

CONTAMINATED BREAD CLAIMS DO NOT RISE TO COVERAGE: GEORGIA COURT OF APPEALS APPLIES EXCLUSION M

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The Georgia Court of Appeals recently upheld an insurer's denial of coverage for claims related to use of contaminated bread through application of Exclusion m, the impaired property exclusion. *See Lavoie Corp. v. National Fire Ins. of Hartford*, 666 S.E.2d 387, 395 (Ga. Ct. App. 2008).

National Fire Insurance of Hartford ("Hartford") insured Lavoie Corporation ("Lavoie"), which provided contaminated bread to a franchise sandwich restaurant. *Lavoie*, 666 S.E.2d at 393-94. The restaurant asserted several causes of action against Lavoie, including breach of warranty, strict liability, deceptive trade practices, interference with business relations and violation of federal anti-trust laws. *Id.* at 394. After Lavoie tendered its defense to Hartford, Hartford denied coverage, applying Exclusion m. *Id.* The trial court entered summary judgment in Hartford's favor. *See Id.* at 389.

On appeal, Lavoie argued that the restaurant may have been able to prove that the contaminated bread caused property damage to the restaurant and bodily injury to its customers. *Id.* at 395. The Georgia Court of Appeals rejected the insured's argument, reasoning that "[t]here is no allegation in the complaint that any . . . customers sustained bodily injury." *Id.*

Additionally, the court rejected the insured's argument that the restaurant may have been able to prove that it sustained property damage because the definition of "impaired property" unambiguously included the contaminated bread the restaurant incorporated into its sandwiches. *Id.* The court further reasoned that even if the restaurant's complaint had alleged property damage in the form of returned sandwiches, those damages would not have been covered through application of the impaired property exclusion. *Id.* Because there was no coverage, the appellate court also affirmed the trial court's entry of summary judgment on the insured's bad faith claim. *Id.* at 395-96.

The *Lavoie* decision is significant because the court applied a business risk exclusion in concluding that there was no coverage for claims arising from the insured's contaminated product.

For further analysis of first- and third-party coverage issues involving food contamination claims, please contact Joe Bermudez, Jason Melichar or Suzanne Meintzer of Cozen O'Connor's Denver, Colorado office. Cozen O'Connor is a recognized leader in identifying and analyzing emerging trends in food contamination coverage.