

Recall and Recoup: Georgia Court Denies Insurer's Early Motion to Escape Contribution Claim Arising from \$51 Million Product Recall Coverage Dispute

Article By:

Syed S. Ahmad

Geoffrey B. Fehling

A federal judge has denied an insurance company's motion to dismiss the claims of another insurer seeking reimbursement and contribution for the \$15 million it paid to settle underlying claims arising from a product recall.

In May 2016, Grain Craft, an independent flour miller, voluntarily recalled certain flour orders that were contaminated by trace amounts of peanut protein. Grain Craft's customers asserted claims against the company and its insurers, seeking compensation for "property damage" incurred from incorporating the contaminated flour into their products. The insurers covered the customers' claims under two separate towers of insurance including several general liability, umbrella, and excess policies. One excess insurer, Travelers, paid \$15 million to resolve various recall-related claims. Travelers then filed [a complaint](#) against the other insurers to recoup its \$15 million payout, alleging that the other insurers did not properly exhaust their policy limits and were unjustly enriched by Travelers' payment.

North River, the excess insurer directly above Travelers in the two insurance towers, [moved to dismiss](#) Travelers' complaint for failure to state a claim. North River characterized Travelers' allegations that North River was "unjustly enriched" and that Travelers was entitled to recover its payment as "conclusory statements devoid of factual enhancement" that are "not entitled to the assumption of truth." Specifically, North River argued that Travelers' bare allegations were because North River cannot be liable for equitable contribution because it "sits atop Travelers" and, therefore, had no obligation to pay the recall claims unless and until Travelers had first exhausted its limits.

Following virtual oral argument, the judge denied North River's motion to dismiss, finding that there could be a legal basis for the claim of recovery. The judge ordered the parties to attend mediation within the next 60 days and to proceed with discovery. The judge reportedly expressed skepticism about the viability of Travelers' unjust enrichment claim but concluded that discovery would reveal each insurer's responsibility for allocating the settlement payments at issue.

Insurance coverage for product recall-related claims can come in various sources. Companies can

purchase standalone recall policies, which typically cover the costs of shipping, storing, and disposing of the recalled products, the cost of damage products caused by contamination, loss of profits resulting from the call, and other kinds of rehabilitation and crisis-related expenses. Recall coverage, however, can also come from “traditional” policies, like commercial general liability and umbrella policies, which can be triggered because of the allegations of “bodily injury” or “property damage.” For example, Grain Craft’s customers triggered coverage under the company’s liability policies by alleging property damage when the customers incorporated contaminated four into their products.

In the Grain Craft dispute, the insurers took appropriate steps by first protecting the policyholder in resolving the underlying claims and then pursuing various legal and equitable claims amongst themselves to attempt to allocate loss. North River’s position that generic allegations of unjust enrichment and entitlement to recoupment of insurance payments were insufficient to state a claim was noteworthy, as many times it is the policyholder making those arguments in disputing recoupment claims by insurance companies. The excess insurer in this case was unsuccessful, at least until discovery concludes. We will continue to monitor this interesting recall dispute for further developments.

Casey L. Coffey contributed to this article.

Copyright © 2025, Hunton Andrews Kurth LLP. All Rights Reserved.

National Law Review, Volume X, Number 325

Source URL: <https://natlawreview.com/article/recall-and-recoup-georgia-court-denies-insurer-s-early-motion-to-escape-0>