



By
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It was a call to arms. "Food fight!" was immortalized in National Lampoon's *Animal House*. Nearly a generation later, different kinds of food fights are brewing nationwide. In turn, insurers must prepare to effectively handle emerging coverage issues surrounding the likelihood of a catastrophic food-borne outbreak and related contaminated food losses, originating domestically and internationally.

Historically, U.S. produce was handled by small, family-owned farm-

ing coverage under its property and business interruption insurance, the insured argued the government regulation impaired function and value of its product, causing a direct physical loss. Ruling for the insurer, the court held the insured's uncontaminated product did not suffer a direct physical loss related to the embargo.

Beyond the international front, the \$1 trillion food industry also is concerned with domestic trends involving centralized production and rising demand for processed, fast foods. The result: With more Americans getting foods from a handful of sources, and being exposed to evolving virulent food pathogens, people increasingly are susceptible to catastrophic food-borne contamination outbreaks of potentially unforeseen proportions.

When a devastating outbreak hits, each link in the food supply chain will be vulnerable and potentially liable. The economic impact will be cataclysmic. For coverage to potentially exist under traditional first- and third-party policies, some form of physical damage or injury is required. Even if a physical component is alleged, the loss may not fall within a policy's scope of coverage.

Additionally, certain exclusions, including business risk, contamination, faulty workmanship, governmental action, impaired property, pollution and sistership may apply. For example, in *Landshire Fast Foods of Milwaukee Inc. v. Employers Mutual Casualty Company*, the court applied the pollution exclusion and excluded coverage for a claim involving foods contaminated by *Listeria monocytogenes*.

Coverage disputes aside, many food-related businesses are not aware of their risks and available insurance coverage. Insurers are in a position to offer specialized policies and must continue to maintain knowledgeable and consistent coverage positions in managing these potential, multidimensional claims. Doing so will help them properly prepare for the next food fight. **EB**

Of Mad Cows And Litigators

When a food-borne illness breaks out, each link in the food supply chain becomes vulnerable and potentially liable.

ing operations. Today, however, 45% of our fruit, 17% of our vegetables and 80% of our seafood are imported. Globalization, outsourcing and offshoring are business trends creating worldwide food supply lines and increasing dependency on imported foods. Moreover, the U.S. Food and Drug Administration is capable of inspecting only 1% of imported foods over which it has jurisdiction, so our continued vulnerability to mass food contamination grows.

Source Food Technology Inc. v. United States Fidelity and Guaranty Company, an Eighth Circuit Court of Appeals decision rendered last year, raised some coverage issues surrounding imported foods. In that action, a domestic insured was shipping beef products from Canada. After detecting mad cow disease, the United States closed its border to importation of Canadian beef products. The insured's beef shipment was halted, resulting in lost business and customers. Seek-

Insurers are in a position to offer specialized policies to address insureds' coverage gaps.

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