

## Proposition 65 Defense: Strategy is as Important as Facts

You're reading this because you received a Prop. 65 demand letter from a law firm specializing in Prop. 65 "shakedown" lawsuits. Most likely, the letter says there is excessive lead in your product. You have questions. Here are some answers:

### 1. What are the odds the attorney will "just go away" if I ignore him?

*Answer:* Law requires plaintiff's attorney to laboratory test your product before sending his letter. The fact that you got the letter means --

- (a) He has a positive "hit" for lead in your product,
- (b) He made an investment in laboratory fees to get that positive "hit," and
- (c) Now, he's coming to collect on his investment.

### 2. Why not just wait until I hear from him again?

*Answer:* Prop. 65 requires *you* to pay plaintiff's attorney's fees. Attorneys make more money suing than writing letters. So, the next time you hear from him, he will be serving you with a lawsuit and his legal fees meter will be running.

### 3. What can I do to hold down my costs?

*Answer:* This next point is very important: The law makes plaintiff's attorney wait 60 days between writing his letter and filing his lawsuit. No other law is like that. We take advantage of those 60 days by doing things like --

- Sometimes we do product testing. *Don't* do your own testing. Whatever you discover has to be handed over to plaintiff's attorney. Results from our law firm's testing are confidential under attorney-client privilege. The first results are nearly always bad until we analyze the problem and develop a game plan.
- Sometimes, during those sixty days, we can correct the product. This gives great leverage to settle the case. Even if we correct things, the case doesn't "go away," because plaintiff's counsel will contend you were selling illegal product for years before you corrected it. But correcting things *does* give us a big advantage in holding down costs.

- Sometimes, we contact opposing counsel during the sixty day period and work a deal (it needs to be approved by a Superior Court Judge). Depending on the facts, sometimes there are ways to convince opposing counsel he is better off settling with us early and turning his attention on other defendants.
- There are many other possibilities. Prop 65 strategy is like baseball gloves – – one size does *not* fit all.

We are The Food Lawyers® in the business of protecting food companies worldwide.

Your situation is manageable. Plaintiff's attorney has a head start – – he already has a “positive hit” on your product and he's waiting 60 days to file his case and start his attorney's fees meter. You need to use those 60 days to get ahead of him. The first consultation with us is free. We want to help you succeed.

Best regards,

The Food Lawyers®

*George C. Salmas*

By: \_\_\_\_\_  
George C. Salmas  
Managing Principal

GCS:gt