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PRACTICE GROUP: FOOD RESOURCES & MANUFACTURING

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CO-PACKING AND PRIVATE LABELING LIABILITY PART 2: IT'S OUR PRODUCT, BUT NOT OUR BRAND

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Many manufacturers and food processors have expanded their production and increased sales revenue by providing co-packing services to other companies. What may have started as a simple verbal agreement with a handshake could become a larger part of your annual sales revenue. With that in mind, you may be asking yourself, who has the liability? You produce the product but it's not your recipe, specs, labeling information, or brand. There are three ways to address this risk in your business; quality control, contracts, and insurance.

QUALITY CONTROL

Because you are the manufacturer, you have supervision over the quality control process. There are various certification processes that can help you ensure quality products are delivered on time and without defect. Electronic tracking systems can also provide the data necessary to pinpoint an issue or defective lot number, should you have an issue with quality. However, it is also important to establish a culture within your company of safety and transparency. Many product recalls could have been avoided had employees not tried to cover up potential issues.

Ted Hadley from Odyssey Foods, a private labeler in Seattle, Washington, tightly manages their quality control process all the way through the consumer complaint process. Odyssey has their phone number and address on the packaging, not their client's. They have found that offering the consumer a replacement product or gift card is often all that is required to diffuse a potential lawsuit.

There are three ways to address [liability] risk in your business; quality control, contracts, and insurance.

CONTRACTS

Contracts serve a very important function in protecting your company, but all too often co-packers will yield to their client's requests even when they are not in their best interest. Allison Budvarson from Out of the Box Manufacturing urges you to have a robust manufacturing agreement in place, advising further that everything is negotiable. She also warns, "Don't feel pressured to sign something just to close the deal." The contract should clearly state who is obligated for maintenance,

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service, and warranty issues, and what that process will look like. It should also have dispute resolution language to create a framework for disagreements.

PRODUCT RECALL INSURANCE

Despite your best efforts at quality control, a product recall, whether voluntary or involuntary, can occur at any time. Be prepared by completing a mock recall with your staff and outlining a thorough recall plan. Spell out who is responsible for a recall and at what point you may be on the hook for expenses in your contract with clients.

Many clients are requiring that their co-packers carry product recall insurance policies, and ask that they be included as an additional insured on that policy. Know what your policy covers, and be sure it includes third party damages if you are a co-packer; it will reimburse your client for their expenses associated with the recall even if you don't have any. **Parker, Smith & Feek has extensive experience with product recall policies, call us today to learn more about what you can do to protect your business.**