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PRODUCT RECALL INSURANCE – COURT UPHOLDS ANOTHER COVERAGE DENIAL

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Two cases have now addressed insurance coverage under product recall policies. In both cases, the court upheld the insurers' coverage denial.

In *Little Lady Foods, Inc. v. Houston Casualty Company*, No. 10 C 8280 (N.D. Ill. Sept. 22, 2011), Little Lady had purchased a "Malicious Product Tampering/Accidental Product Contamination" insurance policy from Houston Casualty. In relevant part, the policy provided coverage for "any accidental or unintentional contamination."

Little Lady began to produce a product through a new process. As part of its Hazard Analysis and Critical Control Program, and also as required by the United States Department of Agriculture, Little Lady tested the product for bacteria. The results showed bacteria of the *listeria* genus. That genus included *Listeria Monocytogenes* ("LM"), which could cause sickness or death. As a result, Little Lady put a hold on 57,374 cases of the product.

When Little Lady reported the claim to Houston Casualty, Houston Casualty said that the product had to test positive specifically for LM. Later tests came back negative for LM. However, the hold on the product made it necessary to sell some of the product in the secondary market and to destroy the rest.

Houston Casualty denied coverage because there was no contamination. The court agreed.

As in [Fresh Express](#), a hyper-technical reading of the policy might support the court's conclusion. However, in both *Fresh Express* and *Little Lady*, the policyholder clearly believed that it was purchasing protection from this risk. These two decisions do not auger well for food companies that purchase product recall policies. It appears that once again, insurers will "run for cover, rather than for coverage."

Please contact [Robert D. Chesler, Esq.](#), [Rachel M. Wrightson, Esq.](#) or any of the attorneys in Lowenstein Sandler's [Insurance Law Practice Group](#) with questions related to this alert or other insurance coverage issues.

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