

2017 Food Litigation Year in Review



Perkins Coie is pleased to present its second annual *Food Litigation Year In Review*,

an overview of filings, key court decisions and regulatory developments in litigation affecting the food and beverage industry.

Based on data collected from filings in courts nationwide, there was continued and significant class action litigation against the food and beverage industry in 2017. Nearly 150 such lawsuits were filed last year, representing an increase this year over an already active pace in 2016. These filings ran the gamut from lawsuits directed at product origins, ingredient purity or preservative claims; alleged slack fill in the packaging of candies, cookies and other snacks; and continued litigation disputing the use of the term "natural," including attempts to attack the presence of purported non-natural substances down to the molecular or feed level. These numbers confirm that the plaintiffs' bar continues to see the food and beverage industry as a favored target.

Yet, despite the persistence of these filings, there were signs of growing skepticism by courts in 2017. The "reasonable consumer" standard produced dismissals in cases where the truth and accuracy of the defendant's label could not reasonably be contested, and in "natural" cases where plaintiffs proposed implausible and idiosyncratic definitions for that term. Likewise, some cases foundered at the class certification stage, with courts denying certification based on an inability to prove classwide damage—often because there was no evidence to support any price premium associated with the challenged labeling claim. Despite these successes, however, enough uncertainty remains at the appellate level to make continued litigation likely as we head into 2018.

In Proposition 65 actions this year, lead and acrylamide, a chemical compound created by applying high levels of heat to starchy foods, were the most cited chemicals by a significant margin. While lead has been the most cited chemical for several years running, the occurrence of acrylamide cases increased dramatically, and one of the largest Proposition 65 cases ever involves the presence of that chemical in coffee. The volume of warning letters pursuant to the law's 60-day notice provision continues its upward trend, and as new chemicals are added to the list that trend is likely to continue.

[Download the *Year in Review*](#). Also, visit Perkins Coie's [Food & Consumer Packaged Goods Litigation blog](#), offering up-to-the-minute updates and insights on litigation activity in the food and consumer packaged goods industry.

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