

11th Circ. Says No Extra Irma Coverage For Fla. Farm

By **Riley Murdock**

Law360 (April 11, 2023, 3:54 PM EDT) -- The Eleventh Circuit rejected a Florida farming company's bid to have underwriters at Lloyd's of London cover crops that were destroyed in Hurricane Irma, affirming a district court's ruling that its marine cargo policy only covered goods that were in transit.



The Eleventh Circuit said underwriters at Lloyd's of London do not have to cover a Florida farming company's crops that were destroyed in Hurricane Irma. (AP Photo/Mike Stewart)

The Lloyd's underwriters had accepted coverage and paid for up to \$5 million in vegetables stored at Pero Family Farm Food Co. Ltd.'s so-called packing house in Delray Beach during the hurricane but were correct to deny further coverage for crops that were growing in fields and greenhouses at the time, a three-judge panel ruled in an **unpublished per curiam opinion Monday**.

Both parties argued that Pero's policy is unambiguous, with Lloyd's insisting it doesn't cover crops before they're harvested and transported and Pero claiming that it covers all merchandise "of every description incidental to" its business, according to the opinion. The panel found that the scope of coverage under the policy was clearly intended to apply only to goods in transit or in storage, not before they left the field.

"We agree with Pero that the policy's language was clear and unambiguous," the panel wrote. "But we agree with Lloyd's and the district court that the policy did not cover Pero's damaged seedlings, plantings, and plastic coverings."

The claims-handling process outlined in the policy confirms the scope of coverage, as it required Pero to

provide information while making a claim including the "name of vessel/conveyance," "date of shipment," "insured cargo" and the cargo's current location, as well as additional transit-related documents, the panel said.

Pero's original insurance application in 2015 also explained that coverage under the policy is limited to goods being transported or stored during the process of being transported, according to the opinion.

"The [policy] offered coverage to Pero's goods and merchandise while in transit 'from' field to packaging, 'to' their final destination, and while stored as 'stock' during the course of transit; they did not cover goods and merchandise anywhere and anytime," the panel wrote.

Pero grows vegetables, mainly peppers and green beans, which it sells for retail or wholesale, according to case filings. While it plants seeds in fields it owns or leases, it also sends some to a third party, Trans Gro, which grows them in greenhouses until they're mature enough to be planted in the fields, filings show.

The company's policy contained limits of \$150,000 per individual shipment and \$5 million for goods stored at a "location" during transit, according to the opinion. The value of the inventory at the company's packing house is the same as the per-location coverage limit in the policy as well, the panel noted.

Pero submitted a claim for losses caused by Hurricane Irma in September 2017, filings show. Lloyd's accepted coverage and paid for vegetables lost in the coolers at its packing house, which had been insured for up to \$5 million, but denied coverage for plants currently growing in fields or greenhouses, as well as plastic coverings in the fields.

Lloyd's then sued Pero in Florida federal court, seeking a declaration that it did not have to cover the remaining losses. Pero filed a counterclaim for breach of contract, case records show.

The parties entered dueling motions for summary judgment, and the district court sided with Lloyd's, finding that goods needed to be moved in commerce to be covered under the policy and that Pero doesn't sell any of the property in dispute.

Pero argued on appeal that the district court erred by relying on the title of the so-called marine cargo policy, but the panel affirmed that the name of the policy was consistent with the coverage it provided. Even if Pero's crops were considered covered merchandise, they still only would have been covered if they were destroyed while in transit, the panel said.

"We're gratified by the ruling, which recognizes that coverage for cargo insurance does not include crop damage claims," counsel for the underwriters David Frederick said. "The court's ruling was a straightforward reading of the insurance policy and application of ordinary principles of insurance coverage."

Representatives of Pero did not immediately respond to requests for comment.

U.S. Circuit Judges Charles R. Wilson, Robert J. Luck and Barbara Lagoa sat on the panel for the Eleventh Circuit.

Lloyd's is represented by Krista Fowler Acuña and Michael J. Dono of Hamilton Miller & Birthisel LLP and David C. Frederick of Kellogg Hansen Todd Figel & Frederick PLLC.

Pero is represented by John G. Crabtree, Charles M. Auslander, Brian C. Tackenberg of Crabtree & Auslander.

The case is Certain Underwriters at Lloyd's of London v. Pero Family Farm Food Co. Ltd., case number 20-12711, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Emma Brauer.