

Food Litigation Year in Review 2018



Perkins Coie is pleased to present its third annual [Food Litigation](#)

[Year in Review](#), offering a summary of the year's key litigation outcomes, regulatory developments, and filing data. Last year, pointing to uncertainty at the appellate level, Perkins Coie predicted continued litigation in 2018. Using metrics from our proprietary database, developed by our food litigation team in order to track and understand trends in this area, 2018's *Year in Review* again reports an increase in class action litigation—indeed, one of the most active years on record, with 158 new lawsuits. Lawsuits continued to challenge the use of the term "natural" (yet undefined by the FDA) on food and beverage product labels. In particular, these claims continued to apply the theory that foods containing trace amounts of pesticides should not be labeled "natural," notwithstanding the general skepticism of the courts toward such arguments. Lawsuits alleging slack fill in the packaging of candies, bake mixes, and other foods also continued unabated, despite notable early victories in several such cases. While the courts have seemed increasingly unwilling to adopt plaintiffs' theories, class action litigation persisted and grew. For several years, Perkins Coie has been a leader in defending food litigation cases, securing favorable, precedent-setting results for its clients. 2018 was no different, with several important victories, including a pathbreaking decision in the Proposition 65 case *Post, et al. v. Superior Court*. The California Court of Appeals held that Proposition 65 warnings for cereal based on the presence of acrylamide in those foods would conflict with the FDA's longstanding policies encouraging the consumption of whole grain cereals. The court granted summary judgment to the food industry's leading cereal manufacturers, a decision that withstood attempted appeal to the state's highest court. Consistent with the trend of the past several years, the number of Proposition 65 pre-suit notice letters continues to increase, 2018 seeing more than 530 such notices. Given the proliferation of pre-suit notices, litigation in this area is bound to increase.

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