



COUGHLIN DUFFY LLP

CASE ALERT, NO. 6

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COUGHLIN DUFFY LLP ACHIEVES REVERSAL FROM APPELLATE DIVISION ON APPLICABILITY OF BUSINESS RISK EXCLUSION

On August 9th, in an appeal argued by Kevin E. Wolff of Coughlin Duffy LLP, the New Jersey Appellate Division reversed the trial court and held that the business risks exclusion contained in a CGL policy excluded claims for costs borne by an insured's customers in recalling beverages contaminated during production. Further, the Court concluded that claims arising from a general recall of the insured's product were specifically excluded by the CGL policy's "sistership" exclusion.

In *Atlantic Mutual Ins. Co., etc. v. Hillside Bottling Co., Inc., etc., et al.*, the insured manufactured carbonated beverages on behalf of customers utilizing ingredients supplied by both the customer and the insured. After a beverage from the insured's plant was found to be contaminated with ammonia during the production process, the insured's customers recalled all the beverages that had the insured's product code.

In excluding coverage under the business risks exclusion, the Court explained that a party's liability to others for its own faulty work is a matter of warranty and not insurance coverage. This holding is consistent with established law under the principles articulated by the New Jersey Supreme

Court in *Weedo v. Stone-E-Brick*. The Court further explained that the insuring clause in a standard CGL policy does not cover an "accident of faulty workmanship but rather faulty workmanship which causes an accident." Thus, claims arising from the creation of a contaminated product were precluded by the CGL policy's business risks exclusion since they arose out of damage to "your product" or "your work."

The Court further explained that the "sistership" exclusion barred claims arising from the recall of the insured's own product because the damages sought were based on the product recall. The "sistership" exclusion limits coverage provided under the CGL policy by excluding the cost of recalling apparently undamaged products to search for damaged products not yet discovered. The Court determined that the insured's recall extended to all of the beverages that bore its plant code without regard to whether the products were actually contaminated. Thus, the Court concluded the claims arising from the recall fell under the purview of the "sistership" exclusion.

Please call us with any questions or comments.

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