

Nothing Cheesy About Needing to Allege Personal Injury for Coverage

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Nearly all commercial general liability and excess liability insurance policies require in their coverage grants that the damages the insureds are legally obligated to pay are because of bodily injury or property damage. It may seem simple, but for insurance to apply, the allegations made have to fit reasonably within the coverage provided. In a recent case, a New York motion court addressed whether allegations in an underlying class action about mislabeling Parmesan cheese fall within the coverage grants of a series of commercial general liability policies.

In [Travelers Property Casualty Company of America v. ICCO Cheese Co., Inc.](#), No. 652787/2016 (N.Y. Sup. Ct. Oct. 28, 2019), insurers moved for summary judgment seeking a declaration that they did not have to defend or indemnify the policyholder and additional insured for the underlying class actions. The court granted the motion.

The case was about allegedly mislabeled Parmesan cheese. The insurance policies each covered the insured's legal obligation for damages because of bodily injury or property damage. Bodily injury and property damage was defined in the normal way (bodily injury, sickness or disease; physical injury to tangible property). The policies also excluded coverage for contractual liability.

The insurance companies moved for summary judgment contending that the underlying class action complaint did not plead facts supporting coverage. In other words, there were no claims for bodily injury or property damage. The damages, as characterized by the court were essentially for overpayment.

In granting the insurers' motions, the court stated that the critical issue before it was whether the underlying class action complaint negated the possibility of coverage under the policies. It held that because, as alleged, the underlying complaint presented no facts that set forth a claim for any covered categories or otherwise had a cause of action or demand related to any covered categories, the motion was granted. The court found that all of the claims related to deceptive labeling and overpayment, which were not covered under the insurance policies. As the court stated, "the death knell tolls for Defendants' position because none of the facts or causes of action alleged . . . relate to claims for bodily injury or property damage."

The court rejected arguments that there may be a possibility of coverage and, therefore, a duty to defend. The court found that at most the allegations alleged that certain underlying plaintiffs may have ingested the cheese containing more of an ingredient that they alleged to be potentially hazardous than they were expecting, and that they overpaid and did not get the cheese that they bargained for.” The court found further that “[i]n no case do any of the underlying complaints as currently pled allege that as a result of ingesting the cheese, any plaintiff was injured or any property damage was sustained.”

Although insurance was in place, it was not the kind of insurance that covered the actual claims being made.

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