

PRODUCT LIABILITY

Naturally Boulder—2013

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Produced up until 1996..

Produced starting in '98





PCA Executives Indicted for Fraud, Conspiracy in Salmonella Peanut Butter Outbreak



Executives at The Peanut Corp. of America (PCA) knew their products were contaminated with salmonella, but continued to ship them to customers. The contaminated peanuts were distributed for use in more than 3,600 products.

The Peanut Corp. of America (PCA) --Tainted Peanuts

- ▶ Food and Drug Administration (FDA) investigators reported “12 instances where the firm, as part of its own internal testing program, identified some type of salmonella,” and yet still released the product.

The Peanut Corp. of America (PCA) --Tainted Peanuts

“We need to protect ourselves and the problem is that the tests absolutely give us no protection.”

-- PCA President Stewart Parnell

From: Stewart Parnell [REDACTED]
Sent: Thursday, August 21, 2008 1:31 PM
To: 'Sammy Lightsey'
Subject: RE: Micro

okay, let's turn them loose then...Stewart

Excel Corporation Beef

- ▶ Executives at Excel Corporation were repeatedly warned by regulators that food safety at its Fort Morgan, Colorado, meatpacking plant was in dire need of improvement, yet the company took no action to improve its food safety systems.



“It's like a roll of the dice or a game of Russian roulette.”
--Dan Allen, Excel's food safety director to AP Reporter in 2000



Ford Pinto

BENEFITS & COSTS ANALYSIS		
<i>Excerpt: Ford Inter Office Memo, September 18, 1973</i>		
BENEFITS		
180 burn deaths	\$200,000 per death	\$36,000,000
180 serious burn injuries	\$67,000 per injury	\$12,060,000
2,100 burned vehicles	\$700 per vehicle	\$1,470,000
		<hr/>
		\$49.5 Million
COSTS		
11,000,000 cars	\$11 per car	\$121,000,000
1,500,000 light trucks	\$11 per truck	\$16,500,000
		<hr/>
		\$137.5 Million



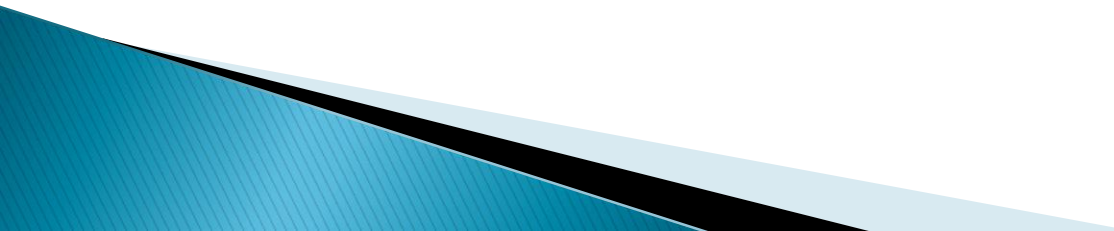
Over the Counter Laxative

- ▶ Originally developed in the late 1800s as a “purgative” and to treat hangovers, this saline laxative saw a new use in the early 1990s—as a pre-colonoscopy bowel cleanser.
- ▶ The Company soon began to receive reports of kidney failure associated with this use but deflected criticism until late 2008 when reported adverse events reached the point where the product was recalled.

PREPARE

- ▶ *“By failing to prepare, you are preparing to fail.”*
 - ▶ --Benjamin Franklin

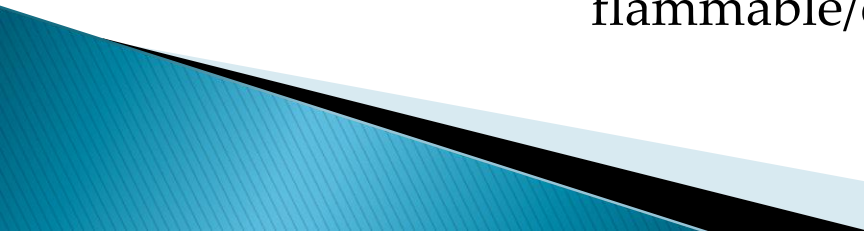
Regardless of the size of your business, whether you are just starting or established, the best time to address product liability is before it happens to you!



▶ What is Product Liability?

▶ CONSIDERATIONS

- ▶ What should I look for?

- ▶ Will the failure of my product, component, accessory or material result in a foreseeable loss—bodily injury and/or property damage?
 - ▶ Is the foreseeable loss likely to result in a serious accident or loss?
 - ▶ Is the useful life of my product likely to last more than a few years?
 - ▶ Is more than one person likely to be injured in the event of a product failure?
 - ▶ Is the expected user of my product a child/teenager, the elderly or an infant?
 - ▶ Is my product considered inherently hazardous? (e.g., pressure components; moving parts; toxic substances; flammable/combustible/explosive)
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▶ FACTORS

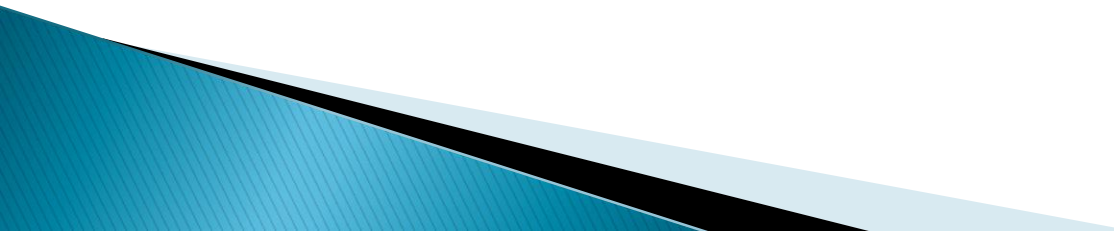
- ▶ A concealed danger has been created
- ▶ Safety devices have not been incorporated
 - ▶ Materials are of inadequate strength
- ▶ Failure to comply with accepted standards
- ▶ Failure to consider possible misuses of the product which were legally foreseeable
 - ▶ Warnings and instructions are inadequate

- ▶ The risk of accidents and product liability can never be completely eliminated

▶ BUT, Businesses frequently do not devote adequate attention or resources to product safety

▶ Why????

- ▶ Because product safety considerations and related expenses (READ: ADDED COSTS) often take a back seat to manufacturing, marketing, advertising, sales and profit.

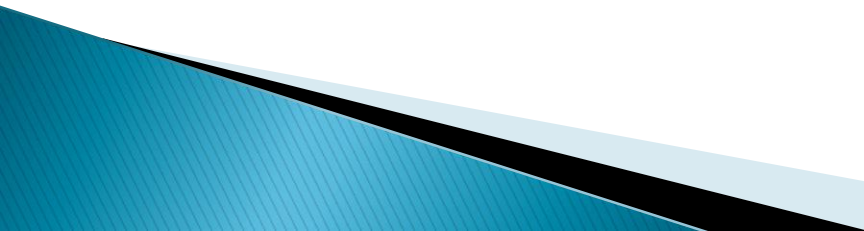
- ▶ “I’ll get to that tomorrow or next week or when I have better cash flow or[fill in the blank].”
 - ▶ *“Never put off till tomorrow what you can do today.”*
 - ▶ --Lord Chesterfield
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▶ YOUR GOAL:

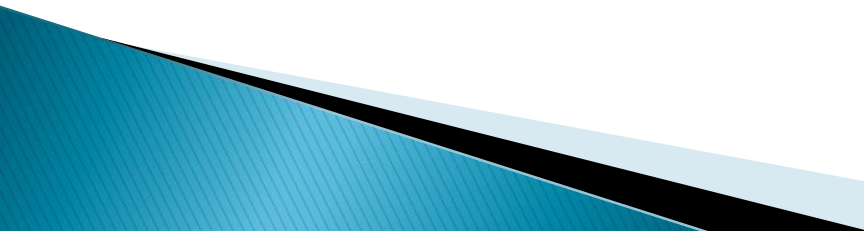
- ▶ Manage risk to minimize accidents and to provide a good defense if lawsuits occur.

▶ HOW AND WHERE DO I START?

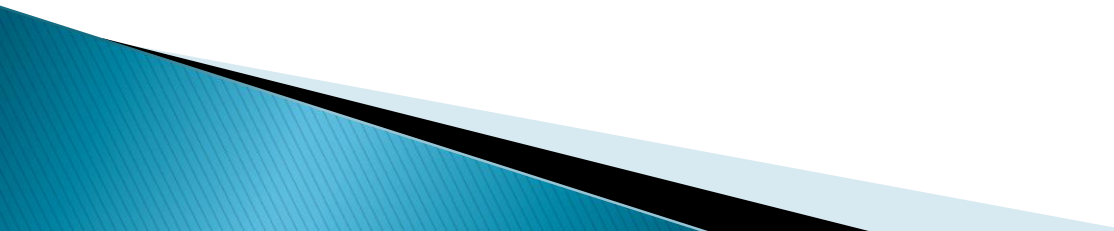
▶ IS YOUR BUSINESS HOUSE IN ORDER?

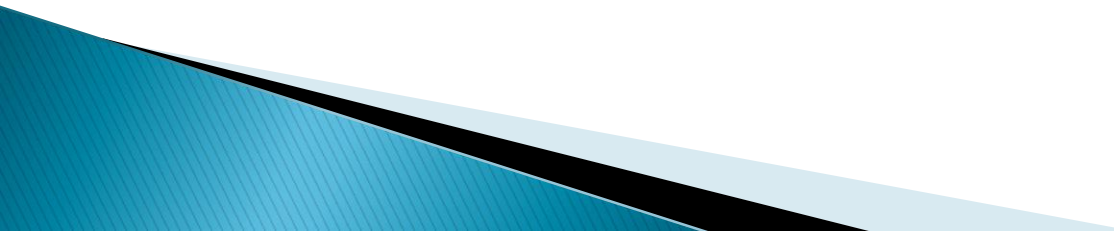
- ▶ Corporate Recordkeeping
 - ▶ Employee policies and procedures
 - ▶ Insurance
 - ▶ Record Retention
 - ▶ Website and “e” marketing
- 

- ▶ CONTRACTING PRACTICES
 - ▶ As Seller AND Buyer
- 

- ▶ Indemnification, defense and hold harmless provisions
 - ▶ Insurance
 - ▶ Dispute Resolution
 - ▶ Independent product testing and inspections
 - ▶ Documentation and recordkeeping
 - ▶ Warnings, labels and instructions
 - ▶ Design hazard analysis
- 

QC/QA

- ▶ Codes and standards compliance
 - ▶ Testing
 - ▶ Expert witness availability
 - ▶ Jurisdiction and venue for claims and suits
- 

- ▶ Every Manufacturer and Seller should be, and most are, concerned with producing reasonably safe products.
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- ▶ Safety must be considered a part of each person's day-to-day job

“At Ford Quality is Job One.”

▶ *“In our house, safety is Job One.”*

- ▶ The actions that your business takes now to ensure product safety can go a long way to improve your Company's defense position should face a products liability claim or lawsuit.

▶ **YOU'VE BEEN SERVED!**

▶ *“One ‘ah shit’ wipes out 100 ‘atta boys.’”*

--Old Adage

- ▶ Your business may be decades old, you may have sold thousands of products without incident but, when you get served with a lawsuit, your “atta boys” are gone, used up.

- ▶ Lawsuits and litigation are:
 - ▶ Immediately Disruptive
 - ▶ Time consuming
 - ▶ Distracting
 - ▶ Expensive

▶ OK—Now what?

DON'T PANIC

✓READ

✓ ACT PROMPTLY

✓ DEADLINES

✓ NOTIFY YOUR INSURANCE
BROKER OR CARRIER



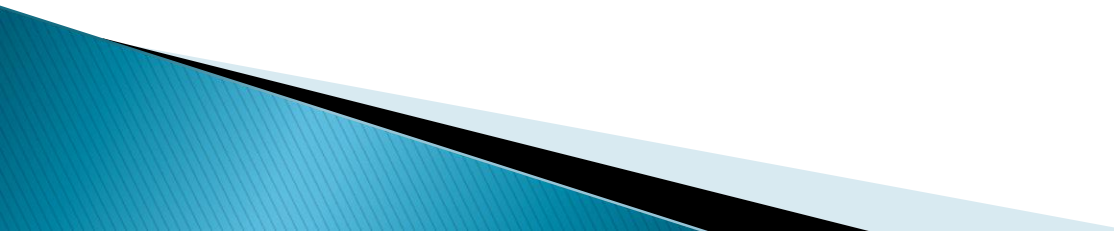
✓ CONTACT A TRIAL LAWYER

✓ Document and record—HOLD

✓ Names, Addresses, Dates

✓ Timeline



- ▶ If contacted by the Media—
 - ▶ *“We do not comment on matters in litigation.”*
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BIBLIOGRAPHY

They Knew and They Failed To (Compilation of Sources),
American Association of Justice, December 2009