



[www.cozen.com](http://www.cozen.com)

**PRINCIPAL OFFICE:**

**PHILADELPHIA**      **NEW YORK MIDTOWN**  
(215) 665-2000      (212) 509-9400  
(800) 523-2900      (800) 437-7040

**ATLANTA**      **NEWARK**  
(404) 572-2000      (973) 286-1200  
(800) 890-1393      (888) 200-9521

**CHARLOTTE**      **SANTA FE**  
(704) 376-3400      (505) 820-3346  
(800) 762-3575      (866) 231-0144

**CHERRY HILL**      **SAN DIEGO**  
(856) 910-5000      (619) 234-1700  
(800) 989-0499      (800) 782-3366

**CHICAGO**      **SAN FRANCISCO**  
(312) 382-3100      (415) 617-6100  
(877) 992-6036      (800) 818-0165

**DALLAS**      **SEATTLE**  
(214) 462-3000      (206) 340-1000  
(800) 448-1207      (800) 423-1950

**DENVER**      **TORONTO**  
(720) 479-3900      (416) 361-3200  
(877) 467-0305      (888) 727-9948

**HOUSTON**      **TRENTON**  
(832) 214-3900      (609) 989-8620  
(800) 448-8502

**LONDON**      **WASHINGTON, D.C.**  
011 44 20 7864      (202) 912-4800  
2000      (800) 540-1355

**LOS ANGELES**      **W. CONSHOHOCKEN**  
(213) 892-7900      (610) 941-5000  
(800) 563-1027      (800) 379-0695

**MIAMI**      **WILMINGTON**  
(305) 704-5940      (302) 295-2000  
(800) 215-2137      (888) 207-2440

**NEW YORK DOWNTOWN**  
(212) 509-9400  
(800) 437-7040

**500 Attorneys • 23 Offices**

**INSURED'S BREACH OF CONTRACT AND BAD FAITH  
CLAIMS CRUMBLE TO NOTHING**

**U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK, APPLYING NEW HAMPSHIRE LAW, HOLDS  
THAT THE "YOUR PRODUCT" EXCLUSION EXCLUDES  
COVERAGE FOR CONTAMINATED RASPBERRY CRUMBLE**

*By: Joseph F. Bermudez, Jason D. Melichar, and Suzanne M. Meintzer*  
jbermudez@cozen.com • jmelichar@cozen.com • smeintzer@cozen.com

On January 29, 2008, the U.S. District Court for the Southern District of New York applied the "your product" exclusion to exclude coverage for an insured's contaminated food product. *Tradin Organics USA, Inc. v. Maryland Cas. Co.*, No. 06 Civ. 5494 (WHP), 2008 U.S. Dist. LEXIS 5820 at \*7-8 (S.D.N.Y. Jan. 29, 2008) (applying New Hampshire law). Canadian-based Crofters Food Ltd. ("Crofters") purchased eighty metric tons of raspberry crumble from Tradin Organics USA, Inc.'s ("Tradin") Amsterdam-based parent. *Tradin Organics*, 2008 U.S. Dist. LEXIS at \*1. In order to fulfill the order, Tradin subcontracted with a Serbian company, which agreed to deliver the crumble directly to Crofters. *Id.* at \*2.

After Crofters accepted delivery of the crumble, the crumble "was discovered to contain plastic, pits, cherry stems, glass and other materials, and the Canadian government ordered it recalled." *Id.* Tradin agreed to compensate Crofters in the amount of \$214,444.32 for the contaminated crumble, and then filed a claim with Maryland. *Id.* Maryland denied coverage under the "your product" exclusion, which excluded coverage for "any property damage due to your product arising out of it or any part of it." *Id.* at \*3 (internal quotations omitted). The policy defined "your product" as "any goods or products . . . manufactured, sold, handled, distributed or disposed of by" Tradin. *Id.* at \*3 (internal quotations omitted). Tradin then brought breach of contract and bad faith claims against Maryland, asserting that it had a right to full reimbursement of the settlement amount. *Id.* at \*1-2. Both parties moved for summary judgment. *Id.* at \*1.

In granting summary judgment for Maryland, the court determined that New Hampshire law applied to the claims, since Tradin was a New Hampshire company, the policy was delivered to a New Hampshire agent, and the premiums were paid from New Hampshire. *Id.* at \*5-6. Because New Hampshire courts have not yet addressed the “your product” exclusion, however, the *Tradin Organics* court looked to New York and other jurisdictions and found that the “your product” exclusion unambiguously precludes coverage for “losses caused by a contaminated or defective product sold by the insured.” *Id.* at \*7. Consequently, the court entered summary judgment in favor of Maryland on Tradin’s breach of contract claim. *Id.* at \*8.

The court also dismissed Tradin’s bad faith claim on the ground that absent a breach of contract, there is no bad faith. *Id.* at \*9.

*For analysis on food contamination coverage issues or how Cozen O’Connor’s national team of food contamination coverage attorneys can assist you, please contact Joe Bermudez, Chair of the Food Contamination Coverage Practice Area. Cozen O’Connor is a nationally recognized leader in representing the insurance industry in all coverage areas, including food contamination claims.*

## ABOUT THE AUTHORS:

**Joseph F. Bermudez** is a member of Cozen O’Connor, where he concentrates his practice on insurance coverage matters. Joe is the Practice Area Leader of the firm’s Food Contamination Coverage Practice Area. He is also the head of the Denver Coverage Group. Joe has authored articles and lectured nationally on food contamination and product recall issues. He has extensive experience representing domestic and foreign insurance companies and underwriters in regard to matters involving complex insurance coverage and reinsurance issues. Since 1990, he has represented and counseled clients with respect to first-party, third-party and specialty coverage matters. Joe earned his bachelor of arts degree from Boston University, and his law degree from the University of Michigan Law School. He is admitted to practice in Colorado, New Jersey, New York, and the District of Columbia. Joe can be reached by phone at (720) 479-3926 or email at [jbermudez@cozen.com](mailto:jbermudez@cozen.com).

**Jason D. Melichar** is a senior associate in Cozen O’Connor’s Denver, Colorado office and practices in the firm’s Insurance Coverage Practice Group. He has counseled and litigated the resolution of numerous first-party and third-party coverage matters involving bad faith, business interruption, contamination, construction defects, employment practices, environmental, intellectual property disputes, products liability, toxic torts, property losses, punitive damages, commercial general liability, and advertising liability. Jason earned his law degree from the University of Denver Sturm College of Law in 1999. Jason can be reached by phone at (720) 479-3932 or by email at [jmelichar@cozen.com](mailto:jmelichar@cozen.com).



[Suzanne M. Meintzer](#) is an associate in Cozen O'Connor's Denver, Colorado office and practices in the firm's Insurance Coverage Practice Group. Suzanne has experience in representing insurance companies in complex first-party, third-party and specialty insurance coverage matters. Suzanne earned her law degree from the University of Denver Sturm College of Law in 2005, and her undergraduate degree from the University of Colorado at Boulder in 1994. Suzanne can be reached by phone at (720) 479-3909 or by email at [smeintzer@cozen.com](mailto:smeintzer@cozen.com).

© 2008 Cozen O'Connor. All Rights Reserved. Comments in the Cozen O'Connor Alert are not intended to provide legal advice. Readers should not act or rely on information in the Alert without seeking specific legal advice from Cozen O'Connor on matters which concern them.