TWO CONTAMINATION DECISIONS AFFIRMED ON APPEAL

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The Hueske decision construed a first-party Farm/Ranch policy and an umbrella policy issued by State Farm. Both policies contained similar business pursuits exclusions, which excluded coverage for property damage arising out of the insured’s business pursuits. Because the insured had sold several thousand tons of corn syrup to ranchers over the course of two years, the court concluded that insured’s activities were continuous and motivated by profit. Id. Accordingly, the court held that the business pursuits exclusion applied to exclude coverage for the claimants’ claims. Id. On appeal, the Eighth Circuit affirmed, adopting the “reasons stated in the [district court’s] thorough and well-reasoned opinion.”

The Truitt decision construed a vermin exclusion in a first-party policy issued by ACE American. The exclusion provided that a loss caused by vermin was excluded “unless caused by a Covered Cause of Loss not excluded elsewhere” in the policy. An exception to the exclusion, however, provided that losses from vermin are excluded “only if the vermin infestation was, in turn, caused by a different exclusion in the policy.” Because the alleged infestation was caused by poor sanitation practices, and the insurer provided no evidence showing that a risk excluded in a separate provision of the policy caused the rat infestation, the court concluded that summary judgment in favor of the insureds was appropriate. The Georgia Supreme Court denied certiorari, and as such, the appellate court’s decision construing an exception within an exclusion stands.

The relevant portion of the Truitt decision reads:

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For a further analysis of the coverage issues raised in the context of food contamination and product recall claims, please contact Joe Bermudez, Jason Melichar or Suzanne Meintzer of Cozen O’Connor’s Denver, Colorado office.