



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**EMPLOYERS MUTUAL CASUALTY COMPANY v. DGG & CAR,  
INC., dba METROL SECURITY SERVICES, CV-07-0280-PR**

**PARTIES AND COUNSEL:** The petitioner is DGG & Car, Inc., doing business as Metrol Security Services, represented by Steven Feola, Robert J. Traica and Richard A. Alcorn. The respondent is Employers Mutual Casualty Company, represented by Randy L. Sassaman and Michael J. Raymond of Raymond, Greer & Sassaman.

**FACTS:**

In June 2002, Metrol Security Services discovered that accounting employee John Brown had stolen approximately \$528,428 from Metrol between 1997 and 2002 by forging and/or altering checks on 284 occasions and then falsifying accounting records and making false statements to conceal his thefts.

Employers Mutual Casualty (EMC) insured Metrol under a policy that included employee dishonesty coverage. The policy provided that “[t]he most [EMC] will pay for loss in any one ‘occurrence’ is the applicable Limit of Insurance shown in the Declarations.” “Occurrence” was defined to mean “all loss caused by, or involving, one or more ‘employees,’ whether the result of a single act or series of acts.”

Metrol submitted a claim for the losses, contending there was coverage for each of the 284 separate thefts. EMC countered that the separate thefts constituted a single loss caused by a single employee, and that EMC, therefore, was liable only for the policy limit of \$50,000.

The trial court, finding that the policy term “occurrence” is ambiguous such that each theft could constitute a separate occurrence, granted partial summary judgment in favor of Metrol. The court of appeals reversed, finding that the policy language unambiguously provides that only one “occurrence” caused Metrol’s loss. The “series of acts” policy language, the court said, indicates a series of acts, each of which caused a resulting loss. The court found support in *Arizona Property and Casualty Insurance Guaranty Fund v. Helme*, 153 Ariz. 129, 135-136 (1987), and concluded that the policy unambiguously excludes causally related acts from the usual rule that multiple causative acts will constitute multiple occurrences.

Because the acts in this case were causally related by Brown’s desire to steal from his employer, the court concluded, the policy unambiguously provides that such a course of action constitutes one occurrence.

The Arizona Supreme Court granted Metrol’s petition for review.

## ISSUES PRESENTED:

1. Whether, under the insurer's policy definition of "occurrence," the number of occurrences is determined by counting each separate loss as an "occurrence" or whether the number of occurrences should be determined by the number of causes or causative acts that resulted in the loss.
2. Did the Court of Appeals misinterpret, incorrectly apply and, ultimately, expand this Court's decision in *Arizona Property and Cas. Ins. Guaranty Fund v. Helme*, 153 Ariz. 129 (1987), by applying to a fidelity policy the rule pertaining to liability coverage – that is, that the number of occurrences is equated with the number of causative acts?
3. Does the Court of Appeals' construction of the definition of "occurrence" rewrite the policy language, as well as ignore certain language within that definition, with the ultimate consequence of giving broad effect to exclusionary language?

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