

CASE STUDY #4: PRODUCT LIABILITY ISSUES

Truth has no special time of its own. Its hours is now - always, and indeed then most truly when it seems most unsuitable to actual circumstances.

Albert Schweitzer

EcoFriendly Industries (“EFI”) is a multinational manufacturer of cleaning and sanitizing chemicals for the consumer market and also for industrial and commercial users. EFI has over 20,000 employees. EFI’s makes specialized chemicals for the food and beverage industries where they are applied to food processing and food and beverage handling equipment to help keep food safe from pathogens and to make facilities clean. EFI has positioned its business as an environmentally friendly provider of chemicals used to keep families and the food supply safe.

Latisha Smith has a PHD in microbiology. After school, she worked for the US Food and Drug Administration for 3 years before joining EFI. Ms. Smith has worked for EFI for a little more than 8 years. She worked her way up the ranks of the company and 12 months ago was named Vice President of Environmental Services for EFI. In this position Ms. Smith reports directly to the Chief Executive Officer for EFI and she is responsible for the company’s product safety group and its environmental sustainability group. Smith is the chair of the company’s Product Safety Committee that reviews all products for safety purposes before they are initially released into the market. She also heads the EFI Product Recovery team that deals with situations when there are problems with a product already in the field including product recalls. These two committees include people from manufacturing, distribution, product development and legal groups.

Shortly after Ms. Smith assumed her new position, the Product Safety Committee approved a new sanitizing chemical called SanClean for use in meat processing plants. SanClean includes new-patented technology that kills pathogens within seconds after contact and is both safe to humans and does not harm the environment. Following its introduction, sales of SanClean have been outstanding. Many customers are switching from the competitors’ sanitizers because of the eco-friendly profile of this product. The company’s margin on SanClean is also extremely good and when customers switch to SanClean they often also switch their purchases of all other cleaning and sanitizing chemical products because it is much easier to get their chemical supply from a single source.

One Monday morning Smith receives a report from the Plant Manager (who is a good friend of Smith) at EFI’s Omaha plant. It says that the Quality Assurance (“QA”) group is finding an unidentified bacterium in samples of SanClean that is coming from the Omaha plant. Omaha is one of three plants in the USA producing SanClean and it is by far the smallest of

the three producing plants. However, the Omaha Plant is the sole supplier to EFI's largest global customer, Big Beef Company. QA says that it recently implemented a new more robust testing protocol that EFI has been rolling out for some time now. QA has applied this test to multiple samples of SanClean and this bacterium is found in all the samples. Smith is quite disturbed by the report. She immediately directs all plants producing SanClean to use the new test protocol (if they haven't already started using it) and to test not only current production but also to test historical retain samples of SanClean dating back to the beginning of its production. Because of the importance of SanClean to the company, Ms. Smith notifies the EFI Chief Executive Officer. She also calls a meeting of the Product Recovery Committee for 3 PM this afternoon. The company CEO tells Smith to keep her informed of any new information including the recommendation of the Product Recovery Committee.

At the Product Recovery Committee meeting the following information is shared:

- The bacterium is only being found in samples coming from the Omaha plant. It is not clear why this is the case, but the suspicion is that the Omaha Plant has lax cleaning procedures that may have permitted the bacterium to grow in its production vats.
- Testing from Omaha shows the presence of the same bacterium in samples dating back 12 months ago – from the first time SanClean was produced.
- They have not yet identified the specific bacterium, but it is likely either a relatively benign bacterium that does not pose any danger to humans and does not affect the efficacy of SanClean or it is a very similar bacterium that can cause illness in humans and in the case of individuals with sensitive or compromised immune systems (such as the elderly, very young and cancer patients) could be life threatening. Testing to determine the exact bacterium must be done by an outside lab and should be completed within the next 72 hours.
- The new test that discovered the bacterium was proposed over 18 months ago, but Smith put a hold on its introduction until she was convinced it was scientifically effective and not too costly. The test was only put in operation in the last 30 days.
- The Omaha QA test results showing the presence of the bacterium were actually performed 10 days earlier but these results sat on the Plant Manager's desk while he was on vacation.

- As of this time, EFI has not heard from any customer complaining of any illness associated with any products treated with SanClean. However, EFI might not hear from a customer, unless the customer suspected an issue that involved EFI.
- After SanClean is applied, customers are directed to apply a clean water rinse so it is possible that even if the bacterium is a human pathogen, the clean water rinse will remove the bacterium from contact with the food being produced.
- If EFI did notify the Omaha Plant's customers that use SanClean (including Big Beef Company), and recommend they cease using SanClean; EFI could supply customers with replacement SanClean from its other plants, but it would probably take 3 days to do so. During that time, the customers would have to shut down production.

Questions:

1. What should the Product Safety Committee do? What should Ms. Smith do? As Chair of the Product Safety Committee, Ms. Smith's recommendation will carry a lot of weight with the other members.

2. Should EFI notify its customers of the situation? If so, when? From your ethical perspective, is delay a justifiable response in this case or is it ever justifiable when dealing with the food supply?

3. If EFI decides to wait, how long should they wait?

4. Should the delay in implementing the new QA test affect Ms. Smith's recommendation? In reporting to the company CEO, is it okay for Ms. Smith to avoid mentioning the delay in implementing the new testing procedure? And to avoid mentioning the 10 day delay by the Plant Manager in communicating the initial problem at the Omaha Plant?

5. How should the importance of this new product to the business and reputation of EFI affect the actions of EFI? Should the decision of EFI take into account the possibility of lawsuits against the company? If so, in what way?