

Food Service - Significant Ruling on PLIS Trade Name Product



The Taco Bell decision

June 2009: A New Jersey Superior Court Judge has ruled against Lloyd's of London and its coverholder PLIS in a high-profile dispute over coverage under a Trade Name Restoration (TNR) insurance policy held by Taco Bell franchisees affected by a 2006 E. coli contamination incident in the northeastern states.

Lloyd's had argued that a zero-dollar aggregate supplier incident sublimit in the franchisees TNR policy ruled out indemnification for losses arising from products provided by third party suppliers – in this case pre-washed and bagged lettuce to which the contamination was eventually traced.

The franchisees argued that having switched from a discontinued Food Borne Illness (FBI) policy, originally taken out in 1999, to a TNR policy they had not understood or been made aware that the coverage previously in place for losses arising from contaminated products supplied by third parties was no longer in place.

Gray areas in contamination coverage

In this instance Judge Phillip Lewis Palley gave the policyholders the benefit of the doubt. In reaching his decision, he was influenced by:

- the apparent anomaly of a zero-dollar sublimit applied to an area of cover previously in place and not expressly excluded by the replacement policy
- ambiguities in the policy wording
- marketing materials that specifically cited incidents such as that which led to the claim

- Lloyd's unpersuasive insistence that the lettuce was a product (to which the offending sublimit would apply) rather than an ingredient (to which it would not).

Although at this point the insured parties appear to have prevailed – and Lloyd's may yet decide to appeal this decision – the case raises worrying issues around the lack of clarity in certain TNR policy wordings, underlining the importance of involving specialist expertise in arranging cover against the financial consequences of contamination incidents.

If the franchisees genuinely believed that the disputed coverage was in place, the interpretation of who was responsible for this potentially costly misunderstanding could have been decided less favorably for the policyholder and their brokers. It is absolutely essential that other insureds and their brokers avoid falling into gray areas such as those uncovered in the PLIS wording.

Specialist protection

The US fast food and casual dining sector encompasses over a million outlets with annual revenues of US\$537bn.

Trade names like Taco Bell are meant to inspire consumer confidence in a familiar and safe dining experience. But mechanization of food preparation has led to many severe outbreaks of food borne illness attracting widespread negative publicity which can hurt both trade name owners and their franchisees.

Casualty policies respond only to the legal consequences of such incidents. Extensions to property policies for contingent

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business interruption are rarely available and limited in scope. Insurance protection for loss of revenue has been available for over ten years, but on a limited basis, using wordings derived from product contamination policies.

There is now a thriving market in London for insurance protection against loss of business income arising out of a food borne illness outbreak and attendant publicity.

The PLIS scheme placed at Lloyd's – whose potential pitfalls have been highlighted in the Taco Bell ruling – now looks likely to undergo a policy wording review. But two other markets, Catlin and XL offer broad form wordings that provide an attractive alternative.

The Taco Bell case underlines how important it is for brokers to explain fully what cover the PLIS TNR policy offers and the impact of the sublimits it contains. There are clear risks involved for policyholders who rely on brokers who may not have fully understood these implications – and an obvious need for brokers who can bring a more expert specialist focus to bear. As specialists in this complex area, Lockton is ideally placed to help evaluate restaurant businesses' existing protections and ensure they have cover in place that precisely fits their needs.

About Lockton

Lockton is the largest independent, privately owned, global insurance broker and employs more than 3,800 people. Lockton delivers services throughout the world to businesses of all sizes, as well as individual clients. It was founded by Jack Lockton in Kansas City, Missouri, USA, in 1966 and from a modest, home-based insurance agency, has become one of the largest insurance brokers in the world.

Lockton International is a partner in EOS RISQ, Europe's leading insurance broker and risk management consultancy. Our extensive international presence across the world means we are always close at hand whenever and wherever you need us.

Further information

Our advice is free, our experience invaluable. Call us and we can help you face the future with confidence. For further information on product guarantee and recall, please contact:

For full details of the court ruling, please click on the link below www.uk.lockton.com/resources/email/TacoBell/Tacobell.pdf



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