



# Aggregation of Losses and Clash Covers in Liability Treaty Reinsurance

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- Treaty Reinsurance Solutions
- Liability Loss Scenarios
- Wordings Solutions



## 1. „Per Policy“ or „per Risk“ Protection



## Treaty Capacity is Completely Available for the Limit of Each Policy

The limit meant is the **„each-and-every“ limit** of the policy, independently from the annual aggregate limit; a provision about series of losses could be necessary.

# „Per Policy“ or „per Risk“ Protection



## Example Treaty Wording:

»Limit and Deductible: PLN10'000'000 any one policy any one „loss occurrence“ in excess of PLN5'000'000 any one policy any one „loss occurrence“«.

„Loss occurrence“ is meant to follow the original policy definition for determining the maximum amount available for each single loss or series of losses.

## Example Policy Wording:

«Limit of Indemnity per Occurrence: The company will be liable up to the amount stated in the Schedule for losses and claims expenses arising out of any one loss occurrence taking place during the policy period.»

« Loss occurrence means a fortuitous event or accidental happening, **including a series of such events or happenings arising out of the same common cause or original source.**»



## Conclusions:

The **per policy treaty should follow completely** the provisions of the original policy wording. The policy should contain a definition what is one loss occurrence protected by the “each-and-every” policy limit.

In the per policy function an **aggregation of several losses** into one loss occurrence happens in the case that a “claims” or “loss series clause” exists in the original policy wording or on the reinsurance level.



## What is the purpose of contracting several individual losses into one loss?

Avoid that the repetition of similar loss scenarios

- reaches out into a new policy year → **benefit for the insurer**
- consumes more than one deductible and/or more than one each-and-every policy limit:
  - Applicability of the deductible only one time for a whole series of losses → **benefit for the insured**
  - Applicability of the each-and-every policy limit only one time for a whole series of losses → **benefit for the insurer**

# Series of Claims or Losses



- The **aggregation criteria** should be **well phrased** in order to avoid unpleasant discussions with the insured about the interpretation of the extent of the clause. They should **unambiguously contract all losses** part of a series **into one single loss**; the clause should also establish **one single date of loss** for the series.

# Examples of Claims or Loss Series Clauses



Concentration only on the aggregation criteria – without discussing the date of loss problematic

## 1. On the Treaty Level: TPX 1986 for Per Policy Treaties

### **Public and/or Products Liability and/or Professional Indemnity Claims Series Clause (TPX 1986)**

#### **Definition**

For the purposes of this clause, **a claims series event shall be defined as** a series of two or more claims arising from **one specific common cause** which is attributable to **one design** and/or **specification** and/or **formula** in products and/or **services** supplied by **one and only one original Insured.**

#### **Basis for recovery hereunder**

Notwithstanding anything to the contrary contained within this Agreement and subject always to the specific exclusions listed below and subject to the special reporting provisions set out below, it is understood and agreed **with regard to policies of public and/or products liability and/or professional indemnity that,**



## (TPX 1986 cont'd.)

where legal liability of one original insured is established in respect of a claims series event as defined above, then for the purposes of recovery hereunder **such a claims series event** shall be deemed to be **one loss occurrence** whose **date of loss** shall be **determined strictly** on the basis set out below.

...

Main problems with a **clause on the reinsurance level:**

- Definition may **conflict with** a CSC in the **original policies;**
- Original policies may not have a CSC – **capacity** of the treaty may **not be sufficient.**

→ It is **preferable to follow** the **original** policy wordings



## 2. On the Original Policy Level

»A series of losses arising

***from a (specific) common cause***

(or alternatively)

***from one originating cause or source***

shall be considered **one single “loss occurrence”** (claims series event), **taking place** in its entirety **at the date of the first individual loss** constituting the series, irrespective of the dates of loss of each single loss.«



## Examples of Definitions for a „Specific Common Cause“ (unifying factor):

- **Definition:** “Losses arising from a **particular type of product** with a **design error** or **manufacturing defect** or accompanied by **inadequate instructions or warnings.**”

**Examples:** Car accidents because of a defective operative or security part integrated in several cars.

**Evaluation:** Scope of application quite clear

- **Definition:** “Losses arising out of a **series of related** events, occurrences, or causes”.

**Example:** Could be the same as above, but it could also be much more.

**Evaluation:** Criterion “**related**” **generally too broad** and vague as a definition  
→ clause should not be used.



## Other Examples

- **Definition:** “Losses arising from the **same continuous**, intermittent or repeated **exposure** to substantially the same **generally harmful conditions.**”

**Examples:** Inhalation, ingestion, or application of a harmful substance in the air, in food or in a pharmaceutical.

**Evaluation:** Quite precise criteria. This clause is also used as a definition what is one and only one loss occurrence, especially concerning the continuous exposure.

- **Definition:** “Claims because of the wrongful rendering of professional services **based on the same initial erroneous assumption.**”

**Example:** Because of inadequate training an insurance representative is mis-selling a life insurance product to a number of clients.

**Evaluation:** Quite precise criteria.

# Common Cause Definitions and Examples



- **Definition:** "Claims arising from the wrongful rendering of professional services based on or committed **in connection with the same legal or economic matter.**"

**Example:** Could be the same as the previous one, but it could also be much more.

**Evaluation:** Uncertain what means "the same legal or economic matter" → clause should not be used.

# Series of Claims or Losses - Conclusions



- In order to avoid doubts and discussions with the insured, **much attention should be paid to the definition** of the unifying factor that contracts a series into one loss occurrence.
- We can differentiate this factor into two groups:
  - Relationship because of an event or occurrence **happening at a specific time and place** being the one originating source (f.ex. explosion, car accident);
  - Relationship comes from a **common cause** as the originating source, the consequences of which **can happen at different times and places** (f.ex. design error for a product causing several losses).
- The latter one is the one which requires utmost attention, because a flawed definition would lead to the **uncertainty, whether a cause is proximate enough** for a number of claims to be considered a series.
- Be aware that this **whole complex of common cause** tends to be a real minefield with a lot of uncertainty.



## 2. „Per Event“ Protection



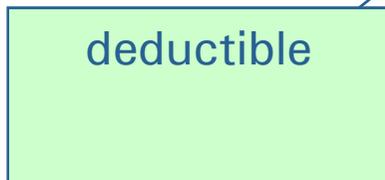
## The treaty has two functions:

- “Per policy” protection
  - The same considerations are applicable like in a “per policy” treaty.
- “Per event” protection
  - In the case of a **clash scenario** the treaty capacity is available **only once for all policies** implicated in the clash.
  - The **capacity** of the treaty **may not be sufficient**.

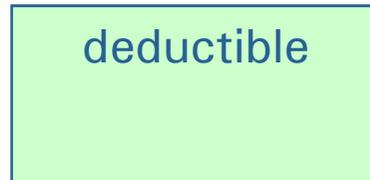
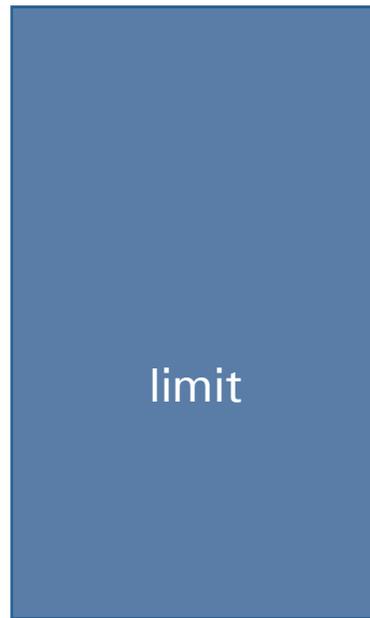
# Per Event Reinsurance Solutions



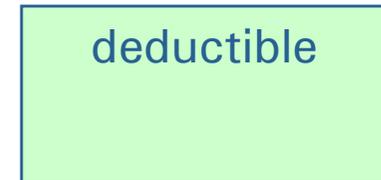
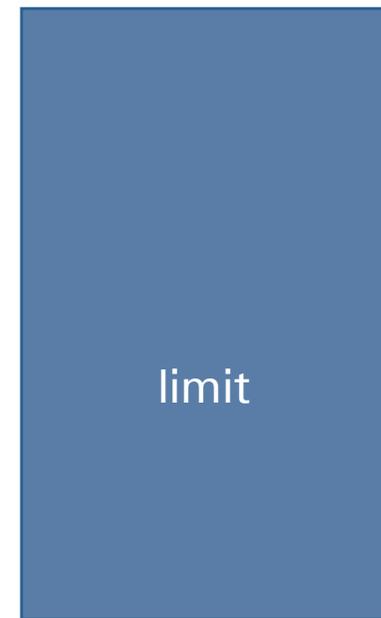
## Per Event



## Per Policy



## Per Event / Multiple Policies



Available  
either for

or



## 3. Combination of a “per policy” and a „per event” protection

# Combination of a “per policy” and a „per event” protection



## a. Clash Layer on top of the normal treaty capacity

- The **normal treaty capacity** is a **per policy/per event** treaty.
- The clash layer on top can only be affected if two or more policies are implicated in a clash scenario. **No increased retention in case of a clash.**

## b. Clash of Retention

- The **normal treaty capacity** is a **per policy** treaty.
- The clash of retention capacity is a separate treaty covering clash scenarios **with an increased retention.**

Advantages of the combination: The normal treaty capacity can be fed more easily up to the treaty limit with all individual policies – there is extra capacity for clash scenarios.

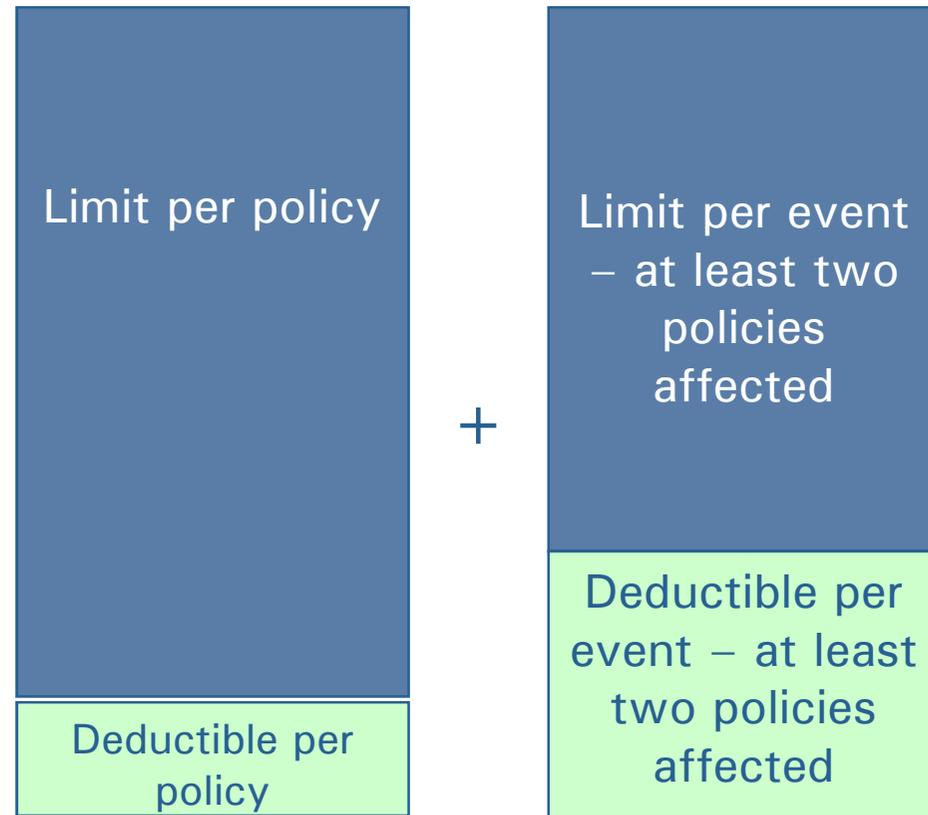
# Clash Layer on Top or Clash of Retention



## 3.a. Per Event + Clash Layer



## 3.b. Per Policy + Clash of Retention





## 1. Fire or explosion in a high rise office building

Possible defendants:

- Building operator
- Maintenance service providers (f.ex. for elevators, electricity or gas supply)
- Security firm
- Construction company
- Architect

## 2. **Auto manufacturer A** purchases the steering column from **B**. The **steering column** has a design defect which **causes a car accident**.

Defendants:

- Auto manufacturer A
- Steering column supplier B



**3. Drug manufacturers A and B** independently use the same ingredient in a drug designed for the treatment of the same health condition. The ingredient has **serious, unanticipated side effects for numerous patients.**

Defendants:

- Drug manufacturer A
- Drug manufacturer B
- Ingredient suppliers C, D, E, ...



**4. A tax advisor is giving training courses to life insurance agents** containing erroneous advises how to optimize tax savings. The agents fall into several mis-sellings of life insurance products.

Defendants:

- The tax advisor,
- The insurance agents.



## What are the differences between accumulation scenarios affecting one policy vs. several policies?

There are accumulation event scenarios that would **not be a series of losses** (especially “big bang” and single product or professional scenarios).

But there can be claims series scenarios that are at the same time accumulation events.



## → Important:

- The phrasing of the event definition should **take into account the different** possible **accumulation situations**.
- The definition should be **phrased accurately, without leaving doubts** whether in a given loss situation various policies can be accumulated. This means to use “specific common cause” language instead of only “common cause”. Helpful to **define the meaning** of “**specific common cause**”.



- A clash scenario can occur with a „Big Bang“ event, a single Products Liability or Professional Indemnity (PL/PI) loss or with several losses happening at different times and places.
  - **Big bang events** are typically affecting the premises and operations liability coverages (also known as public or general liability).  
**Definition criterion:** „... arising out of one event“
  - **Single PL or PI events** are loss scenarios affecting various PL or PI policies  
**Definition criterion:** „... arising out of one event“ or “arising from one specific common cause“



- **Non-big bang scenarios or a series of losses** are typically affecting PL or PI coverages.

**Definition criterion:** „... arising from a specific common cause“

- ▶ The different scenarios can have different event definitions.



## 1. Straightforward Clauses

### a. “Loss Occurrence” shall mean:

All losses arising out of **one accident or loss event** taking place in its entirety at a **specific moment in time** and at a **specific place**. Losses arising out of **multiple accidents or loss events** (including multiple claims series events), taking place at different moments and places, even if traceable to the same cause, causative agency or origin, **shall not constitute** one “loss occurrence”.

*This clause contains a negative clarification, explaining the need of a sudden one-time event. **Only applicable for the examples 1 (big bang) and 2 (single PL/PI) above.***



### 1. Straightforward Clauses (cont'd.)

#### b. “Loss Occurrence” shall mean:

All losses arising **out of one event.**”

or:

“Each and every loss and/or series of losses arising **out of one event.**”

*Clear definition without leaving major doubts. Event to be understood as a sudden and accidental happening. **Only applicable for the examples 1 (big bang) and 2 (single PL/PI) above.***



### 2. “Convolut ed” Event Definitions (should be avoided)

- a. “The term “loss occurrence” as used herein shall mean **each and every accident, disaster, casualty or occurrence** or series of accidents, disasters, casualties or occurrences **arising out of or caused by one event**, regardless of the number of interests insured or the number of policies involved.”



- b. "The expression "Loss Occurrence" shall be understood to mean **any accident or occurrence** or series of accidents or occurrences **arising out of one and the same event**, irrespective of the number of casualties or claims resulting from such accident or occurrence or series of accidents or occurrences and irrespective of the number of policies involved."

***Problem with these clauses:*** Redundant language, essentially saying "accidents (that means "events" instead of "losses") arising out of or caused by one event" – or "accidents caused by one accidental happening." In spite of extensive language **only – if at all - applicable for the examples 1 (big bang) and 2 (single PL/PI) above.**



### 3. “Convolut ed” Event Definition with “Engineered” Claims Series Clause (“more than one insured”) (should be avoided)

“CLAIMS SERIES CLAUSE (TPX 1986 amended)

For the purposes of this Reinsurance, a Claims Series Event shall be defined as a **series of two or more claims arising from one specific common cause** which is attributable to one design and/or specification and/or formula in products and/or services and/or advice\* supplied by one **or more than** one Original Insured.

\* it is understood that «advice» is to mean «piece of advice » i.e. specific advice or instruction rather than advice in general.”

***Comment:*** *Hard to imagine how “one design” or “one piece of advice” can be supplied by more than one original insured. In principle **only applicable for products and professional liability (various events at various times and places).***



### 4. Gen Re Suggestion: Two Separate Provisions

- a. A „Big Bang“ / single PL/PI clause as discussed above, for single loss events occurring on the premises of the insured or caused by the insured's operations, or by her/his products or services.
- b. A separate clause for several Products Liability and Professional Indemnity losses arising from a (specific) common cause.

**Advantage:** In order to **avoid misinterpretation** of the common cause meaning, a detailed specification about the intention is possible.

# Specific Common Cause Examples

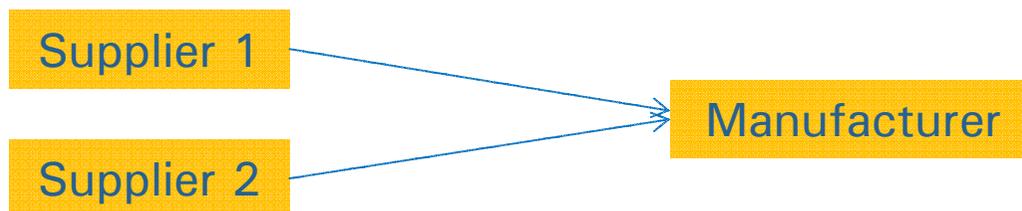


## i. „Supply Chain Aggregation“



Bicycle manufacturer purchases defective components from supplier → end product defective. Single PL loss or series of PL losses.

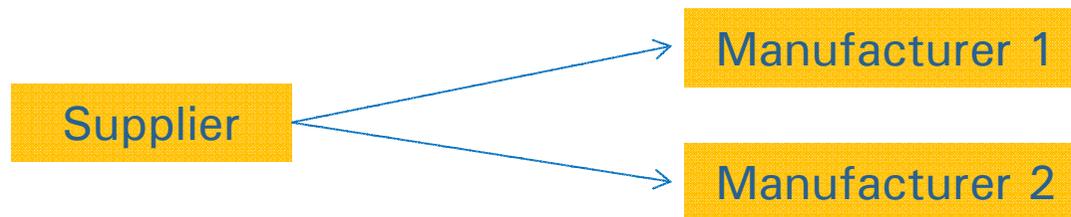
## ii. „Several Suppliers Aggregation“



Food manufacturer purchases a certain additive from different suppliers; the additive turns out to be harmful to human health. Most probably a series of PL losses occur.



## iii. Common Supplier Aggregation



Two manufacturers purchase a defective component from one supplier → end products are defective.

„Loss occurrence shall mean:

- *For Liability Coverages with one single loss event:*

All losses arising out of one accident ... (as example 1.a., see next slide )



- **“Loss Occurrence” shall mean:**

*For Liability Coverages with one single loss event:*

All losses arising out of **one accident or loss event** taking place in its entirety at a **specific moment in time** and at a **specific place**. Losses arising out of **multiple accidents or loss events** (including multiple claims series events), taking place at different moments and places, even if traceable to the same cause, causative agency or origin, **shall not constitute** one “loss occurrence”.



- *For Products Liability Coverages:*

A **series of two or more claims** against **two or more Original Insureds** arising from **one specific common cause** which is attributable to **one design and/or specification and/or formula** in

1. - *«supply chain or several suppliers aggregation»* - a product distributed by one manufacturer or distributor, regardless whether insured with the reinsured or not, where the common cause is attributable to **an ingredient or component part of the product**, which is provided by one or more supplier(s) insured with the reinsured);

or



### 2. - «*common supplier aggregation*» -

products supplied by more than one Original Insured, where the common cause is attributable to the **same ingredient or component part of the products**, which is provided by one and the same supplier, regardless whether the supplier is insured with the reinsured or not.”

Variations of the clause can occur according to the necessities of the parties (f.ex. several suppliers combined with several manufacturers/distributors), but it is **preferable not to broaden too much** the possible scenarios.

# Specific Common Cause Event Definition



- *For Professional Indemnity Coverages:*

A series of two or more claims against two or more Original Insureds arising from one specific common cause which is attributable to a **specific services and/or piece of advice** supplied by one professional, whether insured by the reinsured or not."

Note: PI clash scenarios may occur in very rare cases.



As at least two policies are involved in the clash scenario, a provision is necessary about determining the date of loss applicable to the treaty.

**Principle:** The **earliest date of loss** as defined in the different policies **determines in which treaty period** the whole clash scenario is covered.

**Alternative:** So-called „**interlocking clause**“. Procedure: If the different policies provide for dates of loss in **different reinsurance years**, the loss is distributed to these year proportionally, **reducing limit and attachment point accordingly** – a very complicated procedure.



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