

Insurer Must Cover Damages Stemming From Incorporation Of Insured's Contaminated Ingredient Into Third-Party's Product, Says North Carolina Court

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A North Carolina federal district court granted a policyholder's summary judgment motion, ruling that a general liability policy covered damages resulting from the incorporation of the insured's contaminated ingredient into a pet food company's product. *Penn Nat'l Sec. Ins. Co. v. LinkOne SRC, LLC*, 2021 WL 2345164 (E.D.N.C. June 8, 2021).

LinkOne, a company that provides fresh and frozen ingredients to pet food manufacturers, discovered that a cleaning brush was left in a tanker truck that was subsequently filled with LinkOne's product and delivered to a pet food manufacturer. Based on the contamination, the pet food company shut down its production line and destroyed the tainted product. LinkOne reimbursed the company and sought coverage from Penn National. The insurer denied the claim based on the lack of "property damage" and several policy exclusions. In ensuing litigation, the court granted LinkOne's summary judgment motion.

The court ruled that the damages the pet company incurred from its production shutdown and product recall were "because of property damage," defined as "physical injury to tangible property, including all resulting loss of use of that property . . . or loss of use of tangible property that is not physically injured." The court rejected Penn National's contention that the only property damaged was LinkOne's own property, which was excluded under the policy. The court acknowledged case law in other jurisdictions finding no coverage for the incorporation of the policyholder's contaminated ingredient into a third-party's product, but deemed those decisions unpersuasive and not controlling.

The court also ruled that coverage was not barred by a product recall exclusion. The court noted that the damages sought were not for "goods or products . . . manufactured, sold, handled, distributed or disposed of by" LinkOne, as required by the exclusionary language, because it was the pet food company, rather than LinkOne, that manufacturer and disposed of the final product. In addition, the court held that damages were not excluded by an "impaired property" provision, which applied to property that "can be restored to use" by removal or replacement of LinkOne's product.

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