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## INSURED'S BREACH OF CONTRACT AND BAD FAITH CLAIMS CRUMBLE TO NOTHING

### U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, APPLYING NEW HAMPSHIRE LAW, HOLDS THAT THE "YOUR PRODUCT" EXCLUSION EXCLUDES COVERAGE FOR CONTAMINATED RASPBERRY CRUMBLE

*By: Joseph F. Bermudez, Jason D. Melichar, and Suzanne M. Meintzer*  
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On January 29, 2008, the U.S. District Court for the Southern District of New York applied the "your product" exclusion to exclude coverage for an insured's contaminated food product. *Tradin Organics USA, Inc. v. Maryland Cas. Co.*, No. 06 Civ. 5494 (WHP), 2008 U.S. Dist. LEXIS 5820 at \*7-8 (S.D.N.Y. Jan. 29, 2008) (applying New Hampshire law). Canadian-based Crofters Food Ltd. ("Crofters") purchased eighty metric tons of raspberry crumble from Tradin Organics USA, Inc.'s ("Tradin") Amsterdam-based parent. *Tradin Organics*, 2008 U.S. Dist. LEXIS at \*1. In order to fulfill the order, Tradin subcontracted with a Serbian company, which agreed to deliver the crumble directly to Crofters. *Id.* at \*2.

After Crofters accepted delivery of the crumble, the crumble "was discovered to contain plastic, pits, cherry stems, glass and other materials, and the Canadian government ordered it recalled." *Id.* Tradin agreed to compensate Crofters in the amount of \$214,444.32 for the contaminated crumble, and then filed a claim with Maryland. *Id.* Maryland denied coverage under the "your product" exclusion, which excluded coverage for "any property damage due to your product arising out of it or any part of it." *Id.* at \*3 (internal quotations omitted). The policy defined "your product" as "any goods or products . . . manufactured, sold, handled, distributed or disposed of by" Tradin. *Id.* at \*3 (internal quotations omitted). Tradin then brought breach of contract and bad faith claims against Maryland, asserting that it had a right to full reimbursement of the settlement amount. *Id.* at \*1-2. Both parties moved for summary judgment. *Id.* at \*1.

In granting summary judgment for Maryland, the court determined that New Hampshire law applied to the claims, since Tradin was a New Hampshire company, the policy was delivered to a New Hampshire agent, and the premiums were paid from New Hampshire. *Id.* at \*5-6. Because New Hampshire courts have not yet addressed the “your product” exclusion, however, the *Tradin Organics* court looked to New York and other jurisdictions and found that the “your product” exclusion unambiguously precludes coverage for “losses caused by a contaminated or defective product sold by the insured.” *Id.* at \*7. Consequently, the court entered summary judgment in favor of Maryland on Tradin’s breach of contract claim. *Id.* at \*8.

The court also dismissed Tradin’s bad faith claim on the ground that absent a breach of contract, there is no bad faith. *Id.* at \*9.

*For analysis on food contamination coverage issues or how Cozen O’Connor’s national team of food contamination coverage attorneys can assist you, please contact Joe Bermudez, Chair of the Food Contamination Coverage Practice Area. Cozen O’Connor is a nationally recognized leader in representing the insurance industry in all coverage areas, including food contamination claims.*

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