

PRODUCT LIABILITY

The Newsletter of the Product Liability Defense Practice Group



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PACKAGING AND SELLING OF FRESH FRUIT

Written by: Michael Vetter, Sr., Christopher Myatt, and Lance Thompson - Spicer Rudstrom, PLLC

Product manufacturers are afforded numerous defenses under both federal and state law. In Tennessee, as in many other states, retailers are entitled to immunity from suit for selling defective or dangerous products manufactured by others, subject to limited exceptions, provided that the retailer exercised no control or modification of the product. This is true even when the product is not technically "manufactured," but "produced."

For instance, we recently obtained dismissal for a retail client that sold prepackaged fresh fruit that was subject to a nationwide recall for contamination. Fresh fruit, of course, is not manufactured but produced and, in this case, packaged for sale. The court found that the seller statute portion of the Tennessee Product Liability Act applied and granted immunity to the retailer since it had no control over the production and packaging of the fruit and the producer was both solvent and subject to service of process in Tennessee.

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THE "GOLDILOCKS ZONE" FOR BIOMECHANICAL OPINIONS

Written by Holly M. Polglase & Matthew Bown - Hermes, Netburn, O'Connor & Spearing, P.C.

In the field of astronomy, the term, "Goldilocks Zone" refers to the habitable zone around a star where the temperature is just right - not too hot and not too cold - for liquid water to exist on a planet. This concept takes its name from the 19th Century fairy-tale about a little blond girl named Goldilocks who enters the home of the Three Bears while they are out and eats their porridge and takes a nap. Deciding which of the bowls of porridge to eat, she tested each one to make sure it was not too hot or too cold. Likewise, she did not want to nap in a bed that was too hard or too soft so she tried each one and picked the bed which was "juuusssst right."

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SLACK-WHAT? A POTENTIAL NON-PRODUCT LIABILITY PROBLEM WITH YOUR PRODUCT

Written by: Jack C. Henning - Dillingham & Murphy, LLP



Product liability refers to the legal rules concerning who is responsible for defective or dangerous products.

Entities in the chain of distribution of products that allegedly cause harm to people can be sued under state law theories of negligence, strict liability, or breach of warranty. However, manufacturers of products also need to worry about federal and state law theories concerning misleading product containers and the concept of slack-fill. Have you purchased a box of candy at a movie theater and found it only half-full of product? Have you opened a bag of chips while watching a football game and found the top half-full of air? That is slack-fill, and if you are a manufacturer, you face potential liability regarding the empty space in the container.

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CALIFORNIA & CANNABIS : REGULATING A NEW FRONTIER

Written by Dane J. Bitterlin - Neil, Dymott, Frank, McCabe & Hudson APLC

Recreational use of cannabis is now legal in eleven states and the District of Columbia. Even wider adoption has occurred in the context of medical cannabis, where thirty-three states have legalized medicinal use. While there remains some uncertainty regarding the future of legalized cannabis in the United States, especially in light of its continued prohibition at the federal level, it would appear that inertia is on the industry's side. However, the relatively rapid march toward legalization has resulted in a need to quickly and effectively address the regulatory needs of both consumers and the nascent cannabis industry. One of the states currently grappling with these issues is California, which is significant given its position as the country's economic and agricultural powerhouse.

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