



## The Second Circuit Affirms \$1.33 Million Judgment for Riker Danzig Client in Insurance Dispute over Damage from Contaminated Milk

The U.S. Court of Appeals for the Second Circuit affirmed the District Court's ruling for our client Harleysville Worcester Insurance Company (a Nationwide company). The dispute centered on whether a commercial general liability policy or business auto policy should respond to the contamination of a cheese processing plant in upstate New York caused by the insured's delivery of milk contaminated from metal tailings in the tanker delivery truck.

Riker Danzig's Insurance Group had obtained a judgment in March of 2018 against Wesco Insurance Company, the auto liability carrier, in a ruling by Judge Alison Nathan of the U.S. District Court for the Southern District of New York. Judge Nathan granted our summary judgment motion on behalf of Harleysville, ruling that the accident arose out of the use of an auto, and therefore Wesco must reimburse Harleysville for the settlement, defense costs, and prejudgment interest that Harleysville spent on behalf of the insured delivery truck owner.

Wesco appealed, raising various new arguments, including that Harleysville could not collect on its judgment because it had no obligation to cover the incident, and could not pursue Wesco as a "volunteer". The Circuit Court panel rejected Wesco's arguments in full, declining to address them since Wesco failed to raise them below. The 2<sup>nd</sup> Circuit also affirmed the District Court's conclusion that Wesco's late notice argument had no merit.

Co-Managing Partner Lance J. Kalik led the Riker team for Harleysville, and was assisted on the case by partner Tracey K. Wishert, associate Jeffrey A. Beer, Jr., and the Hon. James S. Rothschild, Jr., who is Of Counsel to Riker Danzig.

Click [here](#) for *Law360*'s coverage of the story.

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