



Basswood Counsel



USBC 360° Legal Session 3

Contracts, IP & Commercial Readiness



About Basswood

Navigating Legal Complexities With Care

Basswood Counsel is a boutique law firm specializing in complex business transactions, including mergers and acquisitions, corporate law, and international tax structuring. Our experienced team offers personalized attention, combining large-firm sophistication with the accessibility of a smaller practice.



Our Services

We provide top-tier legal services tailored to your needs, covering tax planning, corporate finance, cross-border transactions, and securities. Combining global reach with the personalized attention of a boutique practice, we deliver expert legal strategies to help you achieve your goals.

Business & Finance

- General Corporate
- Fund Formation & Investment Management
- Emerging Companies Startups
- Infrastructure Project Development & Project Finance

Tax

- Corporate Fiduciary Representation
- Corporate Tax
- Executive Compensation
- International Tax
- State & Local Tax (SALT)
- Tax Controversy & Litigation
- Tax-Exempt Organizations
- Estate Planning

Family Office

- Family Office Services
- Wealth & Estate Planning

Meet The Team

Our team, composed of attorneys with both domestic and international training, stands ready to navigate the complexities of your legal needs with sophistication and a bespoke approach.



Jephte Lanthia

Equity Partner and Co-Founder



Jephte Lanthia advises on corporate and securities, fintech, and investment management, assisting fund managers and founders with securities offerings, broker-dealer regulation, and regulatory compliance matters. Before co-founding Basswood Counsel, he served as Special Counsel at the Advocate for Small Business Capital Formation at the U.S. Securities & Exchange Commission (SEC).



Connect with Jephte
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Hazvinei Mugwagwa



Of Counsel

Hazvinei approaches deal-making and transactions like soccer, valuing teamwork and achieving success when every participant brings their best effort to deliver optimal outcomes on and off the field.



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Presentation Purpose

A product company is only as strong as the weakest contract in its chain



Contract Anatomy 101

Commercial contracts:

- Price
- Volume
- Delivery Date
- Legal Boiler Plate



Session Complete



BREAKDOWN OF PRIMARY COMMERCIAL RISK CLAUSES IN A CONTRACT



INDEMNIFICATION

- Shifts risk for specified third-party claims (e.g., intellectual property infringement, personal injury)
- Obligation to defend and make whole
- Typically broader and harder to cap
- Often mutual or one-sided based on bargaining power



PROTECTION



RISK ALLOCATION FRAMEWORK



RISK CAP



LIMITATION OF LIABILITY

- Caps the total amount of money that can be recovered (a "liability cap")
- Excludes certain types of damages (e.g., indirect, consequential, punitive)
- Crucial for protecting a company from catastrophic risk
- Exceptions are common (e.g., fraud, intentional misconduct)

FORCE MAJEURE

- Excuses performance or delay due to defined "acts of God" or events outside control (e.g., pandemics, war, natural disasters)
- Must satisfy requirements for notice and mitigation
- Common exclusions may apply (e.g., financial hardship, general labor strikes)
- Usually not applicable to payment obligations



UNFORESEEABLE EVENTS



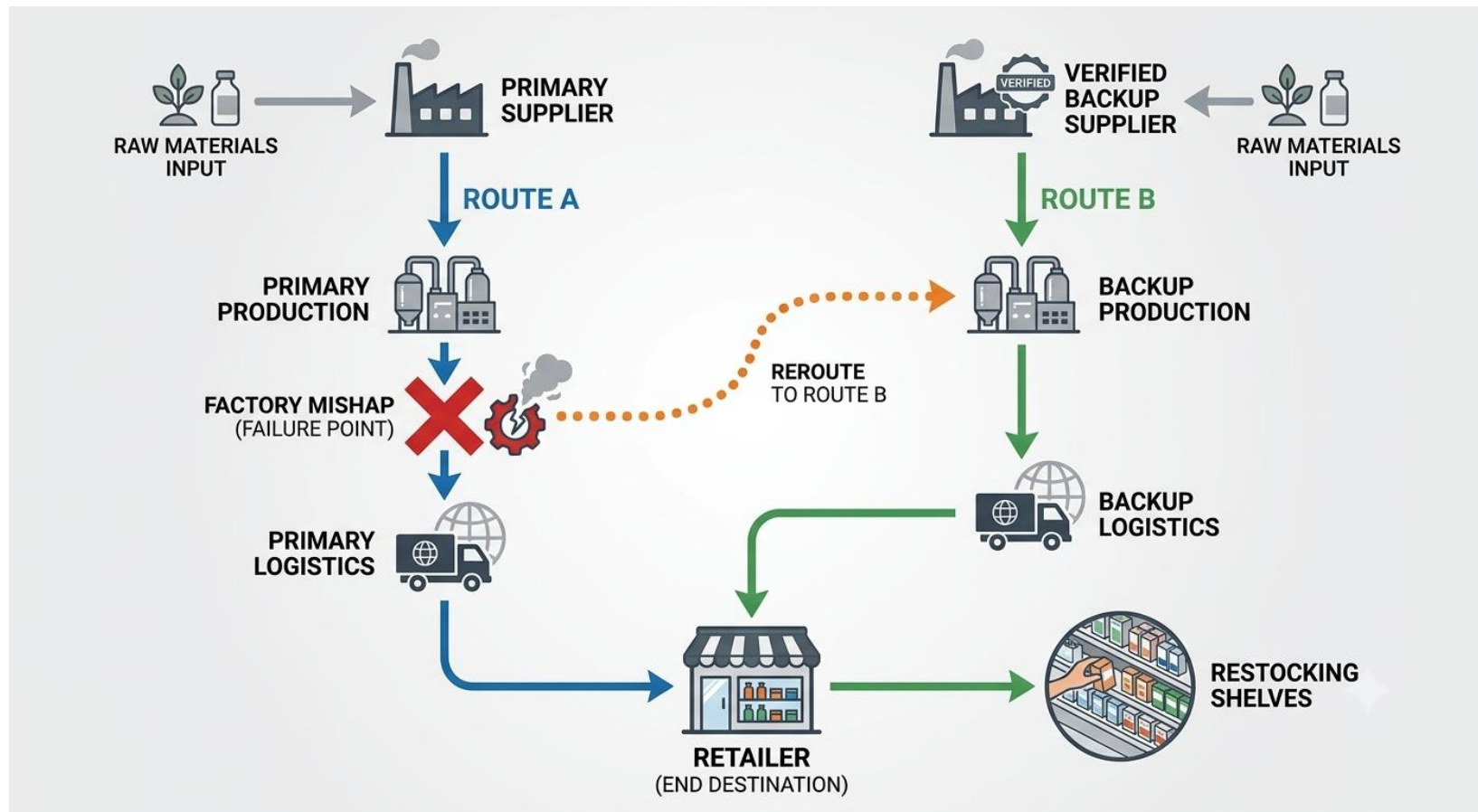
GUARANTEES



UCC WARRANTIES (UNIFORM COMMERCIAL CODE)

- Implied warranties: Merchantability (fit for ordinary use), Fitness for a Particular Purpose
- Express warranties: Statements of fact or promise
- Often specifically disclaimed to manage risk (e.g., 'As-Is', specific disclaimers)
- Requires careful drafting of disclaimer clauses

Supply Chain Resilience



Co-Packers & The IP Threat

- Co-packers provide operational leverage
 - Have undertaken capex
 - Broad expertise
 - Enable an idea and a plan
- Working with a co-packer requires
 - Disclosure of an idea and/or a product
 - A well negotiated contract
 - **TRUST** (but verify)



CRITICAL ASSETS IN CO-PACKER PARTNERSHIPS



LEGAL MEASURES & BEST PRACTICES

1. Strict Non-Disclosure Agreements (NDAs) 
2. Access Restrictions and Monitoring 
3. Employee Confidentiality Clauses 
4. Specific Trade Secret Identification 

RECIPES & FORMULAS

MANUFACTURING PROCESSES

TRADE SECRET PROTECTION  

RECIPES & FORMULAS

MANUFACTURING PROCESSES

SUPPLIER LISTS

PRICING MODELS

**SAFEGUARDING
INTELLECTUAL PROPERTY**

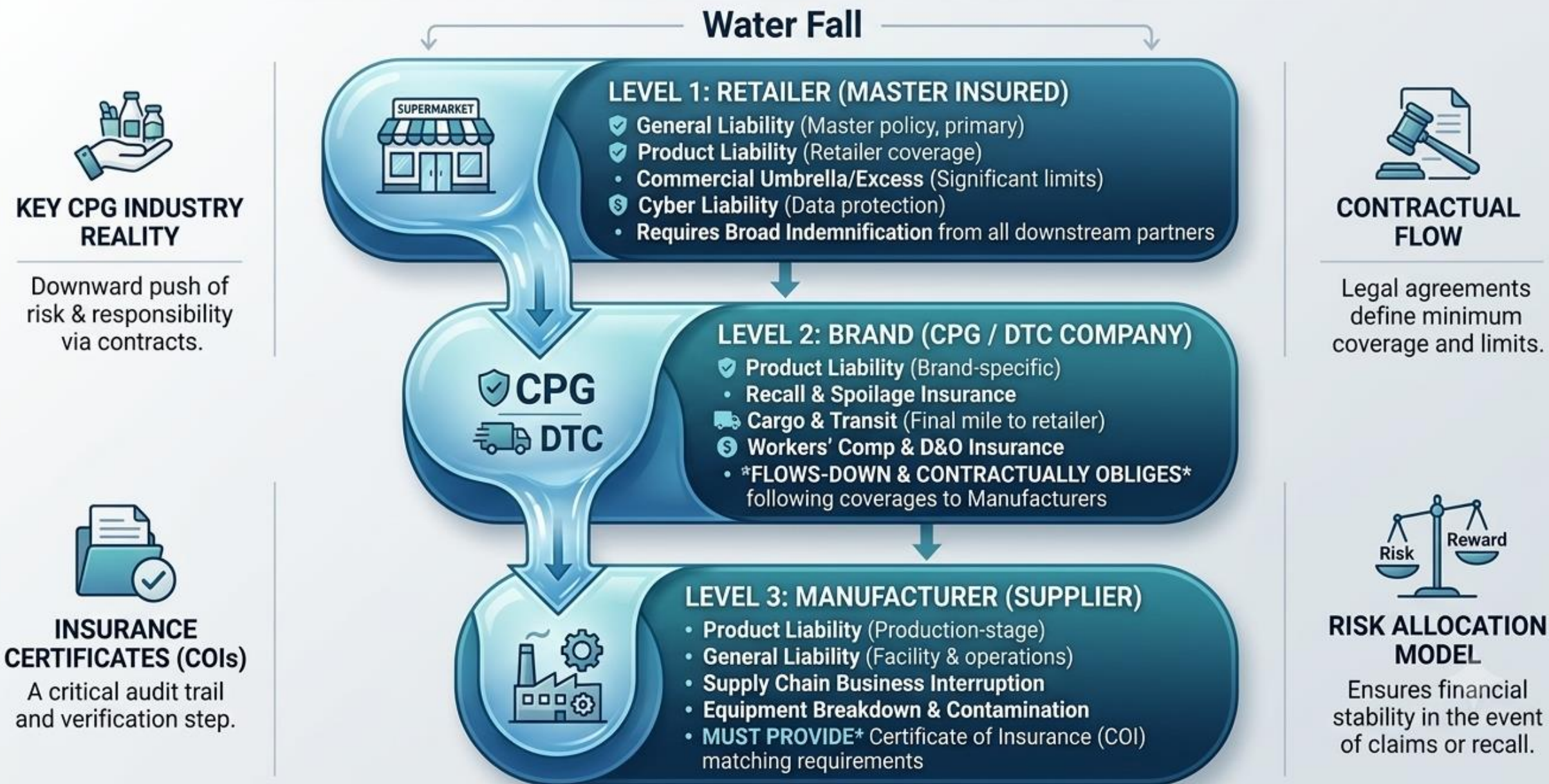
Co-Packer Master Services Agreement

KEY ELEMENTS

- Strict Confidentiality.
- IP Ownership of Improvements.
- Non-Compete/Non-Circumvent.



REALITY OF INSURANCE REQUIREMENTS: DOWNWARD FLOW



Product Liability & The Chain of Insurance

Plaintiffs can sue you under three theories:

1. **Design Defect:** The recipe itself is inherently dangerous.
2. **Manufacturing Defect:** The recipe is safe, but a batch got contaminated on the line.
3. **Failure to Warn:** The product is safe, but you didn't put a peanut allergy warning on the label.



Marketing Claims & FTC Compliance



Marketing Claims and FTC Compliance

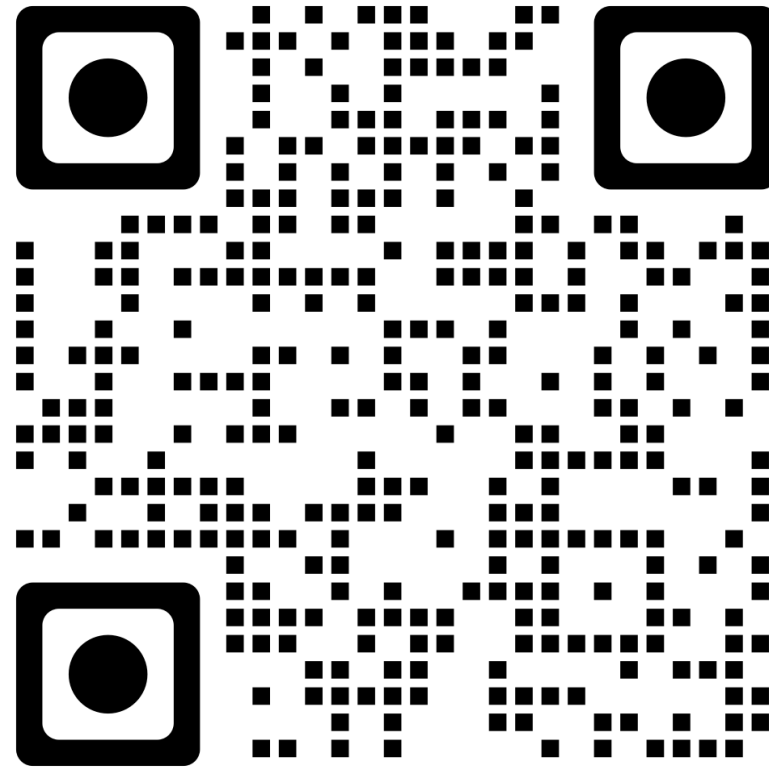
Critical Concepts:

1. **Puffery** is a subjective, exaggerated statement that no reasonable consumer would take as a literal fact. 'The World's Best Hot Sauce.' 'The Most Luxurious Face Cream.' You can print that all day.
2. **Express Claims** are objective, testable statements of fact. 'Reduces wrinkles by 20%.' '100% Organic.' 'Dermatologist Tested.' 'Sustainably Sourced.'
 - Legally required to possess '*competent and reliable scientific evidence*' to substantiate



USBC Contracts – IP – Commercial Issues | Session 3 Handout

Scan to access and download.





Hope you enjoyed the presentation. Please contact us with any questions

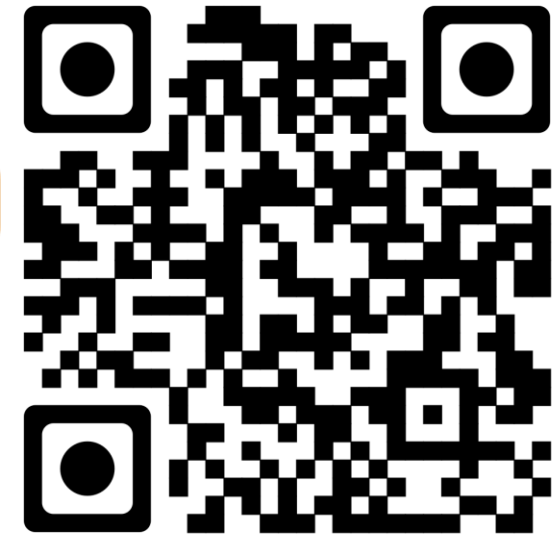
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