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Presenter:

Steven J. Pudell

(973) 642-5858

spudell@andersonkill.com

Eight Things That Your Recall or Commercial Liability Insurance Company Won't Tell You

Disclaimer

The views expressed by the participants in this program are not those of the participants' employers, their clients, or any other organization. The opinions expressed do not constitute legal advice, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

Recalls

1. According to FDA.gov there have been 20 food recalls since October 17, 2013.
2. According to the CDC – food borne illness causes 300,000 hospitalizations and 5,000 deaths in the United States every year.
3. Food outbreaks cost the United States economy \$7 billion every year.

1. Your General Liability Policy May Provide Coverage for “Contamination” Events

Shade Foods v. Innovative Products
(Cal. App. 2000)

Travelers v. Dammann Vanilla
(D.N.J. 2008)

2. A 'recall' of your product doesn't always trigger 'contamination' coverage

Wornick Company v. Houston Casualty Co.
(S.D. Ohio 2013)

3. Your insurance company doesn't know what the policy means

THE UNDERWRITER

Q. So do you know why the word “impairment” was included in this policy?

A. No.

...

Q. Is there any place you would look to determine the word “impairment” in this definition?

A. It's not defined in our policy. So the answer is no.

Q. Do you know the intent behind the word “impairment”?

A. No.

...

Q. Do you have an understanding of how, if at all, impairment is different than contamination?

A. No

...

Q. ... did you select the word “impairment”?

A. I don't recall the genesis of that word in this policy. I really don't.

THE CORPORATE DESIGNEE

Q. Does HCC have an understanding of what the word “impairment” means?

...

A. I would have to defer to the underwriter.

THE LOSS ADJUSTER

Q. And do you have an understanding as to what the word “impairment” means under the policy?

A. No.

4. Insurance companies welcome ambiguity

Quick Service Management v. Certain Underwriters at Lloyds, London
(N.J. Superior Ct. 2007)

5. Good management may lead to no coverage

Phibro v. National Union
(N.J. Super. 2012)

and

Little Lady Foods v. Houston Casualty
(N.D. Ill. 2011)

6. Your insurance company may have to cover even when contamination has not been shown

Netherlands Ins. Co. v. Main Street Ingredients
(D. Minn. 2013)

7. Your insurance company is not even sure who wrote their policy

8. Insurance companies make money from denying and delaying claims

American Association for Justice (f/k/a “ATLA”)

1. “Questforgold” rewarding adjusters for “low payment goals.”
2. Allstate rewarded adjusters with prizes for low payouts
3. Washington Post 2005 – AIG replaced team in order to keep payouts low

Solutions

1. Read your policies
2. Speak to your brokers and risk managers
3. Give notice
4. Prepare to fight!

Thank You

Steven J. Pudell, Esq.

(973) 642-5877

spudell@andersonkill.com