

Let's Talk Turkey: How Does One Determine the Value of a Burnt Bird?



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Practice Areas:

- Insurance Coverage
- Professional Liability

As you are preparing for Thanksgiving and worrying you will accidentally burn the 15 pounds of turkey you have spent hours dressing, just remember, it could be worse. You could burn four million pounds of turkey. That's what happened to a turkey producer in a 1988 opinion of the Western District of Virginia in which the court found that under the terms of an excess fire policy the "actual cash value" of an insured turkey producer's damaged stock (four million pounds worth) was not the mean price for which the stock would have sold on the date of loss, but rather, was the price for which the stock would have been sold had no loss occurred.

In *Rocco Enterprises, Inc. v. Continental Casualty Co.*, during the holiday season, a fire occurred at a cold storage warehouse in Harrisonburg, Virginia, where Rocco Enterprises, Inc. and Rocco Turkeys, Inc. ("Rocco") stored a large inventory of finished poultry. The fire damaged nearly four million pounds of packaged turkey.

National Union Fire Insurance Co. provided primary coverage for Rocco's loss and took possession of the damaged turkey at the price provided in its policy. Continental and Travelers Indemnity Co. provided a layer of excess coverage for Rocco. Continental's policy expressly adopted the same warranties, terms, conditions and definitions which the primary policy contained. Rocco sought excess coverage from Continental; however, Continental and Rocco could not agree on a method of valuation for the lost stock. Rocco filed suit against Continental for inter alia breach of contract and the parties filed competing motions for summary judgment.

Rocco's breach of contract claim centered on the interpretation of an endorsement in the primary policy which had been adopted in Continental's excess coverage policy. The disputed "Manufacturer's Selling Price" endorsement provided:

It is a provision of this policy that the actual cash value of finished stock manufactured by the insured shall be that price, less all discounts and unincurred expenses, for which said stock would have been sold had no loss occurred.

Rocco argued that under the endorsement the actual cash value of finished stock was the price for which the stock would have been sold on the date of the loss. Continental claimed the endorsement defined actual cash value as that price for which the stock would have been sold had no loss occurred. The difference in interpretation was significant due to the date of Rocco's loss. Demand and price for turkey peak during the months of November and December, and then it rapidly declines after the new year. Rocco's loss occurred at a time of year when the price of turkey, as a market commodity, was at its highest annual level. Rocco's argument allowed it to capture the peak market

price of its lost finished stock. Continental's interpretation valued the inventory through the falling market of the new year pursuant to existing sales orders and past sales performance.

Finding the policy language unambiguous, the court rejected Rocco's interpretation:

Rocco's interpretation would require the court first to erase the words "had no loss occurred" from the face of the endorsement, and then to write "at the time of loss" in their place. This court will not rewrite the insurance policy in this manner. To do this would require the adoption of a "strained or unjustified construction of the policy." The court finds that the plain and unambiguous language of the insurance policy is subject of only one reasonable interpretation: that the finished stock be valued at the price for which the stock would have been sold had no loss occurred.

(Internal citations omitted). The court further explained that although, under the language of the policy, if the stock would have been sold on the date of the loss, the stock would be valued at the market price on the date of the loss, Rocco had presented no evidence to that effect.

The court also rejected Rocco's argument that the policy was ambiguous because it did not specify a precise time and place for valuation, and found the absence of a time and date for valuation was mandated by the policy language itself. Moreover, likening the disputed endorsement to a loss of income endorsement which stated "in determining loss of income due consideration shall be given to the experience before the date of damage or destruction and probable experience thereafter had no loss occurred," the court noted the policy explicitly contemplated the type of projective valuation against which Rocco argued.

Therefore, finding Continental's interpretation of the disputed policy language was consistent with the unambiguous language of the policy endorsement and the policy as a whole, the court found as a matter of law that Continental had not breached the insurance contract.

About Logan Wells

Logan Wells is an attorney practicing in the areas of insurance coverage and professional liability. She received her undergraduate degree in history and political science from Furman University and earned her juris doctor from the University of South Carolina School of Law.

During her undergraduate career, she worked for a law firm in Spartanburg as a legal assistant. While in law school, she worked as a summer associate for Collins & Lacy, before joining the firm as an attorney in the fall of 2009.

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