Federal Appellate Cases

6TH CIRCUIT

Thousands of Claims Arising From Contaminated Peanut Butter Were the Result of a Single Occurrence Under Ohio Law

In *J.M. Smucker Co. v. Ace American Ins. Co.*, 2026 U.S. App. LEXIS 19304 (6th Cir. July 1, 2026), J.M. Smucker Company ("Smucker") manufactured peanut butter at its facility in Lexington, Kentucky. In 2022, Smucker recalled certain peanut butter products produced at this facility due to potential salmonella contamination. Consumers brought thousands of claims against Smucker alleging bodily injury and property damage. *Id*. at 2-3.

Ace American Insurance Company ("Ace") issued commercial general liability policies to Smucker for 2021 and 2022, which included coverage for bodily injury caused by bacterial contamination. Each policy contained a retained limit of $250,000 per "occurrence," which included defense costs and indemnity. The policies defined occurrence as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." *Id*. at 2.

Upon receipt of the claims, Smucker tendered them to Ace for defense and indemnity. Ace denied it owed any current duties based upon its view that each exposure to salmonella constituted a separate "occurrence." Alternatively, Ace asserted that a "Lot Endorsement" in the policies aggregated the thousands of claims into 225 occurrences, corresponding to the "lots" of peanut butter products produced at the factory. The Lot Endorsement in the Ace policies read as follows:

> Any "bodily injury" or "property damage" that
>
> A. Is included in the "products-completed operations hazard";
> B. Arises from the substantially same general harmful condition, cause, defect, error or suspected deficiency; and
> C. Arises out of any one "lot" of "your product" that is prepared or acquired by you;
>
> shall be considered as a single "occurrence". Such "occurrence" shall be deemed to occur when the "bodily injury" or "property damage" occurs for the first claim arising from such "lot."
>
> For the purpose of this endorsement, a "lot" means all goods or products

prepared or acquired;
A. During the time frame that is the normal amount of time for a single "lot" in accordance with the insured's customary procedures; and
B. At a single production facility; and
C. Prepared in accordance with the insured's customary production and quality control "lot" identification procedures.

Ace's interpretation meant that Smucker would need to pay up to $56,250,000 under each applicable policy before Ace would be obligated to pay. *Id*. at 3-4.

Smucker filed a declaratory judgment action in district court alleging a breach of contract and requesting a declaration that all claims against Smucker arose from a single occurrence. On cross-motions for summary judgment, the district court held that (1) the salmonella contamination was a single occurrence; and (2) the Lot Endorsement was ambiguous. Ace appealed. *Id*. at 4-5.

Initially, the court of appeals embraced Smucker's view that the occurrence at issue was salmonella contamination and not the consumer's ingestion of the products:

On this point, Smucker's only identifiable accident is the alleged salmonella outbreak which led to the production of potentially contaminated peanut butter. Indeed, producing contaminated peanut butter was both unintentional and the conduct that eventually gave rise to the actions against Smucker. *See id*. By contrast, each claimant's consumption of peanut butter was not an accident, and it was not Smucker's conduct. So, each claimant's peanut butter consumption cannot determine the number of occurrences.

The rest of the occurrence definition further confirms that the alleged salmonella outbreak is the lone occurrence. The definition includes "continuous or repeated exposure to substantially the same general harmful conditions." Again, viewing the issue from Smucker's perspective (what it did to incur liability), Smucker's alleged production errors exposed the claimants to "the same general harmful condition": salmonella contamination. The contamination was a single, continuous accident. *Id*. at 6-7.

The court thereafter addressed whether Ohio's "cause test" supports the conclusion that the contamination was a single occurrence. When confronted by a number of occurrences question, “the number of occurrences is determined by reference to the cause or causes of the damage or injury, rather than by the number of individual claims.” Further, where there is but one proximate, uninterrupted and continuous cause, all injuries and damages are included within the scope of that single proximate cause.” *Id*. at 9 (citing *Cincinnati Ins. Co. v. ACE INA Holdings, Inc.*, 886 N.E.2d 876, 885 (Ohio Ct. App. 2007); *Progressive Preferred Ins. Co. v. Derby*, 2001 Ohio App. LEXIS 2649 (Ohio Ct. App. 2001).

Ace asserted that each claimant’s injurious exposure to contaminated products qualified as a separate occurrence given the exposure caused each person’s injury. In rejecting this position, the court concluded that it ran contrary to the objective nature of the cause test:

> By viewing each claimant’s exposure to contaminated peanut butter as an occurrence, ACE’s perspective makes the number of occurrences and claims identical. Stated differently, ACE asks us to view the claims as the occurrences, and the cause test does not permit this outcome. *See Cincinnati Ins. Co., 886 N.E.2d at 885* (stating that the cause of the injuries is the occurrence rather than “the number of individuals claims.”). *J.M. Smucker*, supra at 6.

The appellate court then addressed the district court's conclusion that the Lot Endorsement was ambiguous and could not override the definition of "occurrence" within the policies. Ace contended the purpose of the Lot Endorsement was to aggregate thousands of losses by "lot" and to adopt Smucker's view would render the Lot Endorsement "meaningless." Despite this plea, the court affirmed the conclusion that the Lot Endorsement was ambiguous:

> Here, the Lot Endorsement is subject to more than one interpretation. First, the provision is equivocal on whether it redefines "occurrence." The Lot Endorsement does not specify that it is replacing the definition of "occurrence," and other endorsements expressly state that they do replace a policy definition. Because the Lot Endorsement is unclear whether it creates a new definition, that already suggests ambiguity.
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> But the problem goes deeper. The phrase "[a]rises out of any one 'lot'" could be a phrase of limitation, indicating that multiple injuries caused by the same condition within one lot are still one occurrence. On the other hand, as ACE contends, the phrase "[a]rises out of any one 'lot'" could suggest that injuries caused by the same condition are aggregated on a per-lot basis when there are multiple defective lots. Both readings are plausible because the operation of the endorsement on claims arising out of "any one 'lot'" does not speak to its effect on claims arising from the same general harmful conditions, but multiple lots. At best, therefore, the phrase is ambiguous.

Ace's final argument suggested that if its view of the Lot Endorsement was ignored, it would run against the general rule that policy provisions should not be viewed as "surplusage" or redundant to other provisions within the policies. Ultimately, the court embraced Smucker's view that the Lot Endorsement served a purpose beyond the number of occurrences issue:

> Smucker proposes a couple of theories that plausibly defeat the surplusage argument. For instance, Smucker suggests that the Lot Endorsement has a "timing function." Specifically, the Lot Endorsement states that an "'occurrence' shall be deemed to occur when the 'bodily injury' or 'property damage' occurs for the first claim arising from such 'lot.'" Thus, it seems that an occurrence is restricted to a single policy year when multiple injuries arise from a

single lot and continue to crop up during later policy periods. And so, even when injuries arise from a single lot across multiple policy periods, this timing function means Smucker would only need to pay the retained limit for one year, rather than for multiple years.

Ultimately, the canon against surplusage requires that we ask whether there is *any* scenario where the Lot Endorsement might operate, and by illustrating the timing function of the Lot Endorsement, Smucker has done just that. At bottom, Smucker has met the relatively low burden of showing that the Lot Endorsement is not "entirely redundant." *Kungys v. United States, 485 U.S. 759, 778, 108 S. Ct. 1537, 99 L. Ed. 2d 839 (1988). J.M. Smucker*, supra at 15-16.

While the "cause test" by itself clearly rendered the injuries caused by the salmonella contamination one "occurrence" under Ohio law, one understands Ace's frustration with the manner in which the Lot Endorsement was (largely) set aside by the court. *J.M. Smucker* follows a long line of cases where courts have scuttled insurer efforts to manage the number of occurrences issue.

7TH CIRCUIT

Prior Work Exclusion Did Not Render Completed Operations Coverage Illusory Under Roofer's General Liability Policy

In *Nautilus Ins. Co. v. Bee Quality, Inc.*, 2026 U.S. App. LEXIS 20107 (7th Cir. July 9, 2026), Bee Quality, Inc. ("Bee Quality") was a roofing contractor In Cook County, Illinois. On August 2, 2020, a windstorm caused damage to a building in Chicago, for which Bee Quality was hired to perform repairs. On April 12, 2022, after Bee Quality had completed its work, the façade of the building collapsed, killing two individuals (Wright and Morris). *Id*. at 2-3.

The decedents' estates filed a lawsuit in state court seeking to recover damages. Plaintiffs alleged that Bee Quality (among others) was negligent in performing repairs to the building, leading to the deaths of Wright and Morris. Bee Quality had purchased a general liability policy from Nautilus Insurance Company ("Nautilus") for the period February 8, 2022 to February 8, 2023. *Id*.

Bee Quality tendered the complaint to Nautilus for defense and indemnity. Nautilus denied that it owed any duties on the grounds that the Prior Work Exclusion within its policy barred coverage. The Prior Work Exclusion barred coverage for "any loss, claim or 'suit' or other proceedings" arising out of Bee Quality's work that was completed prior to February 8, 2022. Nautilus filed a declaratory judgment action seeking to enforce the exclusion. *Id*. at 3.

Bee Quality filed a counterclaim for breach of contract and sought a ruling that the Prior Work Exclusion was unenforceable because it rendered the policy's coverage illusory. On cross-motions for summary judgment, the court granted Nautilus' motion and denied Bee Quality's motion because (1) the Prior Work Exclusion was unambiguous; and (2) Bee Quality admitted in its answer to the complaint that its work was completed by December of 2020. Bee Quality appealed. *Id*. at 3-4.

In declaring that the Prior Work Exclusion clearly removed coverage for the underlying claims, the 7th Circuit focused exclusively upon whether the exclusion's application rendered coverage illusory. It initially focused on a basic canon of policy construction within Illinois:

> Under Illinois law, "a court should construe a policy so as to harmonize its provisions and avoid reading an exclusion in such a way that it removes the coverage explicitly provided elsewhere in the policy." *Wynndalco, 70 F.4th at 996*. We do so because "[i]n some instances," two provisions in a policy read together can create an ambiguity such that "the exclusion appears to take away with one hand coverage that the policy purports to give with the other." *Bee Quality*, supra at 5-6 (citing *Citizens Ins. Co. v. Wynndalco Enters., LLC*, 70 F.4th 987, 996 (7th Cir. 2023). *Id*. (citation modified).

Bee Quality argued the district court failed to "harmonize" coverage because (a) the Prior Work exclusion removed coverage explicitly provided elsewhere in the policy (i.e. completed operations coverage); and (b) Nautilus charged Bee Quality a premium for "unrestricted" completed operations coverage. The court rejected this view as ignoring the completed operations coverage that remained within the policy:

> Since *Wynndalco*, Illinois appellate courts have taken a narrower view of the illusory coverage doctrine. Most prominently, the First District appellate court has held that "[i]t is only when the exclusion has the effect of 'swallowing' … the coverage *entirely* that the exclusion can be deemed illusory." *Nat'l Fire Ins. Co. of*

Hartford v. Visual Pak Co. Inc., 243 N.E.3d 888, 905 (Ill. App. Ct. 2023) (emphasis in original). Put another way, the court stated, "an insurer's interpretation of an exclusion will not be adopted if that interpretation would *altogether eliminate* ... the coverage on which the insured relies." I*d. at 906* (emphasis added). Indeed, "[i]nsureds may choose to limit their coverage and pay reduced premiums accordingly, but nobody would buy insurance that provides no coverage whatsoever." *Id.; see also Am. Country Ins. Co. v. Kraemer Bros., Inc., 699 N.E.2d 1056, 1062 (Ill. App. Ct. 1998)* (finding that a policy covering only claims of strict liability was not illusory, even though it excluded claims for negligence and "there are fewer strict liability claims than negligence claims").

Just so here. As the policy in *Mullins Food Products*, Bee Quality's Policy leaves "plenty of room for coverage of the main insured hazards." *Id.* (quoting *Thermoflex, 102 F.4th at 441*). As Bee Quality admitted before the district court, despite the Prior Work Exclusion, the Policy still provides completed-operations coverage "for work completed by Bee Quality *after* the inception of the Nautilus Policy" on February 8, 2022. (emphasis added). *Bee Quality*, supra at 8-9.

Finally, the court was not inclined to entertain Bee Quality's argument that coverage was illusory simply because Bee Quality believed it paid too much in premium for its policy.

Nevertheless, Bee Quality argues that the parties could not have intended to limit coverage to only post-February 8th work because it was charged a premium well in excess of what such coverage would have cost in the marketplace. Even assuming the accuracy of this contention, we are exceedingly reluctant to disturb the arms-length negotiation of sophisticated parties. *See Nielsen v. United Servs. Auto. Ass'n, 612 N.E.2d 526, 530 (Ill. App. Ct. 1993)* (quoting 43 Am.Jur.2d *Insurance* § 462 (1982)) ("[P]arties may contract for whatever insurance coverage terms they desire."). As the Illinois Supreme Court has stated, "If the insurance policy's words are plain and unambiguous, the court will afford them their plain, ordinary meaning and apply them as written." *Zurich Am. Ins. Co. v. Infrastructure Eng'g, Inc., 248 N.E.3d 1072, 1082 (Ill. 2024); cf. Acuity v. M/I Homes of Chi., LLC, 234 N.E.3d 97, 105 (Ill. 2023)* ("The court will not adopt an interpretation that rests on gossamer distinctions that the average person, for whom the policy is written, cannot be expected to understand.") (citation modified). And, regardless of the purported incongruence in the Policy's coverage and the premiums paid, "courts may not rewrite language or add provisions to make the agreement more equitable." *Berryman Transfer & Storage Co. v. New Prime, Inc., 802 N.E.2d 1285, 1288 (Ill. App. Ct. 2004)* (citation modified). *Bee Quality*, supra at 8-9.

Bee Quality presents another obvious result wrapped in a very tight opinion. Completed operations coverage was available under the insured's policy – just not at the level that would respond to the underlying claim. While certain procedural issues also worked against the insured, the lesson for any policyholder is that courts are not inclined to unwind a contract simply because the insured feels it paid too much for too little coverage.