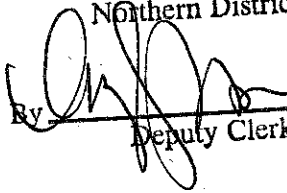


I hereby certify that this instrument is a true and correct copy of the original on file in my office.
Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio

By  Deputy Clerk

FILED
MAR 10 2011
CLERK OF COURT
SUPREME COURT OF OHIO

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

11-0391

HoneyBaked Foods, Inc.,

Case No. 3:08CV01686

Plaintiff

v.

ORDER

Affiliated FM Insurance Company,

Defendant

Plaintiff filed a complaint seeking a declaratory judgment of its rights under its insurance policy with defendant and alleging breach of contract and bad faith denial of claims.

On review and consideration of the pleadings, motions, briefs and relevant law, and I find there is a determinative question of state law for which there is no clear precedent in the decisions of the Supreme Court of Ohio. Accordingly, for the reasons set forth below, this court certifies the question set forth in § II(B) of this order to the Supreme Court of Ohio under Rule XVIII of the Rules of Practice of that Court.

I. Statement of Facts

This is an insurance coverage case. Following discovery of a pathogenic bacterium in several production runs of its ham and turkey products, plaintiff HoneyBaked Foods, Inc. (HoneyBaked), claimed a loss of about \$8 million under its "all-risk" policy with defendant Affiliated FM Insurance

Co. (Affiliated FM). The claimed amount covered the losses from the inability to distribute tainted and potentially tainted food products and interruption of plaintiff's business.

Affiliated FM denied the claim, asserting that exclusions under the policy leave HoneyBaked without coverage for any part of the loss.

HoneyBaked is an Ohio corporation that sells and processes specially glazed ham and turkey products. As a federally inspected meat and poultry processor, HoneyBaked is responsible for processing and distributing wholesome, unadulterated and properly-labeled meat and poultry products to its customers. It is subject to routine inspection by the Food Safety and Inspection Service, an arm of the United States Department of Agriculture, which tests HoneyBaked's products on a regular basis for various safety hazards.

HoneyBaked purchased a comprehensive "all-risk" insurance policy from Affiliated FM. HoneyBaked had hired an insurance broker, Meadowbrook Insurance Group (Meadowbrook), to locate suitable policies for HoneyBaked's insurance needs. Meadowbrook identified Affiliated FM as a potential source for an all-risk insurance policy covering HoneyBaked's products and facility.

Before presenting HoneyBaked with a policy, Affiliated FM conducted a site visit and prepared a risk report identifying and discussing the hazards, exposures and risks at HoneyBaked's facility. This risk report noted that "[t]he most significant and common hazards exposing the food industry are centered on the susceptibility of food products to spoilage and contamination." HoneyBaked purchased the subject all-risk policy mindful of this assessment.

In early November, 2006, HoneyBaked discovered that a sample of its products had tested positive for *listeria monocytogenes*, a pathogenic bacterium that causes listeriosis, an uncommon

but potentially fatal disease. Further investigation revealed that a risk of contamination affected over one million pounds of product produced from September 5 through November 5, 2006.

HoneyBaked identified the source of contamination to be in one of the hollow rollers on its conveyor system. It removed this system and conducted extensive cleaning and sampling procedures. As a result of the contamination, HoneyBaked suspended operations twice, issued a recall of 46,941 pounds of its ham and turkey products, and eventually disposed of nearly one million pounds of product.

HoneyBaked submitted a claim of loss to Affiliated FM seeking reimbursement for the value of the discarded food product and additional losses resulting from business interruption.

Affiliated FM denied the claim, explaining that the policy excluded the product loss, and because “there is no covered physical loss or damage, any business interruption associated with the *listeria* contamination is also not covered.”

Following denial of its claims under the policy, HoneyBaked sued Affiliated FM, seeking declaratory judgment of its rights under the policy and alleging that Affiliated FM had breached the contract and acted in bad faith in denying the claim. The parties filed cross-motions for summary judgment.

I found that the policy excludes the product loss caused by *listeria monocytogenes*. [ECF 54].

The policy contains a contamination exclusion, stating:

This policy does not insure against loss or damages caused by [contamination, including but not limited to pollution]; however, if direct physical loss or damage insured by this policy results, then that resulting direct physical loss or damage is covered.

[ECF 34-15, at 25-27].

The Ohio Court of Appeals for the Eleventh District has explained that the “usual and ordinary meaning” of “contaminate” is “to render unfit for use by the introduction of unwholesome or undesirable elements.” *Hartory v. State Auto. Mut. Ins. Co.*, 50 Ohio App. 3d 1, 3 (1988) (citation omitted); *see also Richland Valley Prods., Inc. v. St. Paul Fire & Cas. Co.*, 548 N.W.2d 127, 131 (Wis. App. Ct. 1996) (collecting cases uniformly defining the term “contamination”); *Landshire Fast Foods of Milwaukee, Inc. v. Emp’rs Mut. Cas. Co.*, 676 N.W.2d 528, 532 (Wis. App. Ct. 2003) (interpreting “contamination” to include the presence of *listeria monocytogenes* in food products).

HoneyBaked argues, however, that it reasonably believed that the all-risk policy would cover spoilage of its product during processing. As Affiliated FM itself observed in its risk assessment, the susceptibility of food products to spoilage and contamination is the most significant risk faced by the food industry.

A jury could find that HoneyBaked had a reasonable expectation of coverage for losses due to contamination. But the policy, when closely interpreted, excludes losses caused by contamination. The availability of coverage, notwithstanding the exclusion, turns on the question of whether Ohio law incorporates the reasonable-expectations doctrine and applies such doctrine to this case.

II. Certification

A. Merits of Certification

The Rules of Practice of the Supreme Court of Ohio provide it with discretion to answer questions of Ohio law certified to it by a federal court. R. of Prac. Sup. Ct. Ohio XVIII. Before certifying a question however, the federal court must determine that “there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent[.]” *Id.* at § 1.

As the Supreme Court of Ohio explained, “[c]ertification ensures that federal courts will properly apply state law.” *Scott v. Bank One Trust Co., N.A.*, 62 Ohio St. 3d 39, 43 (1991) (*per curiam*). The Supreme Court of the United States has recognized that “certification of novel or unsettled questions of state law for authoritative answers by a State’s highest court . . . may save time, energy, and resources and help build a cooperative judicial federalism.” *Arizonaans for Official English v. Arizona*, 520 U.S. 43, 77 (1997) (internal quotations and alterations omitted).

The Supreme Court of Ohio has twice addressed the reasonable-expectations doctrine. In *Anderson v. Highland House Co.*, 93 Ohio St. 3d 546 (2001), the Supreme Court of Ohio considered an insurance policy claim arising from death and injuries caused by residential carbon monoxide poisoning. Although ultimately finding the policy’s exclusions to be ambiguous, the Court noted that “while we make no determination on the merits of the reasonable-expectations doctrine, this rationale could apply to the case at bar.” *Id.* at 551.

In *Wallace v. Balint*, 94 Ohio St. 3d 182, 189 (2002), the plaintiff-appellants asked the Court to apply the reasonable-expectations doctrine. The Court observed that the Second Restatement of Contracts explains the doctrine, providing:

Where the other party has reason to believe that the party manifesting such assent would not do so if he knew the writing contained a particular term, the term is not part of the agreement.

Id.; 2 Restatement of Law 2d, Contracts (1981) § 211(3).

The Court also quoted Professor Keeton’s description of the doctrine’s application to insurance policies: “The objectively reasonable expectations of applicants and beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the

policy provisions would have negated those expectations.” *Id.* (quoting Keeton, Insurance Law Rights at Variance with Policy Provisions, 83 Harv. L. Rev. 961, 967 (1970)).

Although finding the arguments for applying the reasonable-expectations doctrine compelling, the Court observed nine years ago that “there is not yet a majority on this court willing to accept the reasonable-expectations doctrine.” 94 Ohio St. 3d at 189.

Lower Ohio courts, looking to *Anderson*, have considered arguments based on the reasonable-expectations doctrine. *I.G.H. II, Inc. v. Selective Ins. Co. of South Carolina*, 2007 WL 1378379, *5 (Ohio App. Ct.) (finding insured had no reasonable expectation of coverage); *Buckeye Ranch, Inc. v. Northfield Ins. Co.*, 134 Ohio Misc. 2d 10, ¶¶ 38–43 (Ohio Com. Pl. 2005) (finding the Ohio Supreme Court’s “pragmatic approach . . . to understanding what parties thought they would receive when buying insurance” similar to the reasonable-expectations doctrine).

Here, as noted, the policy excludes losses from contamination. The risk of such loss, a jury could find, motivated HoneyBaked’s purchase of the Affiliated FM policy, and that Affiliated FM knew of HoneyBaked’s desire and need for coverage against losses from contamination.

Whether coverage is available in this case depends on whether Ohio law encompasses the reasonable-expectations doctrine.

B. Certified Question of State Law

This Court herewith certifies the following question of state law pursuant to Rule XVIII of the Rules of Practice of the Supreme Court of Ohio:

In light of the Supreme Court of Ohio’s opinion in *Anderson v. Highland House Co.*, 93 Ohio St. 3d 547 (2001), does the reasonable-expectations doctrine apply to a commercial general liability “all-risk” insurance policy, so that coverage, which otherwise would be excluded under the terms and conditions of the policy, is afforded, provided the trier of fact determines that the insured reasonably expected, when purchasing the policy, that the policy would cover the loss at issue.

C. Information Required by Rule XVIII

The court provides the following information in accordance with Rule XVIII, § 2(A)-(E):

1. Name of the case: *HoneyBaked Foods, Inc. v. Affiliated FM Insurance Co.*, 3:08CV01686.

2. Statement of Facts: Please refer to § I of this order for a full recitation of the pertinent facts.

3. Name of each of the parties:

a. Plaintiff – HoneyBaked Foods, Inc.

b. Defendant – Affiliated FM Insurance Co.

4. Names, Addresses, and Telephone Numbers of Counsel for Each Party:

a. Plaintiff's Counsel:

Alan G. Starkoff (#0003286)
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b. Defendant's Counsel:

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Stephen A. Rothschild
1000 Jackson Street
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T: (419) 321-1404
F: (419) 241-6894

5. Designation of Moving Party: The court designates the plaintiff as the moving party.

III.

For the above reasons, the court certifies the designated question of state law to the Supreme Court of Ohio.

It is also

ORDERED THAT:

1. In accordance with Rule XVIII, § 3 of the Rules of Practice of the Supreme Court of Ohio, Geri M. Smith, Clerk of the United States District Court for the Northern District of Ohio, shall serve copies of this Certification Order on counsel for the parties and to file this Certification Order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.
2. Further consideration of the defendant's pending motion for summary judgment be, and the same hereby is stayed pending final action by the Supreme Court of Ohio in response to this Order of Certification; and
3. The parties shall forthwith notify this Court whether the Ohio Supreme Court accepts the certified question; and, if so, of that Court's final determination thereof.

So ordered.

s/James G. Carr
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CERTIFICATE OF SERVICE

3:08cv1686

In re: HoneyBaked Foods, Inc. v. Affiliated FM Insurance Company

This is to certify that copies of the foregoing Order Certifying Question of State Law to the Supreme Court of Ohio was filed electronically on the 4th day of March, 2011, to all counsel of record listed below:

Alan G. Starkoff, Amanda L. Wickline, Jeremy M. Grayem
Richard D. Gable, Jr., Sean P. Mahoney, Thomas S. Brown, Jennifer L. Seme, Michael
G. Sanderson, Nathan A. Hall and stephen A. Rothschild

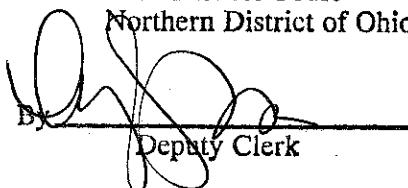
Geri M. Smith, Clerk of Court
Northern District of Ohio

S/ Amy L. Schroeder
Courtroom Deputy Clerk

Toledo, Ohio

I hereby certify that this
instrument is a true and
correct copy of the original
on file in my office.

Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio


By _____
Deputy Clerk

Armstrong, Cat04, Standard

**U.S. District Court
Northern District of Ohio (Toledo)
CIVIL DOCKET FOR CASE #: 3:08-cv-01686-JGC
Internal Use Only**

HoneyBaked Foods, Inc. v. Affiliated FM Insurance
Company
Assigned to: Judge James G. Carr
Demand: \$8,000,000
Cause: 28:1332 Diversity-Insurance Contract

Date Filed: 07/14/2008
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Diversity

Plaintiff**HoneyBaked Foods, Inc.**

represented by **Alan G. Starkoff**
Schottenstein, Zox & Dunn - Columbus

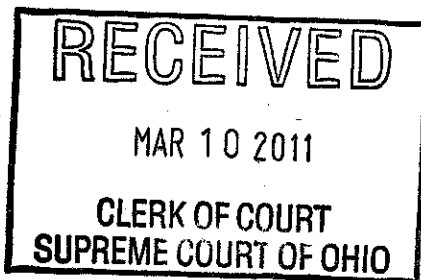
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Fax: 614-462-5135
Email: astarkoff@szd.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amanda L. Wickline
Schottenstein, Zox & Dunn - Columbus

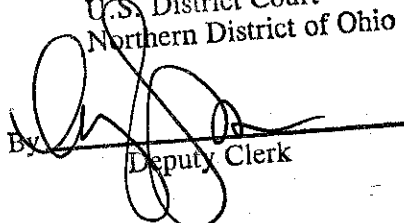
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Email: jgrayem@szd.com
ATTORNEY TO BE NOTICED



I hereby certify that this
instrument is a true and
correct copy of the original
on file in my office.
Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio

By: 
Deputy Clerk

V.

Defendant**Affiliated FM Insurance Company**

represented by **Richard D. Gable, Jr.**
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 Fax: 419-241-6894
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/14/2008	<u>1</u>	Complaint with jury demand against Affiliated FM Insurance Company. Filing fee \$ 350, receipt number 06470000000003104948, filed by HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet) (Starkoff, Alan) (Entered: 07/14/2008)
07/14/2008	<u>2</u>	Corporate Disclosure Statement filed by HoneyBaked Foods, Inc.. (Starkoff, Alan) Modified on 7/14/2008 (Cox, DeAnna). (Entered: 07/14/2008)
07/14/2008		(Court only) Utility Event adding attorney Jeremy M. Grayem and Amanda L. Wickline for HoneyBaked Foods, Inc.. Related document(s) <u>1</u> . (Cox, DeAnna) (Entered: 07/14/2008)
07/14/2008		Judge James G. Carr assigned to case. (Cox, DeAnna) (Entered: 07/14/2008)
07/14/2008	<u>3</u>	Magistrate Consent Form issued to counsel. Summons were not provided and were not issued. (Cox, DeAnna) (Entered: 07/14/2008)
08/25/2008	<u>4</u>	Waiver of Service Returned Executed by HoneyBaked Foods, Inc.. Affiliated FM Insurance Company waiver sent on 7/14/2008, answer due 9/12/2008. filed on behalf of HoneyBaked Foods, Inc. (Starkoff, Alan) (Entered: 08/25/2008)

09/12/2008	<u>5</u>	Answer to <u>1</u> Complaint filed by Affiliated FM Insurance Company. (Sanderson, Michael) (Entered: 09/12/2008)
09/12/2008	<u>6</u>	Corporate Disclosure Statement by Affiliated FM Insurance Company filed by Affiliated FM Insurance Company. (Sanderson, Michael) (Entered: 09/12/2008)
09/15/2008		(Court only) Utility Event adding attorney Stephen A. Rothschild and Nathan A. Hall for Affiliated FM Insurance Company. (A,P) (Entered: 09/15/2008)
10/08/2008	<u>7</u>	Case Management Conference Scheduling Notice: case management conference to be held on 11/17/2008 at 10:30 AM at Chambers 210 before Judge James G. Carr. (S,AL) (Entered: 10/08/2008)
10/16/2008	<u>8</u>	Motion for attorney Richard D. Gable, Jr. to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647000000003251255, filed by Defendant Affiliated FM Insurance Company. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Proposed Order)(Sanderson, Michael) (Entered: 10/16/2008)
10/16/2008	<u>9</u>	Motion for attorney Thomas S. Brown to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647000000003251314, filed by Defendant Affiliated FM Insurance Company. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Proposed Order)(Sanderson, Michael) (Entered: 10/16/2008)
10/21/2008	<u>10</u>	Order granting Motion by defendant Affiliated FM Insurance Company for attorney Richard D. Gable, Jr. to appear pro hac vice. (Related Doc # <u>8</u>). Signed by Judge James G. Carr on 10/21/2008.(S,JM) (Entered: 10/21/2008)
10/21/2008	<u>11</u>	Order granting defendant's Motion for attorney Thomas S. Brown to appear pro hac vice for Affiliated FM Insurance Company. (Related Doc # <u>9</u>). Signed by Judge James G. Carr on 10/21/2008.(S,JM) (Entered: 10/21/2008)
11/12/2008	<u>12</u>	Report of Parties' Planning Meeting <i>Under Fed.R.Civ.P.26(F) and Local Rule 16.3(b)</i> . Parties do not consent to this case being assigned to the magistrate judge. filed by all parties. (Grayem, Jeremy) (Entered: 11/12/2008)
11/21/2008	<u>13</u>	Order: Case Management Conference was held before Judge James G. Carr on 11/17/2008. Track designation is standard. Rule 26 disclosures to be exchanged by 1/30/2009. Discovery re. summary judgment to be completed by 9/30/2009. Dispositive Motions due by 11/2/2009; Opposition and counter-motion, if any, is due 12/1/2009; Reply and opposition to counter-motion, if any, is due 12/21/2009; Reply re. counter-motion, if any, is due 1/15/2010. (If counsel decide not to file a reply, notice of the intent not to file a reply shall be filed in lieu of the reply; failure to file either a reply or such notice may result in delay in the adjudication of the motion.) Final discovery cutoff is 6/1/2010. Initial Settlement Conference to be scheduled at request of any party. Mediation or other ADR to be completed in sufficient time to avoid alteration of the deadlines set herein. Final Settlement Conference is scheduled 6/21/2010 at

		1:00 p.m. in Chambers 210 before Judge James G. Carr. Voir Dire is scheduled 7/12/2010 at 1:30 p.m. in Courtroom 204 before Magistrate Judge Vernelis K. Armstrong. Twelve person jury trial is scheduled 7/13/2010 at 8:30 a.m. in Courtroom 204 before Judge James G. Carr. Signed by Judge James G. Carr on 11/21/2008. Parties are to refer to order for further details. (Time: 20 min.) (S,JM) (Entered: 11/21/2008)
02/02/2009	<u>14</u>	Notice of Service of <i>Initial Disclosures</i> filed by Affiliated FM Insurance Company. (Brown, Thomas) (Entered: 02/02/2009)
04/09/2009	<u>15</u>	Motion to bifurcate <i>and Stay with Memorandum in Support</i> filed by Defendant Affiliated FM Insurance Company. (Attachments: # <u>1</u> Exhibit A)(Sanderson, Michael) (Entered: 04/09/2009)
04/22/2009	<u>16</u>	Unopposed Motion for extension of April 27, 2009 until May 4, 2009 filed by Plaintiff HoneyBaked Foods, Inc.. Related document(s) <u>15</u> . (Grayem, Jeremy) Modified on 4/23/2009 (C,D). Document not signed, filer notified. (Entered: 04/22/2009)
04/29/2009	<u>17</u>	Marginal Entry Order granting <u>16</u> Motion for extension of time until 5/4/2009 to respond to motion to bifurcate and stay; reply is due 6/1/2009. Signed by Judge James G. Carr on 4/29/2009.(S,JM) (Entered: 04/29/2009)
05/04/2009	<u>18</u>	Opposition to <u>15</u> Motion to bifurcate <i>and Stay</i> filed by HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Starkoff, Alan) Modified on 6/2/2009 (C,D). (Entered: 05/04/2009)
06/01/2009	<u>19</u>	Reply to response to <u>15</u> Motion to bifurcate <i>and Stay</i> filed by Affiliated FM Insurance Company. (Attachments: # <u>1</u> Exhibit A)(Brown, Thomas) Modified on 6/2/2009 (C,D). (Entered: 06/01/2009)
06/17/2009		Notice [non-document]: Telephone Conference is scheduled for 6/22/2009 at 9:15 AM before Judge James G. Carr. (S,JM) (Entered: 06/17/2009)
06/19/2009	<u>20</u>	Motion for attorney Sean P. Mahoney to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 06470000000003611574, filed by Defendant Affiliated FM Insurance Company. (Attachments: # <u>1</u> Exhibit A - Affidavit of Sean P. Mahoney)(Sanderson, Michael) (Entered: 06/19/2009)
06/24/2009	<u>21</u>	Marginal Entry Order granting Motion for attorney Sean P. Mahoney to appear pro hac vice for defendant Affiliated FM Insurance Company. Signed by Judge James G. Carr on 6/24/2009. (Related Doc # <u>20</u>) (S,JM) (Entered: 06/24/2009)
06/24/2009	<u>22</u>	Order: Telephone Conference was held on 6/22/2009 before Judge James G. Carr. Ruling on defendant's motion to bifurcate is held in abeyance pending further court order. Discovery to be limited to coverage issues, pending further court order. Signed by Judge James G. Carr on 6/24/2009. (Time: 15 min.) (S,JM) (Entered: 06/24/2009)
08/26/2009		Notice [non-document]: Telephone discovery conference is scheduled 9/1/2009 at 10:30 a.m. Counsel are to submit a brief memo to the court, by fax or e-mail, outlining the issues in dispute by noon on 8/31/2009. (S,JM) (Entered: 08/26/2009)

09/03/2009		Notice [Non Document] of Telephone Discovery Conference set for 9/8/2009 at 01:30 PM in to be held telephonically before Judge James G. Carr. (S,AL) (Entered: 09/03/2009)
09/03/2009	<u>23</u>	Order: Telephone discovery conference was held 9/1/2009 before Judge James G. Carr. Further telephone discovery conference is scheduled 9/8/2009 at 1:30 p.m with Judge Carr. Signed by Judge James G. Carr on 9/3/2009. (Time: 20 min.) (S,JM) (Entered: 09/03/2009)
09/10/2009	<u>24</u>	Order: Discovery Conference was held on 9/8/2009 before Judge James G. Carr. Disputed requests, insofar as they seek production or responses relating to ambiguity of policy terms or damages, need not be responded to, pending further court order. Signed by Judge James G. Carr on 9/10/2009. (Time: 30 min.) (S,JM) (Entered: 09/10/2009)
10/01/2009	<u>25</u>	Subpoena Returned Executed; served upon Meadowbrook Insurance Group by Process Server on September 21, 2009 filed on behalf of HoneyBaked Foods, Inc. (Grayem, Jeremy) (Entered: 10/01/2009)
10/05/2009	<u>26</u>	Proposed Stipulated Briefing Schedule filed by Affiliated FM Insurance Company, HoneyBaked Foods, Inc.. (Grayem, Jeremy) Modified on 10/6/2009 (B,TM). (Entered: 10/05/2009)
10/09/2009	<u>27</u>	<i>Revised Proposed Stipulated Briefing Schedule</i> filed by Affiliated FM Insurance Company, HoneyBaked Foods, Inc.. Related document(s) <u>26</u> . (Rothschild, Stephen) Modified on 10/13/2009 (C,D). (Entered: 10/09/2009)
10/09/2009	<u>28</u>	Stipulation & Order: The Court adopts the briefing schedule proposed by Plaintiff, HoneyBaked Foods, Inc. and Defendant, Affiliated FM Insurance Company as follows: Defendants Motion for Summary Judgment is due 11/16/2009; Plaintiffs Opposition to Defendants Motion for Summary Judgment and its Counter-Motion for Summary Judgment are due 12/14/2009; Defendants Reply in Support of Its Motion For Summary Judgment and Opposition to Plaintiffs Counter-Motion for Summary Judgment are due 1/6/2010; and Plaintiffs Reply in Support of its Counter-Motion for Summary Judgment is due 1/20/2010. Signed by Judge James G. Carr on 10/9/2009. (Related documents <u>26</u> <u>27</u>). (S,JM) Modified on 10/14/2009 (B,TM). (Entered: 10/09/2009)
11/05/2009	<u>29</u>	Order: Status/scheduling conference was held before Judge James G. Carr on 11/2/2009. Discovery re. dispositive motions to be completed by 4/30/2010. Dispositive Motions due by 6/1/2010; Opposition and counter-motion, if any, is due 7/2/2010; Reply and opposition to counter- motion, if any, is due 7/19/2010; Reply to counter-motion, if any, is due 7/30/2010. Final discovery cutoff is 11/30/2010. Initial Settlement Conference to be scheduled at request of any party. Mediation or other ADR to be completed in sufficient time to avoid alteration of the deadlines set herein. Final Settlement Conference is scheduled 12/13/2010 at 2:00 p.m. in Chambers 210 before Judge James G. Carr. Voir Dire is scheduled 1/10/2011 at 1:30 p.m. in Courtroom 204 before Magistrate Judge Vernelis K. Armstrong. Twelve person jury trial is scheduled 1/11/2011 at 1:30 p.m. in Courtroom

		204 before Judge James G. Carr. Signed by Judge James G. Carr on 11/5/2009. Parties are referred to order for full details. (Time: 30 min.) (S,JM) (Entered: 11/05/2009)
03/19/2010		(Court only) Utility Event Terminating Motions. <u>15</u> Motion to bifurcate <i>and Stay with Memorandum in Support</i> filed by Affiliated FM Insurance Company. (S,AL) (Entered: 03/19/2010)
04/09/2010	<u>30</u>	Joint Motion for Order Amending the Scheduling Order filed by Defendant Affiliated FM Insurance Company, Plaintiff HoneyBaked Foods, Inc.. Related document(s) <u>29</u> . (Attachments: # <u>1</u> Brief in Support, # <u>2</u> Proposed Order)(Starkoff, Alan) (Entered: 04/09/2010)
04/15/2010	<u>31</u>	Order: granting <u>30</u> joint motion for order amending the 11/5/2009 scheduling order. The deadline for completion of discovery relating to dispositive motions is hereby extended to 5/31/2010. Dispositive motions are due 7/2/2010. Opposition [and counter-motion, if any] due 8/2/2010. Reply [and opposition to counter-motion, if any] due 8/19/2010. Reply to counter-motion is due 8/30/2010. Signed by Judge James G. Carr on 4/14/2010.(S,JM) (Entered: 04/15/2010)
05/04/2010	<u>32</u>	Attorney Appearance by Jennifer L. Seme filed by on behalf of Affiliated FM Insurance Company. (Seme, Jennifer) (Entered: 05/04/2010)
06/30/2010	<u>33</u>	Motion for Order Requiring Documents be Filed Under Seal filed by Plaintiff HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Proposed Order) (Starkoff, Alan) (Entered: 06/30/2010)
07/01/2010	<u>34</u>	Order: Telephone conference was held on 7/1/2010. Deadlines for filing summary judgment briefing are extended two weeks. Dispositive motions are due 7/16/2010; opposition [and counter-motion, if any] due 8/16/2010; reply [and opposition to counter-motion, if any] due 9/2/2010; reply to counter-motion is due 9/15/2010. Settlement conference and trial date are confirmed. Motion for Order Requiring Documents be Filed Under Seal (Doc. <u>33</u>) is overruled. Signed by Judge James G. Carr on 7/1/2010. (Time: 20 min.) (S,JM) (Entered: 07/01/2010)
07/16/2010	<u>35</u>	Motion for partial summary judgment filed by Defendant Affiliated FM Insurance Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O)(Brown, Thomas) Modified on 7/19/2010 - Proposed Order is filed as page 1 of motion. (G,D). (Entered: 07/16/2010)
08/05/2010	<u>36</u>	Motion for leave to <i>Exceed the Page Limitation Applicable to Dispositive Motions in Standard Cases</i> filed by Plaintiff HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Proposed Order Granting Plaintiff's Motion to Exceed the Page Limitation)(Starkoff, Alan) (Entered: 08/05/2010)
08/11/2010	<u>37</u>	Unopposed Motion for extension of time to Complete Summary Judgment Briefing filed by Plaintiff HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Exhibit A - Proposed Order)(Starkoff, Alan) Modified on 8/12/2010

		(G,Di). (Entered: 08/11/2010)
08/12/2010	<u>38</u>	Marginal Entry Order granting <u>36</u> Motion for leave to exceed the page limitation. Plaintiff is granted leave to file its counter-motion for summary judgment and opposition to defendant's motion for summary judgment that does not exceed 35 pages. Signed by Judge James G. Carr on 8/12/2010. (S,JM) (Entered: 08/12/2010)
08/12/2010	<u>39</u>	Order granting <u>37</u> Motion for Extension of Time. Opposition to Defendants Motion for Partial Summary Judgment and Plaintiffs Counter Motion for Summary Judgment due 9/2/2010. Defendants Reply in Support of Its Motion for Partial Summary Judgment and Opposition to Plaintiffs Motion for Summary Judgment (if any) due September 15, 2010. Plaintiffs Reply in Support of Its Motion for Partial Summary Judgment due September 30, 2010. Judge James G. Carr on 8/12/2010.(C,D) (Entered: 08/12/2010)
08/12/2010	<u>40</u>	THIS ORDER FILED IN ERROR Order: Plaintiff's motion to extend the briefing schedule (Doc. <u>37</u>) is granted. Plaintiff's opposition to defendant's motion for partial summary judgment and plaintiff's motion for summary judgment is due 9/2/2010; defendant's reply in support of its motion for partial summary judgment and opposition to plaintiff's motion for summary judgment (if any) is due 9/15/2010; plaintiff's reply in support of its motion for partial summary judgment is due 9/30/2010. Signed by Judge James G. Carr on 8/12/2010.(S,JM) Modified on 8/12/2010 (S,JM). (Entered: 08/12/2010)
09/02/2010	<u>41</u>	Counter Motion for partial summary judgment <i>and Opposition to Defendant's Motion for Partial Summary Judgment</i> filed by Plaintiff HoneyBaked Foods, Inc.. Related document(s) <u>35</u> . (Attachments: # <u>1</u> Exhibit A - Cited excerpts and exhibits from the deposition transcript of Randy L. Rigdon, # <u>2</u> Exhibit B - All-Risk Insurance Policy, # <u>3</u> Exhibit C - Cited excerpts and exhibits from the deposition transcript of Brett Lee Woods, # <u>4</u> Exhibit D - Cited excerpts and exhibits from the deposition transcript of Joseph Charles Cordray, Ph.D., # <u>5</u> Exhibit E - Cited excerpts and exhibits from the deposition transcript of Daniel P. Kurz, # <u>6</u> Exhibit F - Cited excerpts and exhibits from the deposition transcript of Brian Mariuz, # <u>7</u> Exhibit G - Cited pages from the USDA/FSIS Questions and Answers (May 2006), # <u>8</u> Exhibit H - Cited excerpts and exhibits from the deposition transcript of Brian C. Cook, # <u>9</u> Exhibit I - Cited pages from United States Food and Drug Administration, Food Safety and Inspection Service, Compliance Guidelines To Control Listeria Monocytogenes In Post-Lethality Exposed Ready-To-Eat Meat And Poultry Products) (Starkoff, Alan) Modified on 10/1/2010 (G,D). (Entered: 09/02/2010)
09/08/2010	<u>42</u>	Unopposed Motion to extend the Briefing Schedule filed by Defendant Affiliated FM Insurance Company. (Attachments: # <u>1</u> Exhibit A - Proposed Order) (Brown, Thomas) Modified on 9/9/2010 (B,TM). (Entered: 09/08/2010)
09/10/2010	<u>43</u>	Order the defendant's motion for extension of time. Reply in support of motion for partial summary judgment and opposition to HoneyBaked's

		motion for summary judgment is due 9/30/2010; HoneyBaked's reply in support of its motion for partial summary judgment is due 10/15/2010. <u>42</u> Judge James G. Carr on 9/10/2010.(S,AL) (Entered: 09/10/2010)
09/30/2010	<u>44</u>	Reply to response to <u>41</u> Counter Motion for partial summary judgment <i>and Opposition to Defendant's Motion for Partial Summary Judgment</i> filed by Affiliated FM Insurance Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Brown, Thomas) Modified on 10/1/2010 (G,D). (Entered: 09/30/2010)
10/15/2010	<u>45</u>	Deposition of Randy L. Rigdon taken on May 26, 2010 filed by HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit F-1, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Exhibit L, # <u>14</u> Exhibit M, # <u>15</u> Exhibit N, # <u>16</u> Exhibit O, # <u>17</u> Exhibit P, # <u>18</u> Exhibit Q, # <u>19</u> Exhibit R, # <u>20</u> Exhibit S, # <u>21</u> Exhibit T, # <u>22</u> Exhibit U, # <u>23</u> Exhibit V, # <u>24</u> Exhibit W)(Starkoff, Alan) Modified on 10/19/2010 (pages 114-119 out of order, filer notified) (B,TM). (Entered: 10/15/2010)
10/15/2010	<u>46</u>	Deposition of Brett Lee Woods taken on April 20, 2010 filed by HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 3, # <u>3</u> Exhibit 4, # <u>4</u> Exhibit 5, # <u>5</u> Exhibit 6, # <u>6</u> Exhibit 7, # <u>7</u> Exhibit 8, # <u>8</u> Exhibit 9, # <u>9</u> Exhibit 10, # <u>10</u> Exhibit 11, # <u>11</u> Exhibit 12, # <u>12</u> Exhibit 13, # <u>13</u> Exhibit 14, # <u>14</u> Exhibit 15, # <u>15</u> Exhibit 16, # <u>16</u> Exhibit 17) (Starkoff, Alan) (Entered: 10/15/2010)
10/15/2010	<u>47</u>	Deposition of Joseph Charles Cordray, Ph.D. taken on April 1, 2010 filed by HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6)(Starkoff, Alan) (Entered: 10/15/2010)
10/15/2010	<u>48</u>	Deposition of Daniel P. Kurz taken on April 20, 2010 filed by HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Exhibit 17, # <u>18</u> Exhibit 18, # <u>19</u> Exhibit 19, # <u>20</u> Exhibit 20, # <u>21</u> Exhibit 21, # <u>22</u> Exhibit 22, # <u>23</u> Exhibit 23)(Starkoff, Alan) (Entered: 10/15/2010)
10/15/2010	<u>49</u>	Deposition of Brian Mariuz taken on June 3, 2010 filed by HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14)(Starkoff, Alan) (Entered: 10/15/2010)
10/15/2010	<u>50</u>	Deposition of Brian C. Cook taken on May 26, 2010 filed by HoneyBaked Foods, Inc.. (Starkoff, Alan) (Entered: 10/15/2010)
10/15/2010	<u>51</u>	Notice of Filing of Deposition Transcripts filed by HoneyBaked Foods, Inc.. Related document(s) <u>50</u> , <u>47</u> , <u>46</u> , <u>49</u> , <u>48</u> , <u>45</u> .(Starkoff, Alan) (Entered: 10/15/2010)

10/15/2010	<u>52</u>	Reply Brief in support of <u>41</u> Counter Motion for partial summary judgment filed by HoneyBaked Foods, Inc.. (Attachments: # <u>1</u> Exhibit A - Excerpts from the Deposition Transcript of Randy L. Rigdon, # <u>2</u> Exhibit B - All-Risk Policy, # <u>3</u> Exhibit C - Excerpts from the Deposition Transcript of Joseph Charles Cordray, Ph.D., # <u>4</u> Exhibit D - Excerpts from the Deposition Transcript of Bret Lee Woods, # <u>5</u> Exhibit E - Leprino Transcript of Trial to Jury (Day 3 - Jury Instructions)(Excerpt), # <u>6</u> Exhibit F - Leprino Judgment)(Starkoff, Alan) Modified on 10/19/2010 (B,TM). (Entered: 10/15/2010)
10/25/2010		Notice [Non Document] of Telephone Conference set for 10/29/2010 at 10:00 AM before Judge James G. Carr. (S,AL) (Entered: 10/25/2010)
11/16/2010	<u>53</u>	Order: Telephone status conference was held on 10/29/2010. The 1/11/2011 trial date is vacated. The 12/13/2010 settlement conference is rescheduled as a telephone status conference. Signed by Judge James G. Carr on 11/16/2010. (Time: 15 min.) (S,JM) (Entered: 11/16/2010)
12/02/2010	<u>54</u>	Order : The motion of the defendant for summary judgment is granted in part in accordance with this opinion. By January 15, 2011, the parties shall jointly propose a question or questions for certification to the Ohio Supreme Court regarding whether, notwithstanding the failure of the policy at issue otherwise to cover the plaintiffs loss, such loss might be covered, contingent on jury findings of disputed facts, under Ohio law; failing agreement as to such question(s), the parties shall submit their counter-proposals, supported by a brief statement of reasons in favor of their formulation and opposition to that of the other party. (Related Doc # <u>35</u>) (Related Doc # <u>41</u>). Judge James G. Carr on 12/2/2010.(S,AL) (Entered: 12/02/2010)
12/03/2010		Notice [non-document]: The telephone conference scheduled 12/13/2010 is vacated. (S,JM) (Entered: 12/03/2010)
01/14/2011	<u>55</u>	Notice of Defendant's Proposed Certified Question and Statement of Reasons in Support filed by Affiliated FM Insurance Company. Related document(s) <u>54</u> . (Mahoney, Sean) Modified on 1/19/2011 (B,TM). (Entered: 01/14/2011)
01/14/2011	<u>56</u>	Notice of Plaintiff's Proposed Certified Question of Law to the Ohio Supreme Court filed by HoneyBaked Foods, Inc.. Related document(s) <u>54</u> . (Starkoff, Alan) Modified on 1/19/2011 (B,TM). (Entered: 01/14/2011)
03/04/2011	<u>57</u>	Order of Certification: copies of this Certification Order shall be served upon the Supreme Court of Ohio, along with appropriate proof of service. Further consideration of the defendant's pending motion for summary judgment is stayed pending final action by the Supreme Court of Ohio in response to this Order of Certification. The parties shall forthwith notify this Court whether the Ohio Supreme Court accepts the certified question; and, if so, of that Court's final determination thereof. Judge James G. Carr on 3/4/2011. (S,AL) (Entered: 03/04/2011)