

Ohio High Court Rules Coverage Owed for Contamination That Ruined Product

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Contamination that ruined more than \$1 million worth of glass containers manufactured by a policyholder's customer counts as damage that is covered by an umbrella insurance policy, the [Ohio Supreme Court ruled Wednesday](#).

The Supreme Court justices unanimously agreed that Motorists Mutual Insurance owes coverage to Ironics Inc. for the accidental contamination to 1,850 tons of glass containers, but for different reasons.

Motorists had argued that Ironics was attempting to covert an insurance policy based on contingent risks into a performance bond whereby it would essentially guarantee that Ironics' products will be free from any defects.

"If Motorists believes that claims such as those at issue here should not be covered under the terms of its policy, it remains free to seek agreement to language indicating such in its future contracts, consistent with applicable law," says the majority opinion, written by Justice Jennifer Brunner and joined by three other justices.

In 2016, Ironics sold Owens Brockway Glass Container Inc. a steel waste product, known as "tube scale," that it used to add an amber or brown tint to the glass containers it manufactures. After making more than \$1 million worth of product, Ironics learned from one of its material suppliers that the tube scale has been contaminated with chrome stones that were lying on the floor of a steel mill in Youngstown, Ohio.

The presence of chromium made the glass more breakable. Owens had to scrap all of the containers made with that batch of tube scale. Owens sued Ironics seeking compensation. Ironics asked Motorists to defend it and pay any damages.

Motorists, a unit of Encova Mutual Insurance Group, asked the Wood County Common Pleas Court for a declaratory judgment that it has no duty to cover the accidental contamination because the damage wasn't covered by either its commercial general liability or umbrella policy.

The trial court agreed that no coverage was owed. Ironics appealed and the 6th District Court of Appeals reversed, finding that the umbrella policy covered the claim, but not the commercial liability policy.

Motorists appealed to the Supreme Court. The Ohio Insurance Institute filed a brief supporting the insurer's position. United Policyholders filed an amicus brief supporting Ironics.

The dispute centered on whether the accidental contamination of the tube scale amounted to property damage. Motorists argued that while its policy covers damage to property owned by "others," that damage must be caused by an accident. The insurer said that a principle of law called the integrated-systems rule holds that the incorporation of a defective ingredient into an integrated product or system does not constitute damage to a product.

The Supreme Court majority said that the integrated-system rule was articulated by the Wisconsin Supreme Court to address economic loss and does not apply to Ironics' claim. The opinion says Ironics is seeking coverage for damage to property owned by Owens that was caused by accidental contamination of its product.

Owens also argued that its policy clearly excluded coverage for damage to "your products" and "your work" — meaning Ironics' — and the tube scale that it sold to Owens was Ironics' product. The majority opinion, however, said under the terms of the policy, the exclusion applies only if the property can be restored.

Nothing in the record shows a conceivable way to repair, replace, adjust, or remove the tube scale after it was incorporated into the glass containers manufactured by Owens," the opinion says.

Justice R. Patrick DeWine wrote a separate concurring opinion and was joined by Justice Sharon L. Kennedy. DeWine objected to the "majority's use of this case to go beyond the contractual language and write something of a treatise on insurance law."

Justice Patrick F. Fischer wrote a separate opinion that concurred in part and dissented in part with the

majority. Fischer said in his view the mishap was covered by both the commercial general liability and umbrella policy.