

Ohio Court Rules That Contaminated Baby Food Is Not Covered Property Damage

02.25.19



(Article from *Insurance Law Alert*, February 2019)

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An Ohio court ruled that an insurer has no duty to defend or indemnify claims arising out of the accidental contamination of egg-free baby food with eggs, finding that such claims did not allege covered property damage. *Scottsdale Ins. Co. v. Spring Hill Jersey Cheese, Inc.*, No. 17 CV H 03 0209 (Ohio Ct. Com. Pl. Jan. 23, 2019).

Nature's One, a baby food manufacturer, ordered egg-free dry milk from Spring Hill to use in its egg-free baby formula products. In 2015, Spring Hill inadvertently delivered dry milk that was not egg-free. The error was not discovered until after the nonconforming dry milk was mixed with other ingredients. Because the ingredients were impossible to separate, Nature's One was unable to sell the formula. In ensuing litigation between Nature's One and Spring Hill, Scottsdale provided a defense to Spring Hill but reserved its right to deny coverage. Thereafter, Scottsdale sought a declaration that it had no duty to defend or indemnify Spring Hill.

The court granted Scottsdale's summary judgment motion, ruling that Nature's One did not suffer "property damage" under the policy. The court held that under both Ohio and California law, the mere presence of a defective ingredient or component (without resultant harm or damage to other property) does not constitute "physical injury to tangible property." The court also held that Nature's One did not experience a "loss of use" of property. The court reasoned that Nature's One suffered a "loss of value" rather than a "loss of use."

Finally, the court held that Scottsdale was not estopped from denying coverage based on its defense of Spring Hill for approximately seventeen months prior to reserving its rights. The court explained that estoppel requires a showing of prejudice and that allegations of prejudice based on the possibility of settlement prior to the reservation of rights were "completely speculative."

Authors and Contacts

[Bryce Friedman](#)
Partner

bfriedman@stblaw.com

+1-212-455-2235

