AGRIBUSINESS

CONTAMINATED PRODUCT INSURANCE POLICY HELD VOID DUE TO INSURED'S MISREPRESENTATIONS

by Kimberly J. Ruppel and Samantha A. Pattwell

A federal appeals court recently held void a product contamination policy issued to H.J. Heinz Company on the basis that Heinz failed to disclose previous contamination claims on its insurance application. [1]

In 2014, Heinz recalled baby cereal manufactured in China after Chinese authorities informed Heinz that it was contaminated with lead. Heinz filed a claim under its Starr Surplus Lines Insurance Company accidental contamination insurance policy, seeking indemnification for losses, and subsequently filed a lawsuit when Starr refused coverage. Starr counterclaimed, seeking to rescind the policy on the basis that Heinz failed to disclose or misrepresented material information in its application for coverage.

Specifically, the insurance application requested disclosure of all product withdrawals or recalls, and governmental regulatory issues and fines for the prior 10 years. In response, Heinz provided a loss history which disclosed only one loss in that timeframe in excess of the amount of coverage sought. Yet, Heinz failed to disclose a loss in excess of $10 million which occurred just prior to the policy's inception, resulting from excessive levels of nitrite discovered in Heinz's baby food manufactured in China. Heinz also neglected to disclose other large claims, including a fine imposed by the Chinese government in connection with mercury contaminated baby food. Starr claimed that it relied on Heinz's statements in its insurance application when it decided to sell the contamination policy to Heinz, and that had it known the truth about Heinz's misrepresentations, it would not have issued the policy, or would only have made the policy available to Heinz on different terms.

The District Court found that the Heinz employee who completed the insurance application intentionally misrepresented facts about the company's loss history in the application in order to obtain a lower premium for a lower coverage amount. The Third Circuit agreed, declaring the materiality of Heinz's misrepresentations to be "self-evident."

Rescission of an insurance policy is a drastic remedy and not allowed lightly by the courts. However, when a court is presented with clear and convincing evidence of material misrepresentation in the application process, the protections of an insurance policy may be lost entirely. Tactics such as attempting to minimize, distinguish, or completely failing to disclose claims that are similar to the type of coverage requested may result in voiding coverage at a time when a company may need it the most.

Agri-business companies interested in consultation about contaminated product insurance policies are encouraged to contact the authors.

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[1] *H.J. Heinz Company v. Starr Surplus Lines Insurance Company*, No. 16-1447, -- Fed. Appx. --; 2017 WL 108006 (3rd Cir. January 11, 2017).

FOR MORE INFORMATION CONTACT:

Kimberly J. Ruppel is a Member in Dickinson Wright's Troy office. She can be reached at 248.433.7291 or kruppel@dickinsonwright.com.

Samantha A. Pattwell is an Associate in Dickinson Wright's Lansing office. She can be reached at 517.487.4776 or spattwell@dickinsonwright.com.