

Food contamination risks:

A case study on a contamination event

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Do you think that food contamination and product recall issues are just for trendy fast food restaurants and meat packers? Think again — companies across the food supply chain must consider protecting themselves against potential financial disaster with product contamination and recall insurance coverage. Be it accidental contamination, malicious product tampering, or mislabeling errors, a food safety incident and resulting recall can be a company's biggest exposure, damaging its brand and reputation.

Businesses affected span those that touch any aspect of the food supply system — including food and beverage manufacturers and processors, dietary supplement makers, pet food and animal feed manufacturers, wholesale distributors and cold storage facilities, brewers and distillers, transportation companies, and grocery store chains with private label goods, central kitchens or distribution centers, among others.

With each passing day, the need for coverage increases, sparked by:

- Significant technological advances in tracing the source of foodborne illness
- More government scrutiny due to the Food Safety Modernization Act
- Increased information transmission thanks to social media
- Opportunities for misinformation via these same social channels
- Globalized supply chains that add complexity and spread risks across international borders
- A strong, industry-focused plaintiffs' bar

Even when coverage exists, claims resulting from food contamination or suspected contamination have frequently resulted in coverage disputes between insurers and policyholders. The policies most often involved in a contamination loss are comprehensive general liability, property and product contamination. Coverage provided under any of these policies is fact-specific. Further complicating matters is that legal jurisdictions around the country may interpret coverage differently; what may be covered in one jurisdiction may not be covered in another. With such a complex environment, it is critical that you have the right partnership to help navigate this landscape.

Gallagher understands the food industry and has put together this study to provide an overview of a standard contamination event to illustrate the importance of having the proper coverage. Please note that this review does not go into extensive detail about all of the aspects of coverage. Moreover, this is a hypothetical example of various insurance policy coverages; only coverage under comprehensive general liability and product contamination policies will be examined.

Example

A large U.S. fruit importer sells oranges to a downstream processor/wholesaler. The downstream processor uses the oranges as an ingredient in a fruit salad. After processing, the fruit salad is sold to a retailer. The retailer, in turn, sells the fruit salad to consumers. The fruit importer sells the whole oranges in cartons with lot numbers affixed to the carton to the downstream processor. The fruit importer sold oranges from three lots; Lot A, Lot B and Lot C to the downstream processor. Each box contained 8.8 lbs. of oranges with a value of about \$8.25 per box. Lots B & C were sold, entirely. Only 50% of Lot A was sold with 50% remaining in the fruit importer's warehouse.



Contamination event

A consumer purchased the fruit salad from a retailer, with the logo of the downstream processor affixed to the packaging. The consumer later became ill and made a complaint to the local health department. A local health official conducted a survey, including testing samples of fruit salad sold by the retailer. Testing revealed the presence of salmonella in the fruit salad.

The retailer was contacted by the local health official and was instructed to put the fruit salad on hold, and to remove all fruit salad from the shelves, pending further investigation. The retailer, who had received the fruit salad in consumer ready packaging and did not make any changes to the fruit salad, notified the downstream processor. The downstream processor tested on-hand, finished product fruit salad and all the individual, raw-material ingredients that were in the fruit salad.

Testing revealed the presence of salmonella in both the finished product fruit salad and Lot A of the raw-material oranges sold by the fruit importer to the downstream processor. Subsequently, the fruit importer tested the remnants of Lot A, which were still in its warehouse, and discovered salmonella on the surface of oranges in several boxes from Lot A. Additionally, it was determined that all the lots came from the same grower/processor/packer. Thus, it can be presumed that the grower provided salmonella-contaminated oranges to the fruit importer.

The FDA was alerted through the Reportable Food Registry by the local health department. The FDA performed an investigation and notified the grower/processor/packer under the Mandatory Recall Authority that it should voluntarily recall the oranges sold to the fruit importer.

The importer initiated a recall of its Lot A products, notifying all downstream processors that received a supply from Lot A. In addition, the importer issued a general recall notification to the public, including a notification through the FDA website. Thereafter, the retailer canceled its purchase and sales contract with the processor/wholesaler and the processor canceled its purchase and sale contract with the orange importer.

The importer had four policies that may be applicable to this event—comprehensive general liability, umbrella liability, property and product contamination. In our example, we will focus on the coverage provided under the comprehensive general liability and product contamination policies; not including any bodily injury claims.

What is covered?

Retailer against Processor/Wholesaler

1. Replacement of the consumer-ready packaged fruit salad containing the contaminated oranges held in storage;
2. Replacement of the consumer-ready packaged fruit salad containing the contaminated oranges in retail stores;
3. Replacement of the consumer-ready packaged fruit salad containing the contaminated oranges in the possession of a consumer that has been submitted for reimbursement by the consumer to the retailer;
4. Expenses directly related to the retailer's recall of fruit salad containing the contaminated oranges;
5. Economic loss due to:
 - a. the retailer's loss of sale of fruit salad in storage;
 - b. the retailer's loss of sale of fruit salad withdrawn from the retailer's shelves; and
 - c. the retailer's loss of sale of fruit salad reimbursement of consumer by the retailer.

Processor/Wholesaler against the Importer

1. Replacement value of the consumer-ready packaged fruit salad containing the contaminated oranges from Lot A, held in storage;
2. Replacement value of the consumer-ready packaged fruit salad containing the contaminated oranges from Lot A, retrieved from retail stores;
3. Reimbursement for the consumer-ready packaged fruit salad containing the contaminated oranges from Lot A, returned for reimbursement by consumer to the retailer;
4. Replacement value of the whole oranges, to be used as an ingredient in the fruit salad, still in storage at the processor;
5. Expenses directly related to the retailer's recall of fruit salad containing the contaminated oranges;
6. Expenses directly related to the processor's recall of fruit salad containing the contaminated oranges;



7. Economic loss due to: the retail store; and
 - a. the processor passing back to the importer the economic losses claimed by the retailer;
 - b. the processor's lost profits resulting from the destruction of the fruit salad still in storage;
 - c. the processor's lost profits resulting from the destruction of the fruit salad, retrieved from the retail store; and
 - d. the processor's lost profits resulting from the loss of the retailer's account.

Importer's losses

1. Replacement value of 50% of Lot A remaining in their warehouse that was destroyed;
2. Replacement value of 50% of Lot A sold to the processor/wholesaler that was destroyed;
3. Expenses directly related to the recall of the contaminated oranges sold from Lot A;
4. Liability for the processor's recall costs in retrieving the fruit salad product from the retailer;
5. Liability for the retailer's recall costs in retrieving the fruit salad from consumers returned to the processor;
6. Liability for the processor's replacement costs of the destroyed fruit salad in the possession of the retailer;
7. Liability for the processor's replacement costs of the destroyed fruit salad in the possession of the processor;
8. Liability for the retailer's economic losses directly related to the fruit salad product;
9. Liability for the processor's economic losses directly related to the fruit salad product;
10. Lost profits resulting from the recalled and destroyed oranges; and
11. Lost profits resulting from the loss of the processor/wholesaler's account.

It's important to work with your Gallagher representative to ensure you are properly covered.

As examined above, there are many facets to a contamination event. Consequently, it is important to focus on purchasing coverage that will be applicable should a contamination event occur. Gallagher's team of food industry specialists have the food safety knowledge, expertise and industry focus needed to master the complexities of product contamination/product recall coverage and help clients navigate and survive a food safety incident. Gallagher offers:

- Food professionals who understand the nuances of your industry and keep up with rapid changes in regulations, including FSMA
- Risk management professionals
- Food industry experience for sound advice from a team who's been there
- Both brokerage services and food safety incident consulting, to cover the full range of risk management across the food supply chain
- Evaluations of the need for coverage, and help understanding the coverage
- Help understanding and complying with new FSMA rules, including new recall program requirements
- Gap analyses on food safety programs and recall plans
- Help meeting contractual requirements and negotiating improved terms
- Loss control services designed for the food industry

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