



## **Product Liability**

### **A Successful Slaughter Programme**

On 24 November 2003, Sigma Claims Solutions received instructions from a Lloyd's syndicate to deal with an unusual problem involving the tainting of beef in an abattoir.

An animal feed manufacturer (the insured) was contacted by a beef farmer (the claimant) and was advised that upon slaughter of 15 cattle, the carcasses were rendered unfit for consumption as they were tainted with a 'garlic or onion' odour. The remaining herd, totalling over 250, was also believed to be infected.

The claimant thought that the feedstuff (potato chips) sold by the insured was responsible for the contamination, due to the fact that it contained a spiced wedge component. The overall claim had a value in excess of £142,000.

Following investigations carried out by the abattoir and other interested parties, the carcasses of the 15 cattle were quarantined. A voluntary surrender was secured and provisions made for disposal of the carcasses.

Upon instruction, the loss adjusters recommended retaining and freezing a meat sample from each of the affected carcasses in case an independent analysis was required.

#### **The investigation**

Sigma discovered that the insured was the sole supplier of the potato chips to the claimant, who had received regular deliveries from August to November.

Initially, the loss adjuster examined the claimant's finishing unit and nutritional records. It was discovered that there was a significant shift in the cattle's diet from the end of September, which was referred to the insured's nutritional expert who deemed the diet to be acceptable.

It was then decided to carry out a thorough review of the claimant's feeding and mixing processes, which were satisfactory.

Quality control measures were discussed but it seemed that nothing untoward in relation to the delivery of chips was noticed.



The insured advised the loss adjuster that they had been selling the potato chip product for approximately 15 years to a variety of customers without incident. The spicy wedges were incorporated into the chips about two and a half years ago. The potato chip product is a waste product from a chip production company.

The loss adjuster investigated the production and pattern of 'off spec' waste products from the chip production company. In addition, the composition of the spice flavouring on the wedges was considered. It seemed that the spicy wedge production had been consistent over the period in question and the records showed no evidence of large or irregular quantities of 'off spec' spicy wedge products being discarded at any time during this period.

In order to investigate causation, the loss adjuster looked at the volume of chips sold and the customer base for the product. Over 5,000 tonnes of the chips were sold by the insured per annum. They took approximately five to six loads from the chip factory each week and this was sold to approximately 50 customers throughout the UK.

A review of the insured's marketing materials and invoices showed they describe the product as potato chips and no mention is made about the inclusion of spicy wedges. The claimant's allege that describing the product in this manner implied that this was a waste product from oven and fried chips and he was totally unaware and surprised at the quantity of spicy wedges.

### **The outcome**

Operating entirely without prejudice to liability, the loss adjuster agreed an incremental slaughter programme with the claimant to control any further risk of similar tainting.

Furthermore, it was suggested to the claimant that if they had any concern whatsoever in relation to the feedstuff, they should remove it immediately and allow adequate time for any foreign matter to be eradicated from the cattle, normally about 21 days.

The insured was asked to be extremely careful in relation to the batches of chips sold to the claimant during the intervening period. Where possible, the concentration of spicy wedges should be kept to an absolute minimum.

As a result, five cattle were killed on 19 December and a further 45 cattle on 7 January 2004, all of which displayed no signs of tainting.

Furthermore, no complaints were received from the insured's other customers.



As it was extremely difficult to pinpoint the cause of the contamination problem, the following course of action was recommended:

- Keep the claimant informed about the enquiries and the restrictions in relation to the terms and conditions of supply of this product
- Pursue a compromise settlement, restricting compensation to the original 15 carcasses

Causation was ultimately accepted and agreed and thereafter a settlement of £7,500. The claimant consulted with but did not instruct a solicitor, as he was satisfied with the approach taken to the problem. The file was closed in January 2004, about five weeks after the initial instruction.

#### **Cost benefit analysis**

<b>Head of claims</b>	<b>Exposure</b>	<b>Actual spend</b>	<b>Saving</b>
Damages	£122,550	£7500	£115,050
Claimant's costs	£10,000	£0	£10,000
Defence costs	£10,000	£1,890	£8,110
<b>Total</b>	<b>£142,550</b>	<b>£7,890</b>	<b>£133,160</b>

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