

NUTS! ANOTHER NUT, ANOTHER RECALL

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For the second time in three months, we will undergo another international recall involving another nut. On March 30th, the FDA alerted consumers to a voluntary recall by Setton Pistachio of Terra Bella, Inc. ("Setton") based on possible salmonella contamination of its pistachio products. Setton is the nation's second-largest pistachio processor. Based on this year's previous experience, the recall will likely be international in scope and exceptionally expensive for the food industry.

The Peanut Corporation of America ("PCA") peanut butter recall ("PCA recall") has sickened over 690 people in 46 states, killed 9 and resulted in the recall of nearly 3,900 products. What is striking about the enormity and scope of the PCA recall is that PCA supplied only 1% of the nation's peanut products. Conservative estimates place the recall cost for the food industry at over \$1 billion.

Similar to the PCA recall, the Setton recall will also be ingredient-driven. In addition to recalling its own retail products, Setton has recalled bulk lots of roasted pistachios. Setton distributed nationwide to wholesale customers bulk lots of roasted shelled pistachios and 2,000 lbs., 1,800 lbs., 1,700 lbs. and 1,000 lbs. tote bags of roasted inshell pistachios. As Setton's recall expands, we can expect numerous additional companies that incorporated Setton's pistachio products into their own respective products to also begin voluntary recalls.

In fact, one such cosignee, Kraft Foods, Inc. ("Kraft"), alerted the FDA to the contamination problem. Kraft alerted the FDA on March 24th, after product testing confirmed salmonella contamination.

Last Friday, Kroger Co. ("Kroger") recalled a line of its bagged pistachios because of possible salmonella contamination. Kroger's nuts were sold in 31 states.

In addition to industry-related efforts, the FDA has warned consumers that they should stop eating all foods containing pistachios while it proceeds with its investigation.

As we have seen with the PCA recall, several significant coverage issues are raised under first-party, third-party and specialty policies issued to the companies involved in the contamination outbreak. We can expect similar claims from companies involved in the Setton recall in the very near future.

For analysis on food contamination and product recall coverage issues or how Cozen O'Connor's national team of food contamination/product recall coverage attorneys can assist you, please contact Joe Bermudez, Leader of the Food Contamination/Product Recall Coverage Practice Area. Cozen O'Connor is a nationally recognized leader in representing the insurance industry in all coverage areas, including food contamination and product recall claims.