

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

OCT 09 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNDERWOOD FRUIT AND  
WAREHOUSE COMPANY, a  
Washington Limited Partnership; et al.,

Plaintiffs - Appellants,

v.

NATIONWIDE AGRIBUSINESS  
INSURANCE CO, a Foreign Corporation,

Defendant - Appellee.

No. 08-35745

D.C. No. 2:07-cv-03063-RHW

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Robert H. Whaley, Senior District Judge, Presiding

Submitted October 7, 2009\*\*  
Seattle, Washington

Before: D.W. NELSON, SILVERMAN and IKUTA, Circuit Judges.

Plaintiff Underwood Fruit and Warehouse Company and Plaintiff

Washington Fruit and Produce Company appeal the district court's grant of

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

summary judgment in favor of Defendant Nationwide Agribusiness Insurance Co. We have jurisdiction under 28 U.S.C. § 1291. We review the summary judgment decision de novo, *E. & J. Gallo Winery v. Encana Corp.*, 503 F.3d 1027, 1033 (9th Cir. 2007), and we affirm.

The district court correctly held that Underwood Fruit suffered a single occurrence of employee dishonesty under its insurance policy. *See Valley Furniture & Interiors, Inc. v. Trans. Ins. Co.*, 26 P.3d 952, 955 (Wash. Ct. App. 2001). Schemes I and II were nearly identical and Underwood Fruit presented no evidence that it suffered a loss as a result of Scheme III.

Further, the district court properly granted summary judgment as to Washington Fruit's claims. Washington Fruit's insurance policy expressly and unambiguously limits recovery to losses sustained during the policy period and none of Washington Fruit's losses occurred during that time. *See Kitsap County v. Allstate Ins. Co.*, 964 P.2d 1173, 1178 (Wash. 1998).

**AFFIRMED.**