

HEALTH CARE REFORM ENACTED . . . NOW THE LEARNING CURVE BEGINS

# The Illinois Manufacturer

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Spring 2010



**Winning the battle for safer  
food through effective training**

**Nanotechnology — A world of possibilities  
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**Food safety . . . the changing  
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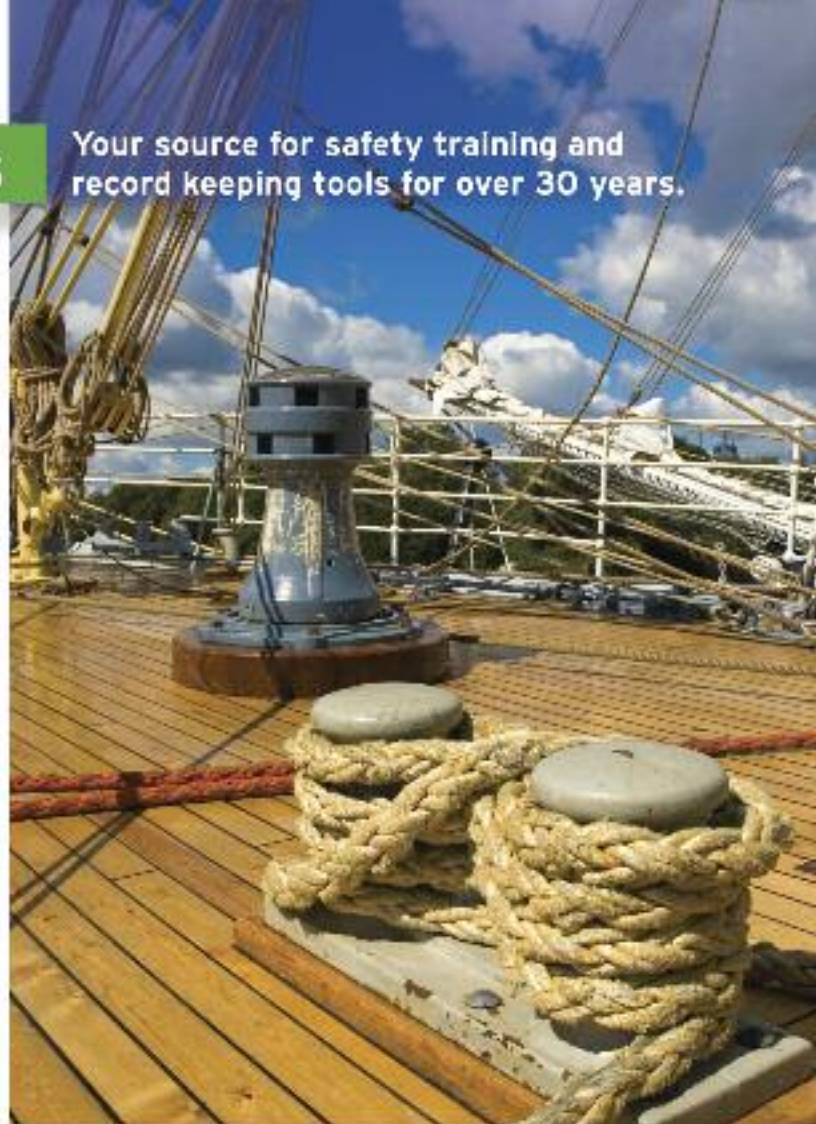
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## Winning the battle for safer food through effective training

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With the industry's heightened emphasis on food safety and its high level of employee churn, it is no surprise that training has become a most critical success factor for food processors.

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ON THE COVER: Ferrara Pan Candy Company's retail candy shop adjacent to the manufacturing facility in Forest Park. Pictured are Chris Rollings, Contract Manufacturing Manager and candy shop employee Silvia Avila (background). Cover photo and all photos at Ferrara Pan Candy Company in Forest Park by Tim Klasinski, Xpress Professional Services, Inc.

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## Mission Statement

The object for which the Illinois Manufacturers' Association was formed is to strengthen the economic, social, environmental and governmental conditions for manufacturing and allied enterprises in the state of Illinois, resulting in an enlarged business base and increased employment.

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## First Amendment rights restored, use wisely

*"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."*



The 2010 elections are just seven short months away, and as Congress returns from their Easter recess, many observers expect House Speaker Nancy Pelosi and Senate Majority Leader Harry Reid to initiate a full-court press to reinstate new prohibitions on our right to free speech.

Penned by James Madison, those enduring words of the First Amendment are the cornerstone of our freedom. But if a referendum were held today on whether to adopt the First Amendment, do you think it would pass?

We all want to say: "Of course it would pass . . . who could possibly be against free speech . . . or to throttle the public's right to know aided by a free and inquiring press, or any of the other guarantees contained in the First Amendment?" But given recent news headlines and threats by elected officials in Washington to overturn a Supreme Court decision that assures free speech, I'm not so sure.

For the last three decades or so, manufacturers' ability to take an active role in the election process has been increasingly thwarted by small-minded policy makers who believe the American people have to be protected from the honest exchange and debate of differing ideals. While initiatives such as campaign finance reform were allegedly put into place to control big-money influence, the effect they had on free speech were too often ignored.

In January, the Supreme Court changed all of that in *Citizens United v. FEC*, deciding by a narrow 5-4 decision that both business and labor could use their own money to advocate for candidates running for seats in the U.S. Congress and the Presidency. The court's decision restored the first amendment rights of business and unions to freely participate in federal elections, a move that should be applauded.

Just days following the high court's action, President Obama himself used his State of the Union address to publicly scold the justices for their decision, noting that it overturned a hundred years of precedent and would allow unlimited foreign contributions in American elections. Fortunately, numerous organizations on both ends of the political spectrum have determined his comments have no foundation in fact. Manufacturers — like other groups — may indeed be involved in the efforts to communicate and influence voters. The First Amendment is alive . . . for now. The 2010 elections are just seven short months away, and as Congress returns from their Easter recess, many observers expect House Speaker Nancy Pelosi and Senate Majority Leader Harry Reid to initiate a full-court press to reinstate new prohibitions on our right to free speech.

Of course, the IMA has long-supported pro-business candidates and causes. Thanks to the foresight of the IMA Board of Directors in 2004, we initiated a for-profit service corporation, Xpress Professional Services, Inc. (XPS). XPS wasn't formed only to provide another non-dues source of revenue — it was created to extend the reach and influence of pro-business forces in the political arena. In a nutshell, XPS is a sophisticated political communications organization that is a wholly owned subsidiary of the IMA. With just two full-time employees, we are able to produce TV and radio ads, sophisticated polling, social media and direct-mail services necessary to inform and educate the public about our issues. XPS provides us with the in-house wherewithal to promote candidates and issues important to economic growth, and fight against those who attempt to foist initiatives upon us that needlessly make it more difficult to conduct business.

The addition of XPS to our arsenal has resulted in a vastly improved ability to be involved at all levels of the political arena. XPS was at the forefront of the IMA's involvement in fighting Card Check, and will play in integral role in this fall's elections as we help those who agree that manufacturing should remain an important segment of our economy. XPS is another arrow in the political quiver for manufacturers. We'll be actively involved in races large and small, and will be expanding our reach well beyond Illinois' borders. Unlike DC-based organizations that must work with Members of Congress daily, we don't worry much about saying that the Emperor has no clothes.

On your behalf and for the advancement of manufacturing in Illinois and elsewhere, the IMA will be actively involved in the fall elections for campaigns at every level; from the U.S. Senate to statehouse races. And we will fully and carefully examine every candidate and recommend those we believe have earned the support of our industry, whether they are a Republican, Democrat or an independent. And with XPS, we'll be getting involved in the most highly targeted races.

This election is just that important. ■



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## Political tidal wave in November?



As we move forward, the IMA and the Manufacturers Political Action Committee (MPAC) will keep a laser-focus on winning seats now held by anti-jobs legislators.

In the wake of the recently-enacted federal health care reform act that has further split the American public along partisan lines, veteran political insiders are beginning to see stark similarities between 1994 and the upcoming 2010 election. As a result, many ruling Democrats in Washington and Springfield are beginning to see ominous clouds on the horizon and are bracing for what could be another political tidal wave in November. However, questions remain about how closely today's playing field compares to 1994 and whether the anti-incumbent sentiment will remain six months down the road when voters actually take to the polls and cast ballots.

Quarterbacked by then Minority-whip Newt Gingrich, in the 1994 election Republicans rallied around the Contract with America to convince Americans that, after a forty-year reign, Democrat control of Congress needed to end. Americans, including Illinoisans, went to the polls and tossed many long-time legislators out of office leading to the so-called "Republican Revolution." When the dust settled, Congressional Republicans picked up 54 net seats while the Republicans in the U.S. Senate gained an additional nine seats (including Sen. Richard Shelby who switched parties) leading to a new majority. However, it's important to remember that since the 1994 landslide, Congressional Republicans have only defeated incumbent Democrats 21 times — an average of three per election.

The tremors felt around the United States were equally as prevalent in Illinois where Governor Jim Edgar led a Republican sweep of constitutional offices. In 1994, after drawing the new legislative map two years prior, House Republicans recruited good candidates in a large number of districts hoping that a rising tide would lift all boats. It did just that. After election night, 13 Republican candidates achieved victory, eliminating a 67-51 minority and giving Republicans a 64-54 majority. This win propelled Lee A. Daniels into the Speaker's office. In the upper chamber, where only one-third of the seats were up for election, Republican Senate President James "Pate" Philip played a more cautious game and ultimately added only one seat making it a 33-26 majority.

As we look forward to November, pundits are first examining recent elections across the nation, especially the gubernatorial elections in Virginia and New Jersey where Republican candidates won offices previously held by Democrats, to see if this foreshadows another voter backlash. Back in 1992, the coming Republican tidal wave was forecast by Democrat losses in races for control of the Governor's mansion in New Jersey and city hall in New York and Los Angeles so there is some real and anecdotal evidence that change is coming.

We Ask America, a national polling firm run by Xpress Professional Services, Inc., a for-profit affiliate of the Illinois Manufacturers' Association, has conducted extensive national polling showing that independent voters are nearly twice as likely to support Republican candidates facing Democrat incumbents who voted in favor of the federal health care legislation. In Illinois, polling shows several Democrat incumbents including Congressman Bill Foster, Congresswoman Debbie Halvorson, and Congresswoman Melissa Bean face very tough challenges and are, in some cases, trailing in the early head-to-head polls.

Prior to the 1994 election, Congressional Republicans enjoyed a 259-176 majority which is very closely mirrored today where Democrats enjoy a 253-177 margin with an additional four open congressional seats due to vacancies. On the ballot, there are currently 20 Republican-held and 19 Democrat-held seats where the incumbents are not running for re-election. After taking into effect the current political map drawn in 2002 and demographics, it appears that there are only 20 seats out of the 435 Congressional seats that are considered "toss ups" at this moment. With 218 seats needed for a majority, Republicans have a good opportunity to regain relevance, or some parity, but it will take another epic event — a net gain of 41 seats — to win back control of Congress.

The race is much tougher for Republicans in the U.S. Senate purely because of numbers. Only 36 seats are up for election in the body where Democrats enjoy a 59-41 advantage. Of the thirty-six seats, there are 18 that are currently held solidly by Republicans and 10 under strong Democratic control, leaving only eight seats as potential "toss ups." With their commanding majority, Democrats need only to win eight of the 36 seats up for election to maintain their majority control.

*(continued on page 8)*

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# Health care reform enacted . . . now the learning curve begins

**O**n March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (the “Patient Protection Act” or “Act”). On March 30th, President Obama signed into law the Health Care and Education Affordability Reconciliation Act of 2010 (the “Reconciliation Bill”), which contained certain negotiated changes to the Patient Protection Act. Unless otherwise noted, this article discusses the Patient Protection Act as modified by the Reconciliation Bill.

The provisions of the Patient Protection Act are largely divided between those that become effective in 2011 (for calendar year benefit plans and individual contracts) and those that become effective in 2014 or later years. The provisions that become effective in 2011 are primarily consumer insurance reforms relating to such subjects as coverage of adult children, annual and lifetime limits, coverage rescissions, claims adjudication, etc. The primary substantive provisions of the Act, relating to the creation of insurance exchanges and individual and employer responsibilities, become effective in 2014.

The Act paints with a broad brush, and thus most of the important details of the legislation will need to be developed through regulations, administrative rulings, and potentially through future clarifying legislation. For example, many of the Act’s requirements build off the concept of “essential health benefits,” a term that is broadly defined in the Act as medical coverage that is equal to the scope of coverage provided under a typical employer plan. However, the details of what constitutes “essential health benefits”

will be developed in regulations to be issued by Health and Human Services (“HHS”).

The learning curve for this legislation, and the regulatory guidance to follow, will be long and steep. It is important now for employers to begin to assess the short-term and long-term ramifications of the Act on their health benefits programs, and prepare for coming developments as the contours of the Act.

## **Interim requirements**

### **Interim Consumer Protections**

Between the date of enactment

and 2014, the Patient Protection Act imposes a series of interim requirements. Some of these provisions are intended to preserve existing benefits. Others are intended to limit adverse actions in advance of final reforms.

These interim provisions become effective for plan years beginning six months after enactment (i.e., plan years beginning on or after September 23, 2010). For calendar year plans, these provisions apply beginning January 1, 2011. These interim requirements are summa-

see **HC REFORM** page 22



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## DENZLER

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At the State Capitol, Illinois Democrats enjoy large majorities in both the House of Representatives (71-47) and the Illinois Senate (37-22). The Illinois House of Representatives, led by Speaker Michael J. Madigan is generally more conservative and has protected the Illinois business community from many of the proposals conceived by former Governor Rod Blagojevich and last year's income tax hike proposals. The Senate, which is more

liberal and under the control of Senate President John Cullerton, took a risk last year by passing a plan raising the income tax and expanding the sales tax to thirty-nine services only to see it languish in the House. Recently, recognizing the voter anger rising across the state and seeking to buttress their incumbency, the Governor and legislative leadership took an unparalleled step of beginning to reign in the high cost of public pensions — a move supported by the IMA and the general public.

As we move forward, the IMA and the Manufacturers Political Action Committee will keep a laser-focus on winning seats now held by anti-jobs

legislators. We plan to run concerted election programs in a small and select group of districts where we can have a major impact. To that end, we will be asking for your specific help paying for mail pieces, radio and television ads, and/or polling information. Together, employers can send a loud and clear message that we are ready for pro-business reform. ■



# The Illinois Manufacturer

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# Employees' cell phone use while driving: Your company's liability?

In light of the recently enacted Illinois and Chicago laws restricting cell phone use while driving, one would think that drivers should hesitate before making that call or composing that text message or email from their cell phones. Under the Illinois text messaging law that went into effect on January 1, 2010 (625 ILCS § 5/12-610.2), drivers may not send or receive text messages or emails from their cell phones or hand-held devices. In addition, a 2005 Chicago city ordinance prohibits drivers from making or receiving calls on their cell phones, unless they are using hands-free devices. Yet despite these laws, we continue to see drivers talking or texting on their phones.

According to recent studies on cell phone use while driving, the ramifications of this conduct can be truly devastating. For example, a study by the Insurance Institute for Highway Safety found that using a cell phone while driving quadruples the chances of an injury-causing collision, and that this outcome remains the same regardless of whether a hand-held or a hands-free device is used. Other recent studies by the University of Utah and the Human Factors and Ergonomics Society concluded that drivers talking on cell phones, whether using hand-held or hands-free devices, were as dangerous on the road as drunk drivers, in tending to drive more slowly, brake more slowly, and to generally respond more slowly. According to another recent study by Nationwide Mutual Insurance Company, 73 percent of 1,200 drivers surveyed openly admitted to talking on their cell phones while driving.

While these and other similar statistics are certainly disconcerting, you may be asking what, if anything, might employers have to do

with this. The answer may surprise you. A number of verdicts and settlements indicate that employers may well be the ones footing the bill when an employee's cell phone call gone awry results in a collision. For example, in 2007, an international paper and packaging product company agreed to a \$5.2 million settlement in a case where an employee who was driving a company car while talking on her company-issued cell phone rear-ended another vehicle, causing the driver of that vehicle severe injuries that eventually required the amputation of her arm. In 2004, an attorney hit and killed a child, while talking on her cell phone and driving. This driver was apparently so distracted by the call that she thought she hit a deer and continued driving, and

turned herself in only the next day after seeing news of the hit-and-run on her television. The attorney's law firm settled the resulting \$30 million lawsuit with the child's family for an undisclosed amount. In 2001, a Florida jury awarded an almost \$21 million verdict against a building company that employed a sales person who, while driving and allegedly talking on his cell phone, struck and severely injured a 78-year-old passenger in a car stopped at an intersection. In 1999, an employee of a brokerage firm hit and killed a man while making a sales pitch for the firm using his cell phone, while driving at 9:00 pm on a Saturday evening. Faced with the prospect of a jury trial, the brokerage firm settled the lawsuit for \$500,000.

see **CELL PHONE USE** page 10



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## CELL PHONE USE

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These and similar cases make clear that companies simply cannot afford to ignore that most, if not all, their employees have cell phones and that they can and do use these cell phones while driving and conducting business-related activities. If an employee is driving a company car or his or her own car on any business-related purpose and happens to be talking, or texting, or emailing on either a company-issued or his or her own cell phone or hand-held device shortly before or at the time of the collision, the company can incur serious, costly liability.

The potential for liability for employers in cell phone driving cases is most likely to come from one of two legal theories: (1) direct negligence; or (2) vicarious liability. The former requires proof that the employer permitted and/or encouraged employees to use cell phones for business-related purposes while driving, but failed to inform employees of the involved safety risks or to train them on adequate policies and procedures on safe cell phone use while driving.

While such direct negligence claims have been made, they are not as common as claims brought under the second, broader theory of vicarious liability, also known as "respondent superior." Vicarious liability has, in fact, been involved in the vast majority of cell phone driving cases implicating employers. For example, in *Ellender v. Neff Rental, Inc.*, 265 So. 2d 898 (App. Ct. La. 2007), the court held in favor of an injured motorist against the driver's employer, because the driver happened to be on a business-related cell phone call and searching for his employer's pricing information while driving when the accident took place. Because the driver was acting within the scope and course of his employment when he was talking on his cell phone and looking for company pricing information, the court held the driver's employer vicariously liable for his conduct.

Not only do cell phone driving cases create serious legal exposure for employers, they can also result in

a public relations nightmare. Given the already controversial, sensitive topic of cell phone use while driving, especially in the state of Illinois, it is not difficult to imagine the backlash of a sensationalized news story or article describing an employee taking a sales call on behalf of his or her company while driving, and causing a serious accident. With today's technology, including blogs and social networking sites, negative publicity from an accident is likely to get around quickly and to then stay around for a long time.

### So what are employers to do?

The first step is facing the reality that individuals' cell phone use while driving is an issue and one that can seriously impact the health of your Company in at least three ways: (1) on a personal, human level, as a result of difficult emotional and morale-related complications at the workplace arising from a company employee causing injury to someone else; (2) financially, as a result of having to defend and, in many cases, having to pay for part or all of a settlement or award in a negligence or vicarious liability case; and (3) on a reputational level, as a result of strong, negative publicity that can follow a collision involving the use of a cell phone.

The second step is to do an audit of your policies and to revise and update or, if necessary, to implement an appropriate cell phone use policy. Among other things, such a policy should state your company's philosophy on employees' use of cell phones while driving. Depending on the nature of a company's business, some employers may be able to implement an outright ban on the use of cell phones applicable to employees driving on company business. A number of companies, including Exxon Mobil, UPS and AstraZeneca US, have taken this route, and prohibited their employees from speaking or texting on their cell phones while driving on company business. If such a ban fits your business, it is the best way to protect you from the ramifications of any cell-phone-caused collisions. If, however, such a ban is not realistic given the nature of your work, requirements and restrictions for cell phone use while driving must be

clearly set out in a written policy. Such a policy should include, among other things:

- A statement of the company's commitment to safety;
- A reminder that employees may not use hand-held devices to email or text while driving;
- A requirement that employees must only make phone calls using hands-free devices and to keep these devices within easy reach while driving;
- Clear restrictions against texting, taking notes, using the phone in hazardous weather or traffic conditions, taking part in emotional or stressful conversations, or otherwise placing oneself at any risk in order to fulfill any business-related requests or needs; and
- A disciplinary component, requiring employees to acknowledge that if they are engaged in traffic violations relating to the use of their cell phones while driving, they will be solely responsible for any liability resulting from such actions, and that policy violations are grounds for serious discipline, up to and including immediate termination of employment.

The third step to dealing with employees' cell phone use while driving is consistent enforcement of your company's cell phone use philosophy, policy and procedures. Unfortunately, employers sometimes forget this important step, which can result in added liability. It can be too easy for a savvy plaintiff's lawyer to argue that an employer's lack of enforcement suggests a willful violation or a reckless disregard of the policy because, while clearly aware of the requirements and risks as reflected in the written policy, the employer chose to ignore these risks and failed to provide adequate notification and/or training to employees. Accordingly, employers should take measures to notify, train, and periodically retrain their supervisors and regular employees in the cell phone use policy, as in their other important policies.

Although you may not be able to prevent a collision or a lawsuit arising from a collision, these steps can help minimize your company's exposure and provide the necessary defense. ■



# Combine multiple energy efficiency projects to make a meaningful impact on sustainability

If you are approaching energy efficiency projects one at a time instead of tackling several at once, you may have a hard time making meaningful progress on your sustainability goals. You are also not maximizing your potential energy cost savings. There is a better approach to sustainability, but it requires you to think bigger.

## A multi-solution approach

Your list of potential energy projects might include upgrading your HVAC systems, installing more efficient lighting or improving insulation. Think about coupling a number of the more inexpensive projects on your list with bigger ticket items. Savings from projects with rapid payback periods can help offset the costs of projects with longer-term paybacks. You are doing these smaller projects anyway. Why not maximize their value by doing more and combining them with the major projects that you've been putting off or did not think were financially possible?

## Achieve double-digit savings

Smart organizations are taking the multi-solution approach to energy and sustainability. One of our customers in Illinois recently implemented a total of six energy conservation measures at once and was able to achieve a 13 percent reduction in overall energy use. That equates to more than \$2.1 million in expected annual savings. Projects ranged from smaller scope measures like lighting improvements and water conservation to more significant upgrades like improvements to the chiller plant and steam/boiler plants.

## Apply savings to pay for upgrades

When you structure these improvements as performance contracts, the guaranteed savings pay for the new equipment and labor. So, without increasing expenses you're able to gain new, more dependable equipment and achieve

your sustainability goals. The customer in the example above was able to significantly reduce its expected carbon footprint, and make the equivalent of \$20 million in upgrades without incurring upfront costs.

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# Nanotechnology — A world of possibilities ripe for regulation and litigation

**N**anotechnology is a field of applied science that deals with the development and use of products that are produced and controlled on the molecular level.<sup>1</sup> A nanometer is one billionth of a meter, and nanomaterials range in size from one to one hundred nanometers.<sup>2</sup> Scientists can produce nanomaterials either from existing, large materials that they reduce in size, or by manipulating atoms and molecules to build nanostructures.<sup>3</sup> Silver, gold, carbon, zinc, silica, and titanium are the most common chemical compounds used in nanotechnology engineering.<sup>4</sup> Although nanotechnology was born in the 1980s, it is still in its nascent stages of development.<sup>5</sup>

Nanotechnology intrigues people because it can be used in a variety of fields and products, much like the Internet is today.<sup>6</sup> Currently, companies are marketing their nanotech wares in the areas of pharmaceuticals, cosmetics, and food.<sup>7</sup> Shampoos, make-up, deodorants, sunscreens, stain-resistant clothing, household appliances, paints, electronics, golf clubs, batteries, bicycles, tennis rackets, and skis are just a few of the over 2,000 consumer products that currently incorporate nanotechnology. It is estimated that the marketplace for such goods and technologies will explode over the coming years — potentially encompassing \$1 trillion in revenue by 2015, and employing millions of workers.<sup>8</sup>

Clearly, what makes nanoprod-ucts so interesting is their size. Because they are so small, they can move across cell membranes and migrate out of human blood cells, which larger particles cannot do.<sup>9</sup> But the size of nanomaterials also makes them risky. With materials so small, the laws of physics that gov-

ern larger objects simply do not apply to nanomaterials. And the chemical properties of many materials that incorporate nanotechnology can change drastically.<sup>10</sup> How these tiny products conduct electricity or react chemically, as well as their strength, solubility, and mobility are drastically different than their larger counter-parts. For example, nano-sized aluminum particles can become highly explosive and nano-sized carbon can become 100 times stronger than steel.<sup>11</sup> Additionally, the increased mobility of nanomaterials allows them to slip by some of the human body's defenses, potentially rendering the nanomaterials toxic.<sup>12</sup> Although scientists have a

general idea of the kinds of things nanomaterials can do, at present, the effects of nanotechnology on the human body and the environment are largely unknown.<sup>13</sup>

Unknown consequences and significant risks in the use of nanotechnology have led some to believe that nanoscience is ripe for "regulation by litigation."<sup>14</sup> At least one report has compared the effects of injecting carbon nanotubes into mice to the effects of asbestos exposure.<sup>15</sup> Another report out of the University of California suggests that individuals working with high concentrations of titanium oxide nanoparticles (titanium oxide is used in sunscreens)

see **NANOTECHNOLOGY** page 14



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have a higher risk of cancer and genetic disorders.<sup>16</sup> This UCLA study was performed on mice, which were exposed to high levels of titanium oxide nanoparticles.<sup>17</sup> The study revealed that the nanoparticles had an effect on the DNA of the mice and elicited an inflammatory response.<sup>18</sup> The scientist's explanation for these results goes back to the very nature of the nanoparticle.<sup>19</sup> Titanium at its normal size is not chemically inert. However, as the particles become smaller and smaller, their surface actually becomes bigger and their ability to interact with other surfaces and the environment create new unknown responses.<sup>20</sup> More human studies are needed in order to truly understand these new unknown responses and how they can affect human health. However, the UCLA study concludes that there should be a concern about titanium nanoparticles and their ability to cause cancer or other genetic disorders, especially for those working with and ingesting these materials.<sup>21</sup>

Although the dearth of knowledge, high risk, and possible toxicity of nanomaterials are probably enough to mobilize the plaintiffs' bar, the lack of regulation in the United States could also contribute to an explosion of litigation in the event of nanoinjuries.<sup>22</sup> American regulatory agencies, including the U.S. Environmental Protection Agency ("EPA"), the U.S. Food and Drug Administration ("FDA"), the U.S. Department of Health and Human Services — National Institute of Occupational Safety and Health, U.S. Department of Health and Human Services — National Toxicology Program, and the Consumer Product Safety Commission, are all still gathering information on nanotechnology. So to the extent there will be initial push-back against nanotechnology, it will likely come from consumers and their attorneys.<sup>23</sup>

One observer predicts that "nanotort" suits could involve medical monitoring claims, toxic tort class action claims, and "no injury" consumer class action suits seeking a refund of the purchase price of the

"offending" product.<sup>24</sup> The mass tort infrastructure, which is already in place due to the success of other mass tort litigation such as tobacco and asbestos, is ready, willing and able to find a new focus and that focus could be products containing nanoparticles.

However, the likelihood of success of these lawsuits is just as uncertain as the effects of the technology itself. If there is no discernible, hallmark nanodisease, proving physical injury and causation of such injury may be extremely difficult.<sup>25</sup> A recent case, *Parker v. Wellman*, involved a claim of alleged beryllium exposure and resultant injuries on the cellular and subcellu-

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The United Kingdom report stated that although the benefits of nanotechnology may be great and ultimately revolutionize the food industry, the secrecy that often surrounds nanotechnology (especially as it relates to food packaging) may lead to a public backlash similar to the backlash encountered by the manufacturers of genetically modified food in the European Union.

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lar levels.<sup>26</sup> The United States Court of Appeals for the Eleventh Circuit ruled that "present physical injury"<sup>27</sup> is a term of art in the legal, not scientific arena, and concluded that some of the plaintiff's damage claims did not rise to the level of "present physical injury." This result suggests that although releasing products with unknown risks and side effects generally raises the chances of liability, the mysteries surrounding the effects of nanoproducts may make injuries difficult to prove, thereby discouraging the plaintiff's bar from bringing these suits.<sup>28</sup>

The potential arena of mass tort class action litigation focusing on the potential effects of nanomaterial

exposure may face even greater challenges.<sup>29</sup> Class certification in such litigation would require showing that common issues of fact and law predominate over individual factual issues.<sup>30</sup> Such individual issues, including exposure, medical history, causation, and damages will vary greatly.<sup>31</sup> However, a creative plaintiff's attorney may use the examples of successful medical monitoring claims and the use of differing class action phases to fashion a palatable nanotort class action.

Just as the scientific facets of nanotechnology are still in their early stages and largely unknown, the legal repercussions of the rise in nanotechnology are also uncertain. The FDA has recently stated that it believes that its "regulatory authority is sufficient to address nanotechnology" but admits there are "further questions" for it to consider.<sup>32</sup> Although the agency plans to release a nanotech guidance letter before the end of 2010, at present the FDA does not even have a working definition of what it considers to be "nanotechnology."<sup>33</sup> In the meantime, the FDA has said that it does not regulate a process or a technology, such as nanotechnology, but only the product itself.<sup>34</sup> It is up to industry to ensure that the products it sells are safe for the public to consume.<sup>35</sup>

The EPA has also stepped into the ring to lay the foundation for regulating nanomaterials.<sup>36</sup> The EPA claims it will seek to assess and limit the risks associated with nanomaterial through the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., ("TSCA").<sup>37</sup> Under the TSCA, the EPA may impose Significant New Use Rules ("SNURs"), which could include requiring protective clothing and equipment for companies importing or processing carbon nanotubes ("CNTs").<sup>38</sup> The EPA proposed the SNURs in November 2009, citing a "lack of data on the potential health risks" posed by CNTs exposure.<sup>39</sup> The EPA believes that CNTs may cause lung problems and other health effects via dermal exposure.<sup>40</sup> The EPA's proposed new SNURs also include imposing new recordkeeping requirements for CNT manufacturers, importers, and processors.<sup>41</sup>

The EPA is also considering issue  
see **NANOTECHNOLOGY** page 27



# Food safety . . . the changing landscape of product recall

**P**roduct recall, are two words no food manufacturer or processor wants to see next to their name. But the food industry is one of the most exposed industries to a product recall. A food industry product recall can be caused for a variety of reasons including, mislabeling or not correctly labeling the ingredients (the most common cause), accidental contamination, or malicious tampering. Recent federal initiatives and pending legislation are intended to significantly increase the FDA's authority to order a food product recall. What are the risks associated with a product recall to the more than 1,300 food manufacturers and processors in Illinois? How can these risks be managed?

## **Federal initiatives and legislation**

In November, 2007, the FDA began to lay the groundwork for a significant increase in their authority with the adoption of the Food Protection Plan. It called for increasing the FDA's authority to order a government recall of food. Currently no government agency has the legislative authority to order a recall of any food or beverage with the exception of infant formula. The FDA and other state regulators can achieve a recall by withdrawing inspectors or closing a food processing facility for health reasons. The FDA Food Protection Plan also asked for the legislative authority to implement new fees, and increase the FDA's access to the records of food processors and manufacturers.

President Obama, in establishing the President's Food Safety Working Group, on March 14, 2009, stated, "There are certain things that only the government can do." The president asked this group to: recommend

legislative upgrades; coordinate food safety efforts throughout government agencies; and ensure adequate enforcement of current laws.

Senate Bill 510: The FDA Food Safety Modernization Act is the culmination of the FDA's requests in 2007 and recommendations of the President's Food Safety Working Group. This bill unanimously cleared committee in November and could reach the Senate floor in May, where it is expected to pass with strong bipartisan support. A similar bill passed the House in July, 2009. This legislation will amend the federal Food, Drug, and Cosmetic Act to significantly expand the authority of the Secretary of Health and

Human Services to regulate food. This new authority would include: suspending the registration of a food facility; requiring food facilities to evaluate hazards and implement preventive controls; assessing and collecting fees related to reinspection or food recalls; and ordering an immediate cessation of distribution or recall of food.

## **What is at stake? Risks and exposures**

The new federal initiatives and proposed legislation directed at food safety will raise public awareness and increase the responsibility of food manufacturers and processors

see **FOOD SAFETY** page 28



# Winning the battle for safer food through effective training

by David Perl, Chief Operating Officer, Alchemy Systems, LP



# F

ood manufacturing is the largest sector of the manufacturing industry in the United States, employing about 1.5 million workers, according to the Bureau of Labor Statistics. It is also one of the most competitive industries in the world. Even when they successfully conquer slim margins, high employee turnover and wildly fluctuating ingredient costs, food processors still face the ultimate challenge: guarding the purity and safety of the product they sell.

All manufacturers face the dilemma of balancing cost and quality. But for food processors, lowering quality is not an option, because it could bring on shortened shelf life and potential liabilities. So processors are always on the lookout for ways to trim costs. After ingredients, their largest cost is labor, an expense which is compounded by the sector's notoriously high employee turnover rate. Some firms experience turnover in excess of 100 percent a year in their production line workforce. At this rate, a firm that employs 5,000 line workers must hire 100 workers a week. That can translate into the screening of 300 potential hires each week.

Complicating the turnover situation, the industry has adopted voluntary food safety standards which raise the level of training and skills

required of all production line workers. It's no longer acceptable to slide in a DVD and push "play." Now manufacturers need proof that the workers were trained; that they understood the training; and that they can demonstrate the lessons learned in the training.

With the industry's heightened emphasis on food safety and its high level of employee churn, it is no surprise that training has become the most critical success factor for food processors. According to the 2010 Manufacturing Trends Survey by *Food Processing* magazine, employee training was the number one initiative cited by processors to improve food safety.

For quality assurance and food safety managers, it is a daunting task to train and assess so many workers in the intricacies of hygiene, allergens, HACCP, and other aspects of food safety. In addition, these same workers are required to go through OSHA awareness courses, human resources training, and their companies' orientation sessions. Many of them are overloaded before they package their first product.

Over the years, every form of training has been tested and implemented in manufacturing facilities. Let's review the most popular training modalities available:





*“Training our plant personnel and front line supervisors is one of the greatest investments we can make in the company. The more our people know, the better they will be able to perform. Alchemy Systems provides interactive training allowing us to know exactly who understands the material and who needs additional help. Whether we’re discussing GMP’s, allergen control or plant hygiene, our plant personnel need to be very well versed. Great taste should be our consumer’s only concern.”*

**Cindy Martinez, Food Safety Plant Auditor,  
Ferrara Pan Candy Company, Forest Park**

### **Instructor-led training**

Instructor-led training (ILT) appeals to companies looking to train groups of employees with a limited number of skilled trainers or experienced workers. ILT might be formal (e.g. scheduled classes in a training room), or more informal (e.g. “tribal” training or “tailgate” sessions at construction sites).

Many companies favor instructor-led training because it is relatively easy and inexpensive to put together courses and classes. In addition, it may afford workers the opportunity to have their questions answered directly by an expert.

At the end of an instructor-led session, a paper test may be given to certify that the workers have retained the necessary lessons that will allow them to do their jobs more safely and efficiently. These papers must be graded and stored in a location that allows for them to be retrieved easily during an audit.

However, ILT courses generally require longer attention spans of the workers, because the material is rarely distilled to the essential level needed for the job. The tendency for most trainers is to “overteach,” by dumping all their experiences and opinions into the lesson.

Language is a barrier that arises for trainers, especially in the food manufacturing industry. In many

facilities, there is a large contingent of non-English-speaking workers. While it would be convenient to only deliver classes in English (and to have the workers do their own translating on the fly), training sessions are not the time to teach English. The most effective training is delivered in the workers’ native language. But it is rare to find trainers who know more than their native language fluently. So to teach classes in multiple languages, companies sometimes rely on less-experienced workers.

Using multiple trainers virtually guarantees that an inconsistent message will be delivered to different groups of workers, because of the trainers’ varied teaching styles and experiences. For example, a trainer who is unfamiliar with a certain piece of processing equipment is more likely to gloss over that section of the course. Such inconsistencies can cause confusion among the workers as to the importance of certain lessons when they are back on the production line.

Indeed, with ILT, it’s all about the instructors. If they are on their game, the workers will be motivated to learn and retain a lot of information. But if a trainer is having a bad day, the company is at risk because workers may not get the essential information they need. Companies also have to remember that good instructors cost a good deal of money, and trainer burnout is commonplace.

### **Videos**

Many companies incorporate videos as part of their training program. Usually displayed in a classroom setting, videos make a great visual resource because they are consistent, portable and reusable. Language issues are addressed by

**Scenes from Ferrara Pan Candy Company in Forest Park . . .**  
**Top: “panning” Lemonheads at the manufacturing facility.**  
**Middle: Mural on the wall of the candy shop, adjacent to the manufacturing facility.**  
**Bottom: Red Hots ready to be packed and shipped to retail outlets.**

see **WINNING** page 18



## WINNING

Cont. from page 17

subtitles or multiple versions of the same course. Most companies that use videos require their workers to sign in, and many require a written test to gauge comprehension.

But videos have their downside. Shown in darkened rooms, they are a leading cause of workplace napping. To a generation of workers who have grown up with email, text messages and Facebook updates every few minutes, videos are just not exciting enough to hold their attention.

In addition, video-delivered information cannot be tailored without significant expense, and it can become outdated very quickly. Ironically, because of this expense, some companies show videos that are over ten years old, and then spend significant time in the class discussing all the changes that have occurred since the video's release!

Finally, like ILT, videos require manual documentation of the workers' attendance and mastery of content, along with the paper-based recordkeeping.

## On-the-job training

On-the-job training (OJT) is the oldest teaching method known to man. It enables supervisors to show new workers step-by-step instructions for the tasks for which they are responsible. OJT is highly customized for the worker, the supervisor and the situation.

No matter how structured and formal a company's training program is, there will always be some OJT occurring. The key for companies is to ensure consistency and documentation by capturing the best OJT, deploying it across the enterprise, and meticulously documenting the events.

Without a formal OJT process, a company faces big risks. The first is inconsistency. As in ILT, contradictory messages can be delivered by different supervisors in OJT situations.

The second risk is discontinuity of knowledge. OJT is very much like tribal knowledge. When a good OJT teacher leaves the company, his knowledge walks out the door with him.

And, lastly, a company risks liability because of the informal nature of OJT. While a supervisor can testify in court that a worker was taught proper use of a machine's guards, the lack of a for-

mal record and assessment puts the company at risk in court.

## E-Learning

E-learning has long promised strong engagement, cost efficiency and consistent delivery of content. This promise has been somewhat unfilled, due to the fact that there are many interpretations as to what qualifies as e-learning. For some companies, a slide show qualifies as e-learning (it certainly passes the cost efficiency test). To others, nothing short of a heart-stopping multimedia experience will do.

Generally, the more engaging that e-learning is, the more expensive it is to produce. A good e-learning course can cost many times as much to create as a comparable ILT course. But the efficiency of e-learning is not determined solely by its development cost. Its biggest efficiency gains over ILT are the reduced cost of trainers; the consistent delivery of lessons; and its electronic assessment and recordkeeping capabilities.

The biggest downside to e-learning in a manufacturing environment is the serial nature of the training. A company with five PCs can only train five workers at a time. In addition, many companies have found that e-learning sessions almost always require a proctor. In large e-learning groups, the proctor floats from PC to PC, answering technical questions as the workers progress. In a one-on-one e-learning session, a proctor is sometimes needed to keep the student from falling asleep!

How can this be? Even well-written e-learning courses can become monotonous. Many courses are written with the intent to "cover all bases," and in doing so, overwhelm the workers with needless information. Comprehension and completion rates drop off dramatically after a few courses. The e-learning industry attempts to cover these discrepancies, by offering more courses.

What is needed in manufacturing is a revolutionary way to train, assess and document workers' knowledge and compliance. Fortunately, technological advancements in training have been developed in the last five years that combine the best qualities of ILT, videos, OJT and e-learning. Products

*"The addition of the Alchemy SISTEM training program has allowed Farmington Foods to easily administer training to our Spanish speaking population in their language without the need for translators. Training groups are a maximum of 12 people and over the course of a year we train about 130 employees including supervisors and managers. As the one presenting the training modules and not speaking much Spanish, I was initially very nervous about the reception that the SISTEM training would receive. However, I have been pleasantly surprised with the employees response. You can see that many are engaged in the topic being presented by the look on their faces and they must pay attention so the module will move forward when questions are presented. As well, many employees seem to look forward to their name being on the training list.*

*With SISTEM record keeping is also very convenient."*

**Melissa Gumm, Director of Quality Assurance,  
Farmington Foods, Forest Park**

incorporating these advancements have been field tested in manufacturing environments with some surprisingly strong results.

One such product is SISTEM, from Austin-based Alchemy Systems. SISTEM was developed under the guidance of food manufacturers, with their unique perspective on worker training issues. Since its launch a few years ago, SISTEM has become a best practice in manufacturing, and recently won the American Meat Institute's Supplier of the Year Award.

Products such as SISTEM don't just train workers. They take a comprehensive approach to managing liabilities by delivering and recording all modalities of training. An OJT training event is treated as importantly as an ILT event, because it is as important to the company.

But for manufacturers, the most appealing aspect of products like SISTEM is how they combine the efficiency of group-based training with the consistency of e-learning. Imagine that your production line has suddenly stopped and is projected to be down for 20 minutes. You now have 75 workers being paid for no output. Using the time for training would be great, but it's impossible to get a trainer to run an ILT class on so little notice, and you only have four PCs available for e-learning.

If you had a product like SISTEM, you would bring the workers into a room and hand each of them a small remote control (a "clicker"). They would sign in electronically through the clickers, and then the line supervisor would start the training session with a few mouse clicks on a PC. The course would be projected to the front of the room for all to see. Interspersed throughout the course would be questions that all the employees must answer before the course would continue. This guarantees that everyone must pay attention (lest their names appear on the screen for not answering!). When the course finishes, all records would be uploaded to the included learning management system (LMS), which can be interfaced with your company's systems.

These products appeal to manufacturers because the courses can be based on almost any format, including pre-existing slide shows, videos,

***"Prior to using SISTEM, our method of training was via 'Five-Minute Employee Meetings' that were held monthly and facilitated by supervisors. Our training documentation consisted only of paper sign-in sheets. This did not allow us to track or test the employees' understanding of the topic, nor were we able to ensure the message communicated was consistent. Using SISTEM has allowed us to dramatically improve in these areas as well as provide a medium that both our English and Spanish speaking employees can understand. Employees seem to really enjoy the skits and competing in the lightning rounds. In one of our locations, employees who won the most lightning rounds were awarded prizes, so it has really increased employee engagement."***

**Megan Robinson, HR Manager, Compensation and Benefits,  
Ed Miniat, Inc., Chicago**

lectures, etc. Even better, companies can load their courses and questions themselves. The SISTEM product comes with a library of courses for manufacturers, and an especially deep library for food processors. In these courses, Alchemy Systems has taken engagement to a new level, by using a combination of humor and competition among the workers. Many IMA members who have been using SISTEM report that their workers leave the training sessions cheering and wanting more.

One of the other appealing aspects of the Alchemy-produced courses is their ability to reach the workers at their own level. They are written in street language, a far cry from the pretentiousness of many e-learning courses. The courses deliver only what the workers need to do their jobs safely, avoiding the temptation to over-teach. The efficiency of training up to 150 at a time in one room means that each language group can take the course in its native tongue.

It's no wonder that comprehensive products like SISTEM have manufacturers clamoring to get on

board. Alchemy Systems, the market leader, reports continued increase in market share for the last three years. Much of this growth is due to companies embracing the SISTEM platform and realizing significant savings of costs and liabilities. Another driver is the need for processors to meet the new food safety training requirements of the major grocery chains.

No one can predict what the next major development in employee training will be. But the most likely source will be the food manufacturing sector, where the constant balance of quality, cost-efficiency and safety demands revolutionary ideas every few years. ■

*Author David Perl is Chief Operating Officer of Alchemy Systems, LP, an Austin, Texas-based company that creates and markets highly interactive training products that use technology and media to educate individuals and groups. He holds an undergraduate business degree from the Wharton School at the University of Pennsylvania, and an MBA from Harvard Business School. For more information, you can contact Alchemy Systems at [contactus@alchemyystems.com](mailto:contactus@alchemyystems.com) or visit [www.alchemyystems.com](http://www.alchemyystems.com).*

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*This list includes current IMA members through April 15, 2010*

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757 N Morgan St # 650, Decatur, IL

PRAIRIE FARMS DAIRY INC  
1800 Adams St, Granite City, IL

PRAIRIE FARMS DAIRY INC  
305 N 18th St, Quincy, IL

PRAIRIE FARMS DAIRY INC  
217 W Main St, Olney, IL

## GREAT KITCHENS INC

300 Innovation Dr, Romeoville, IL  
[www.gkitchens.com](http://www.gkitchens.com)

HEINKEL'S PACKING CO INC  
2005 N 22nd St, Decatur, IL

## HIDDEN VALLEY MANUFACTURING CO

1197 Willis Ave, Wheeling, IL

## HOLTEN MEAT INC

1682 Sauget Business Blvd, Sauget, IL  
[www.holtenmeat.com](http://www.holtenmeat.com)

## INSIGHT BEVERAGES

635 Oakwood Rd, Lake Zurich, IL



## JELLY BELLY CANDY CO

1501 Morrow Ave, North Chicago, IL  
[www.jellybelly.com](http://www.jellybelly.com)

## KAPPA PRODUCTS CORP

1301 E 99th St, Chicago, IL

## KRAFT FOODS GLOBAL INC

3 Lakes Dr, Northfield, IL  
[www.kraftfoodscompany.com](http://www.kraftfoodscompany.com)  
*Other Kraft Foods facilities and locations:*

KOOL-AID/KRAFT FOODS  
7400 S Rockwell, Chicago, IL

KRAFT FOODS INC  
1701 W Bradley Ave, Champaign, IL

KRAFT/CLAUSSEN PICKLE CO INC  
1300 Claussen Dr, Woodstock, IL

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# manufacturers . . .

## LITTLE LADY FOODS

2323 Pratt Blvd, Elk Grove Village, IL  
www.littleladyfoods.com

## MARS PETCARE US INC

6565 E County Rd 1000 N, Mattoon, IL  
www.mars.com/global/index.aspx

## MILLER COORS

3939 W Highland Blvd, Milwaukee, WI  
www.millercoors.com/Home.aspx

## ED MINIAT INC

945 W 38th St, Chicago, IL  
www.miniat.com

## NESTLE USA/BEVERAGE DIVISION

1111 Carnation Dr, Jacksonville, IL

## NIELSEN-MASSEY VANILLAS INC

1550 S Shields Dr, Waukegan, IL  
www.nielsenmassey.com

## NOON HOUR FOOD PRODUCTS INC

215 N Desplaines St, Chicago, IL

## O S I INDUSTRIES LLC

1225 Corporate Blvd, Aurora, IL  
www.osigroup.com/americas/otto/

*Other OSI Industries facilities and locations:*

### NATION PIZZA PRODUCTS

2491 N Milwaukee Ave, Chicago, IL  
www.nationpizza.com

## OTTO & SONS

711 Industrial Dr, West Chicago, IL

## OTTO & SONS INC

4545 S Racine Ave, Chicago, IL

## OAK STATE PRODUCTS INC

775 St Rte 251, Wenona, IL  
www.oakstate.com

## P C S PHOSPHATE CO INC

2660 E US Hwy 6, Marseilles, IL

## PEER FOODS INC

1200 W 35th St, Ste 5 E, Chicago, IL  
www.peerfoods.com

## PEPPERIDGE FARM INC

230 2nd St, Downers Grove, IL  
www.pepperidgefarm.com

## JOHN B SANFILIPPO & SON INC

1703 N Randall Rd, Elgin, IL  
www.fishernuts.com/jbss/home.html

## SIEMER MILLING CO

111 W Main St, Teutopolis, IL  
siemermilling.com

## SOKOL & CO

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www.solofoods.com

## STEWARTS PRIVATE BLEND FOODS

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www.stewarts.com

## TATE & LYLE NORTH AMERICA

2200 E Eldorado St, Decatur, IL  
www.tateandlyle.com

## TOLL PACKAGING GROUP LLC

310 W 10th St, Gibson City, IL  
www.tollpackaging.com/index.html

## TYSON FOODS INC

2210 W Oaklawn Dr, Springdale, AR  
www.tyson.com

*Other Tyson facilities and locations:*

### BRUSS CO

3548 N Kostner Ave, Chicago, IL  
www.bruss.com

### CHICAGO/CULINARY COMPLEX

4201 S Ashland Ave, Chicago, IL

### GENESEO

PRODUCTS/JOSLIN-TCCS  
Hwy 92, Geneseo, IL

## UNILEVER BESTFOODS

2200 Cabot Dr, Ste 200, Lisle, IL  
unilever.com

*Other Unilever Bestfoods*

*facilities and locations:*

### UNILEVER BESTFOODS

2816 S Kilbourn Ave, Chicago, IL

## V & V SUPREMO FOODS INC

2141 S Throop St, Chicago, IL  
www.vvsupremo.com



## VANEE FOODS CO

5418 Modermott Dr, Berkeley, IL  
www.vaneefoods.com

## VEGETABLE JUICES INC

7400 S Narragansett Ave, Bedford Park, IL  
www.vegetablejuices.com

## WORLD'S FINEST CHOCOLATE INC

4801 S Lawndale Ave, Chicago, IL  
www.worldsfinestchocolate.com

## Spotlight on IMA member Ferrara Pan Candy Company



Ferrara Pan Candy Company recently received reimbursement of funds they spent in FY 2009 on employee training. The \$9,999 came from Illinois Department of Commerce and Economic Opportunity ETIP funds acquired through the American Recovery and Reinvestment Act (ARRA) and administered through a grant to the Illinois Manufacturers' Association. Pictured above (l to r) are Sal Ferrara, President; Lou Pagano, Vice President Market Development; Tom Pagano, Senior Vice President; and Jim Buffardi, Chief Financial Officer.

Salvatore Ferrara came to America from Nola, Italy, in 1900 and founded Ferrara Pan Candy Company in 1908 in Chicago, Illinois. At the time of his immigration from Italy, Mr. Ferrara was skilled in the art of making Italian pastries and sugar coated candy almonds. Sugar coated candy almonds, otherwise known as "confetti," continues to be a tradition at Italian weddings.

By 1904, Salvatore Ferrara had become proficient in the English language. Since he was fluent in both English and Italian, the Santa Fe Railroad hired him as an interpreter between crews and their foreman. He worked at the Santa Fe Railroad for four years. In 1908 he came to Chicago and opened a retail pastry and confection shop. From 1908 to 1919 the sugar coated almond business experienced substantial growth and Mr. Ferrara was shipping to an extensive market in the Midwest.

In 1919, Salvatore Ferrara, Salvatore Buffardi and Anello Pagano, brothers-in-law, formed a partnership to engage in the manufacturing of a wide variety of confections. Upon the formation of the partnership, they had constructed a manufacturing facility located at 2200 West Taylor Street in the City of Chicago. This is the same site in which the original Ferrara Bakery is still located. The same families, Ferrara, Buffardi and Pagano, continue to own and manage the Ferrara Pan Candy Company.

The word "pan" in the company name indicates that some of the candy made is "panned." This process involves building candy pieces from single units, such as grains of sugar, nuts or candy centers, tossing them in revolving pans while adding the flavor, color and other candy ingredients. This process continues until the pieces become the desired size. Finally, the candy gets a high polish with an edible vegetable wax, which gives it an attractive appearance.

The Ferrara Pan Candy Company is equipped with the latest of automatic manufacturing and packaging equipment. All confections are made from the very finest of pure, wholesome ingredients and a continuous program of research is employed for the development of new products. Visit the Ferrara Pan Candy Company Web site at [www.ferrarapan.com](http://www.ferrarapan.com). ■

## HC REFORM

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rized on the Vedder Price Web site in the March 23, 2010, issue of Vedder Price's *Employee Benefits Briefing*. Go to: [www.vedderprice.com/index.cfm/fuseaction/news.home/news\\_current.cfm](http://www.vedderprice.com/index.cfm/fuseaction/news.home/news_current.cfm) to download the publication.

### **Permitted grandfathering of existing coverage**

#### **Patient Protection Act:**

The Act contains a broad grandfathering provision for collectively bargained plans and other plans in effect on the date of enactment (March 23, 2010). As noted by President Obama in The President's Proposal (February 22, 2010), this grandfathering provision "allows

people who like their current coverage, to keep it."

- A plan may provide that individuals who are covered on the date the Patient Protection Act becomes law (March 23, 2010) can continue coverage under the plan generally without regard to the requirements of the Act.
- Family members may enroll in the grandfathered plan in the future if family coverage was permitted under the terms of the plan as in effect on March 23, 2010.
- New employees may join the grandfathered plan in the future if the plan permitted new employees to join on March 23, 2010.
- Plans in effect pursuant to a collective bargaining agreement that was ratified prior to March 23, 2010 may remain in effect without change (including inter-

im requirements applicable to other grandfathered plans) until the collective bargaining agreement expires.

The Act requires grandfathered plans, other than collectively bargained plans, to comply with certain provisions of the Act when those requirements would otherwise apply. The requirements that apply to grandfathered plans are:

- No lifetime limits (2011)
- Restrictions on annual limits (2011)
- Restrictions on coverage rescissions (2011)
- Extension of dependent coverage to adult children (2011)
- Uniform summary of benefits
- No pre-existing condition exclusions for enrollees under the age of 19 (2011)

see **HC REFORM** page 23

## EMPLOYER RELATED REVENUE PROVISIONS

<b>Per-Head Fee (2012)</b>	Both insured plans and self-insured plans will be charged a \$2 fee for each plan year ending after September 30, 2012 (\$1 for plan years ending during fiscal year 2013) times the average number of covered lives under the plan.  Beginning in 2014, this per-head charge will be increased by the percentage increase in health care spending. The per-head charge will not apply to plan years ending after September 30, 2019.  These fees will be used to fund a "Patient-Centered Outcomes Research Trust Fund."
<b>Medicare Part D Employer Subsidy (2013)</b>	Provides that the amount otherwise allowable as a deduction for retiree prescription drug expenses is reduced by the amount of the non-taxable subsidy payment received.  Note: This change effectively makes Medicare Part D employer subsidies taxable to the employer, thus increasing the cost of providing retiree prescription drug coverage.
<b>Medicare Tax Changes (2013)</b>	Although neither the Patient Protection Act nor the Reconciliation Bill impose additional Medicare taxes directly on employers, these additional taxes will affect tax withholding and reporting obligations for certain employees, and thus are important additional provisions for employers to be aware of.  The Patient Protection Act adds an additional Medicare tax of 0.9% to an employee's Medicare wages in excess of \$250,000 (married filing jointly) or \$200,000 (individual). Unlike regular FICA and Medicare taxes, this additional Medicare tax is imposed solely on the employee. However, employers will have withholding obligations with respect to Medicare wages exceeding \$200,000 during each year.  In addition to the 0.9% Medicare tax described above, the Reconciliation Bill imposes a 3.8% Medicare tax on "unearned income" for employees whose adjusted gross income exceeds \$250,000 (married filing jointly) or \$200,000 (individual). Unearned income includes interest, dividends, annuities, royalties, certain rents, certain trade or business income, and net taxable gains on the sale of certain property. The additional Medicare tax will be imposed generally on the employee's unearned income or, if less, the amount by which the employee's adjusted gross income exceeds the applicable \$250,000/\$200,000 threshold. This additional Medicare tax is imposed solely on the employee.
<b>Excise Tax on Cadillac Plans (2018)</b>	A 40 percent excise tax will be imposed on the value of medical coverage above \$10,200 for single participants and \$27,500 for family coverage.  Insurers will be responsible for paying the excise tax on insured plans. Employers will be responsible for paying the excise tax on self-insured plans.  The \$10,200/\$27,500 limitations are increased for employees in certain high-risk professions (e.g., law enforcement, fire protection, emergency medical care, construction, mining, agriculture, forestry and fishing) and for participants in the 17 highest-cost states as determined by HHS.  Beginning in 2019, the dollar limits will be increased by the medical cost of living adjustments provided for under the Act.  The medical coverage being measured is the coverage that is excludable from the employee's gross income, and is determined without regard to whether the employer or employee is paying for the coverage. The value of the coverage is to be determined in a manner similar to how COBRA premiums are determined.  Thresholds are adjusted for firms whose health costs are higher due to age or gender of workers.  Free-standing dental and vision benefits are not counted as taxable benefits for purposes of the excise tax.

## HC REFORM

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- No pre-existing condition exclusions for enrollees of any age (2014)
- Maximum waiting period is 90 days (2014)

### Limits on medical FSAs

Beginning in 2011, over-the-counter drugs will no longer be reimbursed under FSAs. Beginning in 2013, Employees may contribute only up to \$2,500 to a medical FSA each year. This limit may increase in \$50 increments based on cost-of-living increases beginning in 2014.

### Increase in penalty for non-qualified distributions from HSAs and Archer MSAs

Beginning in 2011, the excise tax imposed on non-qualified distributions from HSAs and Archer MSAs (i.e., distributions used for non-medical purposes before age 65 or disability) is increased to 20 percent.

### Reporting cost of employer-sponsored coverage on W-2s

Beginning in 2011, the aggregate cost of applicable employer-sponsored coverage must be reported annually on the employee's Form W-2. This requirement will affect 2011 W-2s sent to employees on January 2012.

### Reinsurance for early retirees

Within 90 days of enactment (i.e., by June 23, 2010), HHS is directed to establish a reinsurance program for sponsors of retiree medical programs covering retirees who are 55 or older and not yet eligible for Medicare.

- An employer participating in the reinsurance program may be eligible to be reimbursed for up to 80% of expenses incurred on a medical claim between \$15,000 and \$90,000.
- Payments received by employers under the program are not considered taxable income to the employer, but must be used to reduce costs under the plan.
- The program has a fixed \$5 billion fund and will end on January 1, 2014.

**Note:** The legislative language regarding this reinsurance program

leaves significant details of the program to be developed.

### 2014 requirements

Once the Patient Protection Act provisions are fully implemented (which is generally 2014), other requirements will apply. Please refer to the March 23, 2010, issue of Vedder Price's *Employee Benefits Briefing*. Visit [www.vedderprice.com/index.cfm/fuseaction/news.home/news\\_current.cfm](http://www.vedderprice.com/index.cfm/fuseaction/news.home/news_current.cfm) to download the publication.

### Revenue provisions

The Patient Protection Act contains numerous revenue provisions, some affecting individuals, others affecting medical device manufacturers, others affecting services (e.g., indoor sun tanning). The chart on page 20 summarizes revenue provisions that will have a direct impact on employers generally.

*If you have any questions regarding this issue, please contact either of the authors of this article. (See the bottom of page 7 for contact information.)* ■

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## Illinois businesses, consumer groups and others launch the Illinois Coalition for Chemical Safety

Illinois businesses, unions, consumer groups and other organizations, including the Illinois Manufacturers' Association, the Illinois Chamber of Commerce and the Illinois Mechanical Contractors recently announced the launch of the Illinois Coalition for Chemical Safety (ICCS). This non-profit, non-partisan group has joined together to support modernization of our nation's system for regulating the use of chemicals.

"We're excited to be part of this important effort," said Mark Denzler, of the Illinois Manufacturers' Association and a member of ICCS. "Modernizing the federal law regulating chemicals is important for the safety of all Americans, whether at home, school, or in the workplace."

"The federal Toxic Substances Control Act (TSCA) is more than 30 years old," said Mark Biel, Executive Director of the Chemical Industry Council of Illinois. "Our ability to assess chemical risks has advanced tremendously since then, and our nation's laws should reflect improvements in science and technology."

ICCS will be building its membership and educating the public and elected officials about the importance of a strong, innovative, properly regulated chemical industry. The organization supports a national chemical safety regulatory system that protects public health and the environment, provides consistent, reasonable regulation and consistent protection, and encourages American companies, including small businesses, to invent, manufacture, use and sell innovative chemical-based products and services. With an improved chemical regulatory system, American industries will be better able to create and support high-quality jobs.

The ICCS is affiliated with the national Coalition for Chemical Safety, which is based in Washington, D.C. Included among the members of the national Coalition is the American Chemistry Council (ACC).

The Coalition for Chemical Safety can be found on the Web at [www.coalitionforchemicalsafety.com](http://www.coalitionforchemicalsafety.com).



## Copresco wins Gallery of Excellence printing awards

Copresco has been honored with more awards for exceptional printing quality from the Gallery of Excellence of the International Association of Printing House Craftsmen (IAPHC). In competition with printers around the globe, the Carol Stream digital printer was honored with a gold award for a four-color, hardcover children's book, and a silver award for a full-color corporate-identity manual. The company's newsletter, Overnight Lite, received an honorable mention award.

"This recognition for digital printing craftsmanship on such a vast global basis is something very special," said Copresco President and CEO Steve Johnson. "Personal craftsmanship has always been a trademark for all the work we do for our customers." Copresco specializes in digital on-demand printing of publications, books and manuals for clients in the general business, printing trade, technical and institutional fields.



## Owens-Illinois, Inc. elects Radhika Batra as vice president and chief procurement officer

Consumer products company Owens-Illinois, Inc. recently reported the appointment of Radhika Batra as vice president and chief procurement officer of the company.

Batra, in her new role, will lead the company's global strategic sourcing function and drive synergies across the regional operations to maximize buying power.

Most recently, Batra was employed with Solutia Inc, where she served as vice president of business process in the CPFilms segment. She previously served as vice president of supply chain and global procurement at the company.



## United Engravers wins 2010 FPPA Sustainability Award



Terry Cappas, Vice-President (left) and Peter Cappas, President (right) of United Engravers with the FPPA Sustainability Award standing in front of the 52" by 110" MacDermid Liquid Photopolymer Machine.

United Engravers received the 2010 Sustainability Achievement Award from The Flexographic Pre-Press Platemakers Association (FPPA) at its annual convention in February in Fort Myers, Florida. The award recognizes the application of environmental sustainability efforts, which contribute to the advancement of the pre-press, platemaking industry. Representatives from each competing company presented their respective sustainable measures practiced in 2009. FPPA members voted United Engravers to be the recipient of the award.

United Engravers purchased 25 percent wind energy in Fall of 2009. Green-e energy uses renewable sources that produce little to no greenhouse gas emissions. The current average mix of energy sources supplying the USA includes only two percent of renewable energy. United is considering the option to utilize 100 percent wind energy in the future. From 25-100 percent, wind energy benefits the environment by producing less gas emissions.

In an effort to utilize sustainable materials, United Engravers incorporated green practices in its recent renovation. While adding offices to the previously vacant second level, United picked out cabinets certified through the Kitchen Cabinet Manufacturers Association's (KCMA) Environmental Stewardship Program (ESP). In purchasing wood cabinets, United chose a recyclable and biodegradable product that uses less

energy to process than other materials, such as plastic or metal.

Recycled material was also used in the upstairs renovation. The ceiling tiles were processed with 50 percent recycled material, and half of the carpet base uses recycled material. United also purchased motion sensor faucets and air-assist toilets, in an effort to reduce water consumption.

Green efforts are ongoing at United Engravers. Future steps may include purchasing a larger quantity of wind power, as well as taking additional measures to lessen the company's carbon footprint.



## Bison Gear celebrates 50 years of excellence

*Gearmotor manufacturer looks to skills training, R&D and customer focus to continue successful American manufacturing legacy.*

In January, over 200 employees of Bison Gear & Engineering Corp. gathered to celebrate the 50th anniversary of the founding of the St. Charles, Illinois, headquartered gearmotor manufacturer. Bison was established in 1960 by three Chicago area entrepreneurs who derived the company's name from their last initials of B-S-N. The company began as a producer of gears and today manufactures gearmotors, electric motors and gear reducers for hundreds of customers ranging from successful entrepreneurial OEMs to many multinational industrial and commercial equipment OEMs. As one example of its success, Bison gearmotors are used in a wide variety of food service equipment found in virtually every fast food establishment throughout the world.

"While Bison's continuous growth and development have been driven by our many loyal customers, to whom we are very thankful, it would not have been possible without the commitment to excellence that has driven our associates now for half a century," said Ron Bullock, Bison chairman and owner. "Going forward, Bison's strong focus on

skills training and research and development will ensure our next half century of success as an American manufacturer."

Beginning as a producer of gears and designer of custom gear reducers, by the late 1960s Bison's engineering expertise, quality systems and production controls were instrumental in Bison winning a contract to supply critical gear sets for use in surface to air missiles. Bison's continuous improvement efforts maintain that relationship through three generations of missile systems. By the 1970s Bison had designed a line of standard gear reducers and gearmotors sold through national distribution.



## Schaumburg manufacturer emerges as Great Lakes regional finalist for U.S. Chamber of Commerce DREAM BIG Small Business of the Year Award

*Quality Float Works, Inc. will share potential \$10,000 cash prize with employees*

Coming off the recent announcement the U.S. Chamber of Commerce had recognized Quality Float Works,



Inc. with a 2010 "Small Business Blue Ribbon Award," the local family-owned manufacturing company has emerged from a tough group of competitors to be named one of seven finalists for the "DREAM BIG Small Business of the Year Award." This Awards program is designed to honor our nation's job creators and recognize their significant contributions as drivers of economic growth. The winner of the DREAM BIG Award will receive a \$10,000 cash prize courtesy of Sam's Club. Should they win, Quality Float Works, Inc. plans to give the money

to their employees as a 'thank you' for their continued hard work and dedication during the recent tough economic times.

"It's an honor to be recognized for our achievements in providing our quality products worldwide to our customers, especially coming out of a tumultuous year for our industry" said Jason Speer, Vice President and General Manager, Quality Float Works, Inc.

"I am a concept without my employees," said Sandra Westlund-Deenihan, President and Design Engineer of Quality Float Works, Inc. "I'd love to reward them with not only the honor, but also the prize money."

The 2010 finalists were selected from the U.S. Chamber's 75 Blue Ribbon Small Business Award® winners who were chosen based on financial performance and business history, staff training and motivation, community involvement, community service and business plan or strategy for growth. Quality Float Works, Inc., has grown into a global competitor exporting to Canada, Latin America and countless Asian and European countries. This award represents the continued strides the company has made in innovation and unparalleled service in the manufacturing industry.

"These finalists are among the best small businesses in America," said Thomas J. Donohue, the U.S. Chamber's president and CEO. "They are the nation's doers, dreamers, and innovators. Their vision and hard work will help lift this country out of recession and create the 20 million jobs we desperately need in the next decade."

IMA member Quality Float Works, Inc. is the premier manufacturer of hollow float metal balls and float valves in the nation. Quality Float Works, Inc. is owned and operated by third and fourth generation entrepreneurs. To learn more about Quality Float Works, Inc., visit [www.metalfloat.com](http://www.metalfloat.com).



see **MEMBER NEWS** page 26

## MEMBER NEWS

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### Plante & Moran named to *FORTUNE* magazine's list of "100 Best Companies to Work For" for 12th consecutive year

*Celebrating 86 years of history and a dozen years as one of the nation's best places to work.*

Plante & Moran, PLLC, the nation's 12th largest certified public accounting and business advisory firm, has been named to *FORTUNE* Magazine's list of "100 Best Companies to Work For" for the 12th consecutive year. The full list, which ranks Plante & Moran 66th, appeared in the February 8 issue of *FORTUNE* magazine.

"We are truly honored that *FORTUNE* has continued to recognize Plante & Moran as one of the '100 Best Companies to Work For' for twelve years," said Managing Partner Gordon Krater. "Considering the average life cycle for an organization on the list is three years, our recur-

ring presence is evidence that our team has created a truly unique and extraordinary work environment.

Plante & Moran doesn't take this honor for granted," Krater added. Two-thirds of *FORTUNE*'s judging criteria is based on confidential surveys in which staff evaluate the credibility, respect, fairness, pride, and camaraderie of their workplace. In 2010, Plante & Moran's survey percentages improved in each of the five categories.

Krater said Plante & Moran strives to be 100 percent jerk-free, which allows the firm to find and retain talented staff who provide quality service to its clients. "I speak for our staff in Michigan, Ohio, Illinois, Monterrey, Shanghai, and Mumbai when I say we are very excited to be recognized for our culture. It proves that wherever we are, practicing the golden rule and treating our clients and each other the way we'd want to be treated, is a timeless value that has served us well for 86 years."

In the 12 years since Plante & Moran first appeared on the *FORTUNE* list, the firm has more than tripled its revenue and has nearly

doubled its staff, all while maintaining a culture that promotes staff development, retention, and focus on client service. The result is lower turnover, which promotes unparalleled longevity and trust and drives exceptional client results.



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## SUSTAINABILITY

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### Get recognized for your green commitment

Reducing your energy usage by a significant percentage demonstrates a real commitment to sustainability. And, when you offset your energy usage — partially or fully — with renewable energy certificates or on-site solar generation, you will be well on your way to developing a reputation as a green organization. That should motivate your various stakeholders, from employees to customers, and give you a marketing advantage over organizations that take less comprehensive approaches to sustainability.

### Efficiency + solar = real progress

If you want to make the biggest impact on your sustainability goals,

pair multiple efficiency improvements with an on-site solar array. Some of our customers have been able to meet as much as 75 percent of their facilities' electricity demands with an on-site solar installation. Combine that with double digit efficiency savings and your facility might be able to achieve net zero energy usage — the holy grail of sustainability. Given that Constellation Energy enables you to deploy solar at no upfront cost when you agree to buy back all the power from the system at rates that are often below brown power grid prices, what is stopping you from setting your goal at net zero?

### Find the right energy partner

The key to a multi-solution approach is working with a multi-solution energy partner like Constellation Energy. The best energy services companies handle traditional energy efficiency and infra-

structure projects, of course, but also the construction, financing, ownership and maintenance of renewable systems. You should also be able to work with the same provider to participate in demand response programs and to procure electricity, gas and renewable energy certificates.

If your energy partner can't provide an integrated suite of products and services, implementing a comprehensive energy strategy will be more complicated and probably less effective.

*Organizations interested in taking a multi-solution energy efficiency approach can contact Constellation Energy at Sustainable-Solutions@constellation.com or 1-866-237-POWER. ■*

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ing mandatory nanomaterial health effects testing under the TSCA.<sup>42</sup> The EPA believes that this new mandatory nano-related testing will “assist the EPA in understanding the health effects” of these materials and minimize the potential risks they may pose.<sup>43</sup> This health effects testing would extend beyond CNTs, to nano-sized clays and alumina.<sup>44</sup> The EPA hopes to promulgate the new test rule by November 2010.<sup>45</sup>

The EPA’s agenda also includes issuing new reporting requirements for certain nanoscale materials under Section 8 of the TSCA.<sup>46</sup> The new reporting requirements would mandate that manufacturers submit all existing data on the environmental and health effects of nanoscale materials to the EPA for evaluation.<sup>47</sup> Which nanoscale materials would be subsumed into these reporting requirements is not yet known; but, what is known (or is suspected) is that the requirements will be broad and hold the potential to be expanded over time. These new SNURs, mandatory testing, and reporting requirements signal that the EPA intends to lay a massive foundation to take control of managing and regulating nanomaterials.

A recent report out of the United Kingdom indicates that nanotechnology concerns and potential regulations are not limited to the borders of the United States. Instead, they may take hold on a global scale. The United Kingdom report stated that although the benefits of nanotechnology may be great and ultimately revolutionize the food industry, the secrecy that often surrounds nanotechnology (especially as it relates to food packaging) may lead to a public backlash similar to the backlash encountered by the manufacturers of genetically modified food in the European Union.<sup>48</sup> The report, issued by the United Kingdom’s House of Lords Science and Technology Committee, recognized the great potential and impact that nano-packaging could have on the global marketplace both economically and for consumers.<sup>49</sup> The report stated that “[t]he use of nanotechnologies in food and food packaging is likely to grow significantly over

the next decade. The technologies have the potential to deliver some significant benefits to consumers but it is important that detailed and thorough research into potential health and safety implications in this area is undertaken now to ensure that any possible risks are identified.”<sup>50</sup>

The food packaging industry responded that this alleged “secrecy” was due to high costs and supply chain concerns, not to conceal research due to fears of public backlash.<sup>51</sup> Although the benefits of nanotechnology for the food packaging industry may be great — i.e. technology that senses when food has spoiled — the industry is slowly integrating such technology into their final products because they are waiting for someone else to take on the high costs and essentially make the first move.<sup>52</sup> The technology is there. The final missing link is the actual implementation of nanotechnology into this vast marketplace that is the food packaging industry.<sup>53</sup> Even still, the report went on to state that “[t]he science needs to be promoted in an effective way and concerns need to be addressed through regulatory testing regimes” — a regulatory regime that would monitor and assess new developments.<sup>54</sup>

The United States and the United Kingdom are just two of the countries trying to get in front of nanotechnology to ensure that health and safety concerns are addressed *before* it is integrated into industries and the economic benefits begin to be realized on something other than a nanoscale. With nanotechnology in its infant stages, its effects greatly unknown, and its vast economic potential, it is an area ripe for both regulation and litigation.

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51. *Id.*
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## FOOD SAFETY

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to appropriately respond, and indeed survive in the event of a recall. Regardless of whether it is a national recall of peanut products, or a local or regional recall of specific lot numbers of a processed food, product recall has costly consequences for food manufacturers and processors. These consequences can be categorized into two different types of risks, first party and third party. Both of these risks can have short and long term costs associated with them.

A first party risk or exposure is one that is incurred directly by the food processor or manufacturer who must recall a product. Initial costs associated with a recall can be significant, but there are also long term costs critical to a manufacturers' successful recovery following a recall. Out of pocket expenses necessary to implement and successfully survive a product recall can include:

### INITIAL RECALL EXPENSE:

- Employee overtime
- Media, communication
- Product testing, destruction and disposal
- Public relations, crises management or consulting fees

### REPLACEMENT COSTS:

- Materials, labor and overhead directly related to reproducing product that had to be recalled and or destroyed.

### LOST PROFITS:

- Profits lost as a result of products recalled
- Future profits lost as a result of declined sales

### BRAND REHABILITATION:

- Consumer education and advertising
- Promotional or price reduction campaigns

Product recall presents a third party exposure that to a certain extent is out of the control of the typical food manufacturer or processor. Third party exposures are losses incurred by a customer of a food

manufacturer or processor, as a result of a recall caused by the food manufacturer or processor. These losses can include the customer's recall expenses, lost profits, extra expenses and even losses affecting other products sold by the customer. The recall of any food ingredient will affect the finished food product, and potentially all of the processors involved.

### How to manage the risk

Food processors and manufacturers have a unique exposure to product recall because of the potential harm their products can cause. Key to managing this risk is understanding what is, and is not covered under typical general liability policies. Essential to successfully surviving a product recall is a risk management plan. A well designed risk management plan will include risk transfer techniques and crisis management. Risk transfer is purchasing an insurance policy to cover the costs associated with a recall. Crisis management involves the internal planning and training to quickly mitigate losses and recover.

### Risk transfer

The cost of a product recall could be hundreds of thousands if not millions of dollars. Few food processors or manufacturers could survive a financial catastrophe of this nature. One of the best and most affordable risk transfer techniques is to purchase Product Recall or Contamination and Malicious Tampering insurance. There are however major differences among the policies offered by the various insurance companies, what events can trigger coverage and what is covered. In an attempt to meet the growing demand and specific needs of food processors and manufacturers, insurance companies have recently expanded and enhanced policies to offer broader coverage.

### Product recall vs. product liability

A common misconception is that Product Recall is included in a standard ISO Commercial General Liability policy. While the standard ISO Commercial General Liability policy does provide coverage for bodily injury caused by the insured's

products, the policy excludes coverage for product recalls. The ISO Commercial General Liability policy excludes "damages claimed for any loss, cost or expense incurred by you or others for loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your product, or your impaired property."

### Product contamination and malicious tampering policy vs. product recall

Products Contamination and Malicious Tampering insurance is also known as an Accidental Contamination and Malicious Tampering Policy. This type of policy is normally targeted towards food and beverage manufacturers, distributors and retailers. The primary purpose of a Products Contamination policy is to provide a variety of critical first party coverages addressing the expenses an insured might be forced to incur should a product be tampered with or contaminated. The incurred expenses must be the result of a covered product being maliciously tampered with or the result of an accidental contamination. The policy coverage is normally triggered by an actual or suspected accidental contamination or malicious tampering, that has the potential to cause or has caused bodily injury or property damage. Most insurance companies who provide Product Contamination Insurance include coverage for: Product Recall Expenses (first and third party); Product Replacement; Extra Expenses; Loss of Profits; Product Rehabilitation Expenses; and Fees or Expenses of a Specialist or Consultant.

Product Recall insurance policies are different from Product Contamination policies in two major ways. Primarily, the Product Recall policy is triggered by the recall or withdrawal from the market place of a product. This recall can be due to a defective or malfunctioning product that has the potential or already has caused bodily injury or property damage. Coverage under a Product Recall policy is not triggered by the contamination of a product. It is important to also note that under a Product Recall policy products still in the insured possession, housed at the insured's

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location, and not shipped yet, would not be covered, as the product has not been recalled. Secondly, Product Recall policies limit the first party losses to recall expenses and the repair, replacement or refund of the product. Normally the basic Product Recall policy does not provide coverage for any first party loss of profits or extra expenses.

Most Product Contamination and Malicious Tampering policies are broken into three main sections. Section I addresses Malicious Product Tampering. Section II addresses Accidental Product Contamination. Section III is normally a General Terms and Conditions section that applies to both Section I and Section II. Each policy section should clearly define covered recall expenses as well as excluded events or expenses.

### Enhancement endorsements

The basic Product Recall and Contamination and Malicious Tampering policy offers a wide range of coverage that will help mitigate the costs associated with a recall of a contaminated or tampered product. In recent years several new coverages have become more readily available. These new coverages have expanded what was already a broad policy. Many insurance companies are now providing third party recall coverage that goes beyond third party recall expenses. These third party enhancements can now include: loss of profits, rehabilitation expenses, compensatory damages and defense costs. Insurance companies that offer Product Recall and Contamination and Malicious Tampering policies offer slightly different enhancement endorsements, so it is important to review all of the coverages and endorsements available.

Adverse Publicity coverage is intended to expand the contamination section of a policy to include not only an actual insured contamination event, but also adverse publicity for an insured event. The specific wording of this coverage can vary among insurance companies.

Government Recall coverage is another important enhancement to consider for food manufacturers and processors. A Contamination and

Malicious Tampering policy should respond to a covered event if the government orders the recall or not. The definition of contamination generally requires that bodily injury or property damage would occur if the product was used. However, the pending legislation could lower the standards the FDA uses to order a recall. A Government Recall endorsement would help bridge this gap. Not all carriers offering Contamination and Malicious Tampering policies offer the Government Recall endorsement.

### Crisis management plan

A critical factor to successfully managing the risk of a product recall is a crisis management plan. This plan should be formally documented and practiced, and include provisions that will allow the immediate identification and recovery of contaminated or tampered products. The plan should also include communication strategies to notify vendors, distributors, retailers and customers. A crisis management team should be created, consisting of critical employees and management, and outside consultants. Many insurance companies that offer Product Recall or

Product Contamination and Malicious Tampering policies also provide crisis management assistance often through an outside specialist.

Engaged American consumers and the current political climate factored together will likely ensure the passage of the FDA Food Safety Modernization Act or something similar to it in the coming months. Illinois' 1,300 food manufacturers and processors need to be aware of their risks, and the risks to their customers in the event of a product recall. There is much that a food processor or manufacturer can do to manage these risks, both internally and externally. A company's commitment to quality including utilizing suppliers who share that same commitment is a critical component to a successful risk management plan. Risk transfer through insurance, which should include crisis management assistance, will transfer the risks which cannot be financially absorbed by a food processor or manufacturer. A well designed product recall plan that includes risk management, risk transfer, and crises management is key to a food processor or manufacturer surviving a recalled product. ■

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**National Electrical Manufacturers  
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Rosslyn, VA

## IMA & MIT 2010 Calendar of events

### MAY 2010

May 12, 2010

**IMA EVENT: Defending ADA Cases**  
Ditka's Restaurant, Two MidAmerica Plaza,  
Oakbrook Terrace, 8:00–11:00 am

Claims brought by employees under the ADA in 2010 are up 30 percent since last year. In January, 2009, the ADA amended the ADA in ways that have made it easier for employees to file ADA lawsuits. Gregory Andrews, of Dykema, will walk attendees through the anatomy of a successful defense to an ADA case. The briefing will also provide useful checklists to propose realistic and practical solutions to real life problems from manufacturing-based workplaces so that the risk of lawsuits for employers can be reduced. Cost: \$60 IMA members; \$85 Non members

May 14, 2010

**IMA-MIT Event: Customer Service Skills and Excellence, DePaul University O'Hare Campus, 3166 S. River Rd., Des Plaines**

Customers are more demanding today than ever before! Complaints to Better Business Bureaus and state regulatory agencies are at an all time high, and growing! Study after study indicates that World Class Customer Service will provide the most valued differentiator between your organization and the competition.

May 18, 2010

**IMA Breakfast Briefing: Social Media in the Workplace, Ditka's Restaurant, 7:30–10:00 am, Two MidAmerica Plaza, Oakbrook Terrace**  
Employers must face the fact that their employees do access and use social networking sites and they likely do so at work. This presentation will help you implement smart measures to deal with this reality and explore some additional aspects of the topic of social networking sites. Cost: \$60 IMA members; \$85 Non-members.

May 25, 2010

**IMA-MIT Event: Essential Leadership Skills for Front Line Managers and Supervisors, DePaul University O'Hare Campus, 3166 S. River Rd., Des Plaines**

This one day program will prepare your supervisors for a complete change of responsibilities and offer a plan for the challenges ahead. They will come away with a better understanding of what the boss, peers, staff and company expects of them. The invaluable set of tools in this program will prepare supervisors for their important new role providing greater confidence and success.

### JUNE 2010

June 24, 2010

**IMA-MIT Event: Strategic Planning and Goal Setting, DePaul University O'Hare Campus, 3166 S. River Rd, DesPlaines**

The Strategic Planning and Goal Setting Workshop aims to assist managers and team leaders to plan strategically, set goals and objectives for their functional team, and align them with actions, as well as to demonstrate strategic thinking during everyday operations.

### JULY 2010

July 14, 2010

**IMA-MIT Event: Consultative Selling Skills for Sales Professionals, DePaul University O'Hare Campus, 3166 S. River Rd., Des Plaines**

The goal of any selling process is to earn and sustain a loyal and partnership-minded client base that will keep coming back. Be ready to turn your "lean and mean" sales team into "customer friendly" advisors your clients will trust to help them make complex buying decisions. Participants will be able to determine how their company's product can provide meaningful value to a client, even in a competitive or saturated market.

July 27, 2010

**IMA-MIT Event: Assertive Communication Skills: Communicating with Authority & Impact, DePaul University O'Hare Campus, 3166 S. River Road, Des Plaines**

Responding assertively is positive and effective, showing leadership skills and self-confidence. Professionals having effective assertive communication skills are most often seen as trust-worthy, credible, direct and results-oriented. They are better able to generate desired outcomes. Assertive communication provides the speaking and listening skills necessary to productively relate in today's complex work environment.

### AUGUST 2010

August 6, 2010

**IMA's Small Manufacturers Council**  
Ditka's Restaurant, Rte. 83 and 22nd St., Oak Brook, 8:15 am-12:00 noon

IMA's Small Manufacturers' Council is a group focused on the unique issues and challenges facing manufacturers employing fewer than 150 workers. The council meets four times yearly to explore current and emerging business trends and hears from leading experts on matters important to the manufacturing community in Illinois. Continental breakfast provided. Underwritten by Sikich LLP

### SEPTEMBER 2010

September 13-18, 2010

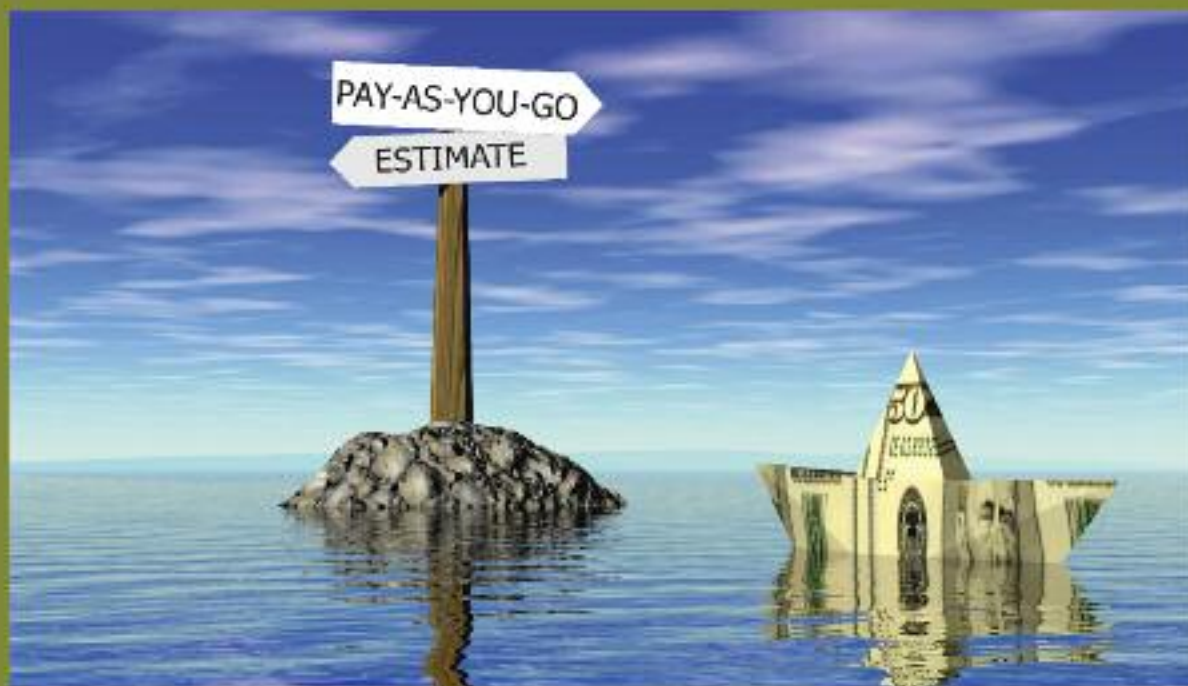
**International Manufacturing Technology Show 2010, McCormick Place, Chicago**

Registration for the 28th edition of The International Manufacturing Technology Show — IMTS 2010 is open. IMTS is one of the largest industrial trade shows in the world hosting more than 92,000 manufacturing industry professionals from 116 countries. Contact IMTS, 508-743-8535 or visit Web site: [www.IMTS.com](http://www.IMTS.com). ■

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