

California Court of Appeals uses common sense and holds there was no "Accidental Contamination" for lost business as a result of a competitor's E. coli outbreak

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In *Fresh Express Incorporated v. Beazley Syndicate 2623/623 At Lloyd's*, the Court of Appeals of California, Sixth District, reversed an earlier ruling by the trial court in favor of produce giant Fresh Express. In its September 8, 2011 decision, the Court of Appeals found that the plain language of the subject insurance policy precluded coverage for losses claimed by Fresh Express suffered during the E. coli outbreak of 2006.

Background

Beazley Syndicate 2623/623 at Lloyd's and QBE Insurance (Europe) Limited (collectively "Beazley") issued a "TotalRecall+" insurance policy to Fresh Express Incorporated (Fresh Express), a company that markets bagged spinach. The policy type was identified as "Malicious Contamination, Accidental Contamination and Products Extortion Insurance." Only the "Accidental Contamination" coverage was at issue, and the policy contained an "Accidental Contamination" limit of \$12 million "per Insured Event and in the aggregate."

In September 2006, the FDA issued an alert advising consumers that they should not eat bagged fresh spinach due to an outbreak of E. coli. The FDA withdrew the advisory two weeks after the source of the outbreak had been identified. Fresh Express was not the source of the E. Coli outbreak, but suffered a significant loss of business because of the FDA advisory.

Fresh Express submitted a claim under the policy, and Beazley denied coverage. Fresh Express subsequently filed a breach of contract action against Beazley alleging that Fresh Express' decision to make two spinach purchases from ranches in August 2006 that had not met the Company's food safety rules constituted an error under the policy's "Accidental Contamination" coverage. Fresh Express prevailed and recovered the \$12 million policy limit at trial. The trial court found that Fresh Express had made "errors within the meaning of the Policy" related to the purchasing of spinach from two locations that did not meet company safety standards and that the "the ultimate cause of Fresh Express' losses was the E. coli outbreak itself."

Appeal

Beazley appealed on the basis that the trial court awarded damages for losses that did not come within the policy's coverage for losses that were a "direct result" of an "Insured Event" of "Accidental Contamination." Beazley contended that the trial court erroneously defined the "Insured Event" under the policy as the E. coli outbreak. In fact, there was no evidence to show that any Fresh Express products were the cause of the E.

coli outbreak. Beazley, therefore, contended that all of the losses established by Fresh Express at trial were attributed to the E. coli outbreak, an event that was not covered under the policy, rather than to “Accidental Contamination”, the only covered event under the policy.

The Court of Appeals found that the policy’s plain language contradicted the trial court finding that the E. coli outbreak was an “Insured Event” under the policy. First, the Court noted that the policy provided that Beazley will “reimburse [Fresh Express] for losses as specified in this Policy arising out of Insured Events ... incurred by [Fresh Express] . . . only where such losses arise because of . . . Accidental Contamination [or another specified Insured Event].” Thus, the Court held that the policy clearly covers only losses that arise from and because of an “Insured Event.” The only “Insured Event” at issue was “Accidental Contamination” which was defined in the policy as “error by [Fresh Express] in the manufacture, production, processing, preparation, [or] assembly ... of any Insured Products ... which causes [Fresh Express] to have reasonable cause to believe that the use or consumption of such Insured products has led or would lead to” bodily injury. The Court then held that because the policy equates “Insured Event” and “Accidental Contamination,” the policy restricts recoverable losses to those “arising out of” an error by Fresh Express. The Court held that the E. coli outbreak was not an error by Fresh Express and could not qualify as “Accidental Contamination” and, thus, was not an “Insured Event” under the policy.

Conclusion

The Court of Appeals for California found that the trial court’s ruling that the “Insured Event” was the E. coli outbreak directly contradicted the express terms of the policy. The Court of Appeals found that the E. coli outbreak could not be considered “Accidental Contamination” under the policy, as the E. coli outbreak was not an “error” by Fresh Express. By ruling in favor of Beazley, the Court of Appeals sent a message that the terms of a policy of insurance should be interpreted according to their plain meaning. The holding is one of clear common sense, that is, the definitions and terms of a policy should not be so tortured so as to make the plain words of the policy meaningless.