numerous incidents of sex abuse of a minor, of a minor by priests, spanned several years and several policy periods. If you look at the consolidated Edison case of New York versus all state insurance, this is a case from 2002 out of New York's Court of Appeals, they determined that it's well established that in determining a dispute over insurance coverage, the course first look to

the language of the policy. So, in doing so, a court must construe the policy in a way that affords a fair meaning of all of the language employed by the parties in the contract, and leaves no provision without force and effect. So again, you have to look to the policy language first, see how they define occurrence and see what they mean. New York employs the unfortunate event test, which says that you can't aggregate three accidents into one. So the court adopted this unfortunate event as specifically rejecting other approaches that would equate the number of occurrences with either the sole proximate cause or by the number of persons damaged. The Court of Appeals addressed how to determine whether there are one or more occurrences within the meaning of an insurance clause limiting coverage to a certain amount per occurrence. And they cited back to a case from 1959. Arthur Johnson Corp, I have that in the materials for you as well. There's also a case from 2007, where the court stated that absent policy language indicating an intent to aggregate separate incidents into a single occurrence, the unfortunate event tests should be applied to determine how occurrences are categorized for insurance coverage purposes. So the way we employ the unfortunate event test is we're going to see whether there is a close temporal and spatial relationship between the incidence giving rise to injury or loss. Or if the incidence can be viewed as part of the same causal continuum without any intervening agents or factors. Depending on how that factual analysis plays out, you're going to either have one event or multiple events. Now I'm looking at the definition of occurrence, the court determined that nothing events is an intent to aggregate the incidence of sexual abuse into a single occurrence in the specific policy language in that case, if however, your policy specifically states that it intends to aggregate the cases, then from a defense perspective, you have less exposure. Now, clearly, incidents of sex abuse that span a six year period transpire in multiple locations are going to lack the requisite temporal and spatial closeness to join those incidents. The court concluded that the collapses of separate walls or separate buildings at separate times are in fact separate disastrous events, and thus two different accidents within the meaning of a policy. And this is back in that Arthur Johnson 1959 case where there were wall collapses in different locations, and they said, hey, these are different events. Similar with sexual molestation, if you have something happening in different locations in completely different times. accord is more inclined to say these are different occurrences. The court explained that while the incidents can share an identity of actors, so let's say it's the same perpetrator it still cannot be settled. That an instance of sexual abuse that took place in the rectory of the church in 1996, shares the same temporal and spatial characteristics as one that occurred in 2002, for example, now I also have in the materials for you the causal continuum factor analysis with a case from 1973 that you should take a look at. And I don't want to read all of the case holdings for you, I have that in the material for reference. But basically, contrary to the diocese and dissents view that the negligent supervision was the sole causal factor. There, they required a finding of a single occurrence, the unfortunate event test is going to require them to focus on the nature of the incident giving rise to damages. In the Appalachian case, the cause should not be conflated with the incident. So each incident involves a distinct act of sex abuse, it's interposed over an extended period of time, it's perpetuated in unique locations, then it cannot be said that these incidents are precipitated by a

single causal continuum, it's a very factually specific inquiry. If you have multiple repeated occurrences, then sexual abuse is not going to fit neatly into a policies definition of continuous or repeated exposure to conditions. In the

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Seventh Circuit 1996 decision that I have for you in the materials, they basically said it sounds like language designed to deal with this bestest fibers in the air or lead based paint on the walls rather than with priests and choirboys. A priest is not a condition, but a being. And so they rejected the language and said, Look, this is going to be multiple occurrences. There's a 1992 decision out of California, in which there were two children attending a daycare center that would and they were sexually molested over a period of a month or so, the US Court of Appeals for the first District of California held that the multiple instances of sexual molestation constitute a single occurrence for insurance coverage purposes. Now, the big deal and big difference there is they looked at the policy language that applied in that case, and the policy language was very specific, with their intent to aggregate. So again, the policy is always going to Ctrl. And that should be your very first line of defense, or offense, depending on what side you're on. But you want to look at the policy language, and you want to see how they define occurrences, and what exclusions there are and whether or not they intend to aggregate. New York Court of Appeals specifically declined to follow the holding, because of what they believe to be materially distinguishable differences. So the policy of the California case is expressly provided that all bodily injury and property damage resulting from any one accident, or from continuous or repeated exposure to substantially the same general conditions shall be considered to be the result of one occurrence. And that was quoted in the California decision. There was no such language within national Union's policies indicating an intent to aggregate the sex abuse into a single occurrence. And that's why New York's Court of Appeals went the complete opposite way. So if you're on the defense, and if you're trying to aggregate and you're aware of this new york Court of Appeals decision, all hope is not necessarily lost, you need to look at the specific facts of your case and the specific policy language. And if you have a policy that like in California intends to aggregate, you can still argue despite the New York Court of Appeals decision that this should be aggregated because the policy language is going to control. The California Court of Appeals reason that the negligent failure of the daycare owner to adequately care for and supervise the children subjected them to repeated knowledge station by the perpetrator. The parties in that case agreed that the number of occurrences depends on the cause of the injury, rather than number of injuries or the number of people affected. And so that's the big difference between California and New York, and I have all of that in your materials. I also have a case out of Wisconsin where they found no insurance coverage for employers sued for negligence supervision of Employees who committed assault. I have that analyzed in the materials and I urge you to take a look at that.

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Basically, if the court of appeals adopted the diocese waiver argument carriers could have faced enormous pressure to assert their positions on this defense in the initial coverage positions, that they communicate to their insurance or risk waving them. The decision is also the first in which the New York Court of Appeals addressed the number of occurrences and allocation issues in the context of conduct based offenses such as sex assault, and sexual misconduct. So the court's holding is likely to have implications to several looks to similar coverage disputes arising out of New York law. But nationwide case law is less developed in courts and other jurisdictions may look to the California decision, and this New York court holding for guidance on both policy interpretation and application. So regardless of what state you're in, I urge you to take a look at the New York case and the California case that I have cited in the materials. Unlike New York State, many state courts do hold that claims involving multiple injuries or act nonetheless constitute a single occurrence under a commercial general liability policy warning, if the injuries or act can be traced back to a single cause. And reaching that conclusion, the courts sometimes rely on the same definition of occurrence contained in the diocese commercial general liability policy, which includes continuous or repeated exposure to the same general harmful conditions. And this is super important because again, whether you're on the plaintiff side or defense side, this is going to determine the amount of coverage available, which is going to determine the amount of money that these claims can be settled for. If you have 10 victims, and the claim is worth a million dollars each, you need to somehow have $10 million in coverage, if it's a $1 million policy. And if the 10 claims are aggregated, you're now talking about only having $100,000 per victim. That's a pretty low amount and unlikely to result in an effective settlement. Obviously, plaintiff side is going to want more coverage, defense side is going to want to argue Look, these claims need to be aggregated, here's my million dollars. That's it. If the claims are not aggregated, what's going to happen on the defense side, let's say you have 10 claims, you're now potentially paying $10 million if it's a million dollars per claim. So the coverage issue is a very important issue. And whether the claims are aggregated or not is going to decide what the exposure is. On the defense side, it's going to determine how exposed your client is. And the plaintiff side it's going to determine exactly how much the payout will be. Because obviously, if there's not enough coverage, where you're going to get that the money. So the Court of Appeals ruling on the number of occurrence occurrences issue is something that may influence how other jurisdictions which employed the sole cause test determined this issue. So if anyone has any questions in the materials, I have my contact information, my email and my phone number. And if you have any questions about any of the cases that I cite or anything in the materials, you have the slides available for you, I urge you to go ahead and take a look at them. If you have state specific questions. Like I said, I practice law actually practice in state of New York. I'm also licensed in Alaska and New Jersey, our farm practices in New York, New Jersey and Connecticut. If you're from a state where I do not practice, certainly I can't help you specifically. But I can definitely point you in the right direction in terms of where you may be able to find more resources or material that may be helpful for your specific issue. So thank you everybody for

joining me. And if you have any questions, feel free to reach out