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## **Despite Often Presumed Limitations, Policyholders May Have General Liability Coverage for Supply Chain-Related Breaches of Contract and Damages That Result in Recall**

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The Eighth Circuit recently confirmed that the all-too-common conceptions that breaches of contract and damages that result in recall are never covered by general liability insurance are, in fact, misconceptions.

In *Netherlands Insurance Co. v. Main Street Ingredients, LLC*, 2014 WL 1012793 (8th Cir. Mar. 18, 2014), the policyholder, Main Street Ingredients, LLC (“Main Street”) had purchased dried milk from Plainview Milk Products Cooperative (“Plainview”) and sold it to Malt-O-Meal Company (“Malt-O-Meal”) for Malt-O-Meal to incorporate into its instant oatmeal product. Two years after the sale, the FDA determined that the dried milk had been manufactured in unsanitary conditions and therefore was “adulterated” under the Federal Food, Drug, and Cosmetic Act. As a result, Plainview recalled the dried milk, and Malt-O-Meal recalled the instant oatmeal that contained the dried milk. Malt-O-Meal then sued Main Street (the policyholder) for strict liability and breach of contract. The court in the underlying action granted summary judgment for Main Street on the strict liability claim, and the parties settled the breach of contract claims.

In an effort to avoid its obligations, Netherlands Insurance Company (“Netherlands”) argued that there was no coverage because, Netherland argued, the policy covered only “occurrences” resulting in “property damage,” breach of contract did not constitute an “occurrence,” and the purchaser’s property had not been “damaged.” The insurer also argued that the policy’s exclusion for recalls of the policyholder’s products barred coverage.

The court disagreed with both arguments. First, the court held that there was an “occurrence” (which the policy defined to include an “accident”) because the breach of contract was unintentional. The court also found that because the instant oatmeal included the “adulterated”

dried milk, and the dried milk could not be separated from the oatmeal, the instant oatmeal had sustained “property damage.” And finally, the court found that the policy’s recall exclusion did not bar coverage because the policyholder’s loss arose from property damage to a third party’s product (the instant oatmeal), not because the dried milk that the policyholder sold had been recalled.

The Eighth Circuit’s ruling demonstrates the importance of considering both a company’s place in the supply chain and the interaction of different provisions when placing and updating general liability coverage.