LAW360 Insurance Authority

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Smucker's 6th Circ. Win Could Be A Double-Edged Sword

By **Abraham Gross**

Law360 (July 9, 2026, 8:34 PM EDT) -- The Sixth Circuit found that an alleged salmonella outbreak that possibly contaminated J.M. Smucker Co. peanut butter constituted a single occurrence, freeing the company from paying a multimillion-dollar retainer but potentially binding other policyholders to mixed future outcomes.

The three-judge panel on July 1 **affirmed** a lower court ruling that rejected the interpretation of "occurrence" provided by commercial general liability provider Ace American Insurance Co., which would have forced Smucker's to pay a $250,000 retainer on each of 225 separate occurrences before receiving any coverage.

Ace had relied on the lot endorsement contained in two general liability policies, which they argued established that an "occurrence" was triggered for each 24-hour period of peanut butter production that led to the 2022 recall at Smucker's facility in Lexington, Kentucky — and would have required Smucker's to pay a collective $56.2 million in retainers for each policy to tap into coverage.

The panel, however, ruled that an "occurrence" was an accident, which in this case was the alleged salmonella outbreak. Moreover, the court found that the lot endorsement language was ambiguous and did not modify the definition of occurrence.

Seth Lamden of Blank Rome, who represents policyholders, said that any ambiguity in policy language is going to be construed in favor of maximizing coverage, and since this case involved self-insured retentions that limit coverage, it was required to determine the issue of "occurrences" in the company's favor.

"This case reinforces a basic principle of insurance law, which is if an insurance company wants to specify how occurrences are counted, it must do so in clear, unmistakable language," he said.

The case was an example of a typical product liability situation with a pretty typical policy, said Jeffrey Raskin of Morgan Lewis & Bockius LLP, who represents policyholders.

In that scenario, "the likelihood is ... that there's going to be a single occurrence in something like this, where you're talking about identical exposures of the same product and the same problem," he said.

The policy's guarantee of coverage for bacterial contamination bodily injuries put the court in a position that made it difficult to accept the carrier's interpretation of "occurrence," said Thomas Breen of Mound Cotton Wollan & Greengrass, who represents insurers.

"It seems that in future contamination cases, the carrier might want to come into court with a modified position that seems to create some level of coverage based upon a more palatable position as to how the definition of 'occurrence' should be approached," he said.

The lower court **said as much** in its March 2024 summary judgment ruling, concluding that deeming each contaminated "lot" as an occurrence subject to its own retention "would eviscerate insurance coverage, which was clearly not intended by either party."

"As Ace has no compelling reason for the court to interpret the policy in such an illogical manner, the court will resolve any perceived ambiguity in favor of the insured," Judge John R. Adams wrote.

Though the decision was a victory for Smucker's, experts who spoke to Law360 cautioned that a finding of a singular occurrence is not always in the best interest of policyholders, as policies with per-occurrence limits and no aggregate limit may push policyholders to argue for more occurrences.

"There is not a uniform policyholder view on the number of occurrences, and there is no uniform insurer view on the number of occurrences," said Jay Konkel, policyholder attorney for Pillsbury Winthrop Shaw Pittman LLP. "It's all very situational from the perspective of the parties."

He noted that the decision's impact would likely be limited to situations where there is not an aggregate on either the retention or the limits of liability in the policy, and contemporary policies are much likelier to have uncapped retentions than uncapped limits of liability.

The Sixth Circuit's reasoning may also have limited relevance depending on the jurisdiction.

The panel supported its decision using Ohio's "cause test," which stipulates that "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."

Konkel noted that while most states follow a similar test, the decision may have limited influence in states like New York, which do not.

The Empire State's highest court ruled in its 2007 decision in Appalachian Insurance Co. v. General Electric Co. that it applied the "unfortunate-event" approach to determine that various personal injury claims allegedly arising from exposure to asbestos insulation in General Electric turbines constituted multiple occurrences.

Lamden said it was difficult to draw on any sort of generalization about the case law, even for cases that involve the same subject matter like food contamination, because the cause analysis required the court to focus on the specific circumstances before it.

"Every one of these cases is fact-specific, and sometimes it can be difficult to draw general propositions from these cases other than that the majority of courts will continue to use the cause-based test to figure out how many occurrences there are," he said.

Still, Lamden said the decision was important because of how many kinds of claims involved the issue of counting the number of occurrences, including cases related to construction defects, mass torts, environmental damage and sexual abuse.

The ruling may also prove influential to underwriters, said policyholder attorney Bernard Bell of Miller Friel PLLC.

There has been prior litigation over different versions of the lot endorsement, Bell told Law360, and he said it's up to insurers to come up with clear language to clarify their position if they are dissatisfied with the court's ruling.

"For policyholders that have this exposure, I'd pay careful attention to any changes in their next renewals on lot endorsement wording," he said.

The endorsement in Smucker's policies said that all injuries or damage arising from the same deficiencies from any product "lot" are considered one occurrence.

The panel found that, unlike other endorsements, the lot endorsement did not claim to replace any policy definition. Moreover, it wasn't clear how the endorsement would apply for claims that arise out of the same condition spread out across multiple lots, according to the court.

Breen suggested a modified lot endorsement that would clarify how it applies to bodily injuries caused by contamination in multiple lots and to what extent it modifies the definition of "occurrence" in the policy.

"If you just included that, as to how the lot endorsement works with respect to multiple lots, there's no reason that it wouldn't be honored by the court, because it would clearly be the intent of the policy and the understanding of the parties at the time they entered into the policy," he said.

Konkel suggested that policyholders also look into tweaking their policies, adding that "if you have per occurrence retentions, depending on the pricing, see if you can put an aggregate on that retention, so that even if a court finds multiple occurrences, you can actually get to coverage."

--Additional reporting by Hope Patti and Jennifer Mandato. Editing by Amy Rowe and Bruce Goldman.