



From the Courthouse Steps

In 2006, there was a widely reported incident, referred to as the “Taco Bell Outbreak” involving E. coli that was linked to contaminated lettuce. Following a headline grabbing, explosive few weeks, the case has been quietly in litigation since that time.

A recap: In 1999, the Taco Bell franchisees purchased a Food Borne Illness (FBI) policy to protect against revenue loss attributed to bad publicity following a contamination event. In 2003 the FBI policy was discontinued and the franchisees instead purchased a Trade Name Restoration (TNR) policy from the same Lloyd’s (London) underwriters.

At Issue: Lloyd’s asserted that its Aggregate Supplier Incident Sublimit, which was \$0, precludes insurance recovery for incidents stemming from alleged involvement of a ‘supplier’ and denied the claim. The pre-2003 FBI insurance contained no supplier sublimit (a coverage restriction).

The Outcome: On June 12, 2009, the franchisees were granted a partial summary judgment in New Jersey Superior Court. In short, the judge found the policyholders reasonably believed the new policy “was tantamount to a renewal of those (policies) issued earlier which would mirror the terms of the coverage...afforded in the past.” Going on, the court noted that the marketing material for the TNR insurance stated, “Even the best restaurants can suddenly be trapped in an infectious health situation...due to a food borne illness or supplier mistake.”

Three Lessons:

1. Policy language failed to distinguish adequately between “the Insured’s Products” and an “ingredient” (supplied by others). Accepting off-the-shelf policy language can result in a completely unsatisfactory outcome at the time of a claim. Be sure your policy is being negotiated by an expert who understands the restaurant business and who pays attention to detail.
2. Underwriters are trying to restrict restaurant companies’ coverage and available limits for the biggest source of food borne illness: suppliers.
3. Relying on marketing materials, ambiguous policy language and an aggressive pursuit of coverage can eventually lead to coverage. Wouldn’t it be more efficient and smarter to iron that out on the front end?



Passion. Innovation. Accountability.

www.beechercarlson.com
1-800-657-0243