



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

Presentation Purpose

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

This presentation reviews the legal mechanisms a brand may use to defend its supply chain, protect its secret formulas from co-packers and supply chain partners, and ensuring your marketing claims are compliant with applicable marketing laws.



Contracts

Their role in the chain



Contract Anatomy 101

Commercial contracts:

- Price
- Volume
- Delivery Date
- Legal Boiler Plate



NO SUCH THING AS BOILER PLATE



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 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)

RISK ALLOCATION FRAMEWORK

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



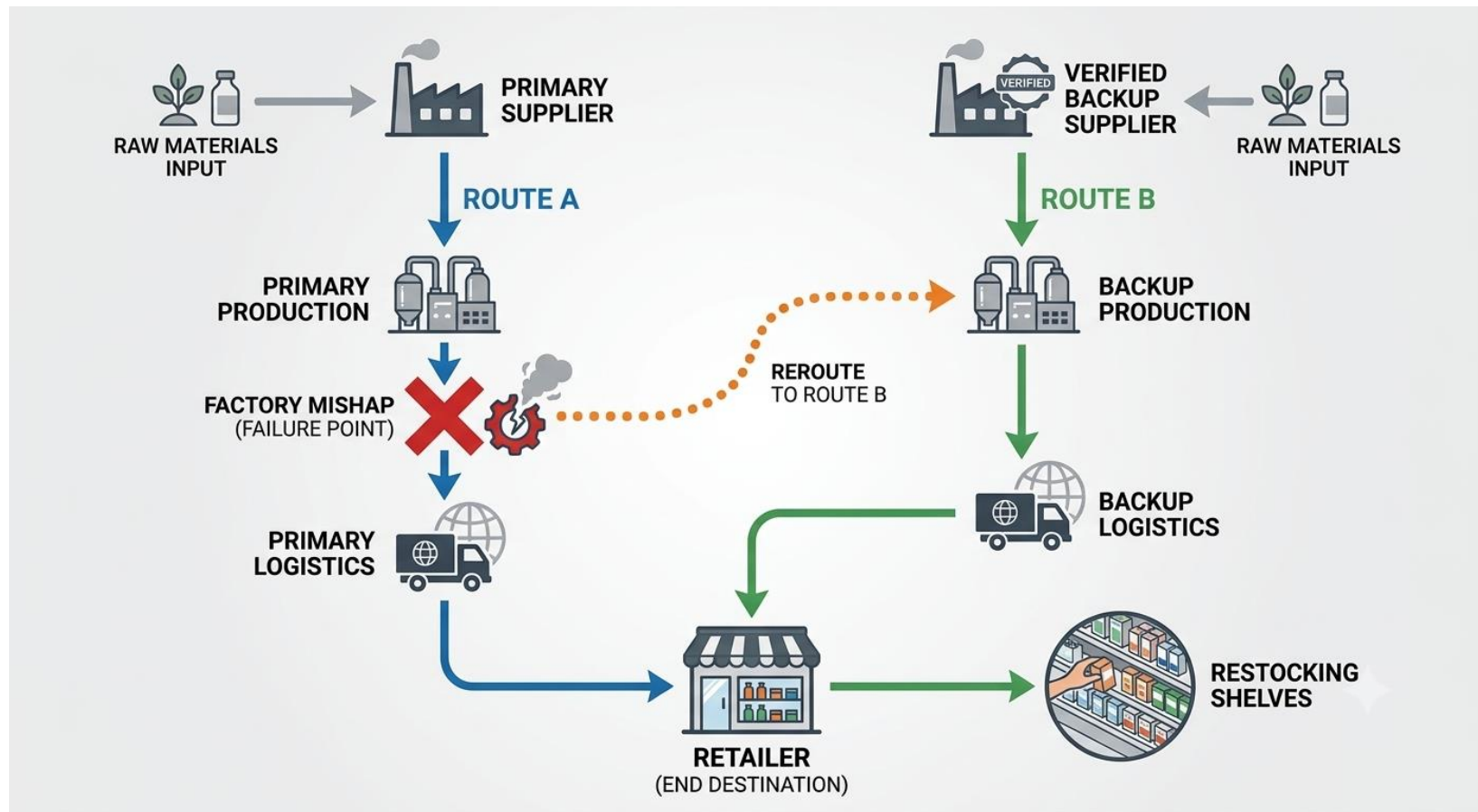
UCC WARRANTIES (UNIFORM COMMERCIAL CODE)

- 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

- Contracts alone do not guarantee performance
 - A bankrupt supplier cannot pay out on a successful breach of contract claim
- Incumbent on the brand owner to utilize various tools to build resilience
 - Legal and operational tools
- As part of scale up, develop secondary suppliers by qualifying, vetting and contracting with them
- Redundant supply requires that when entering contracts exclusivity on supply or otherwise should be avoided

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.



Liability & Insurance

Risk Management

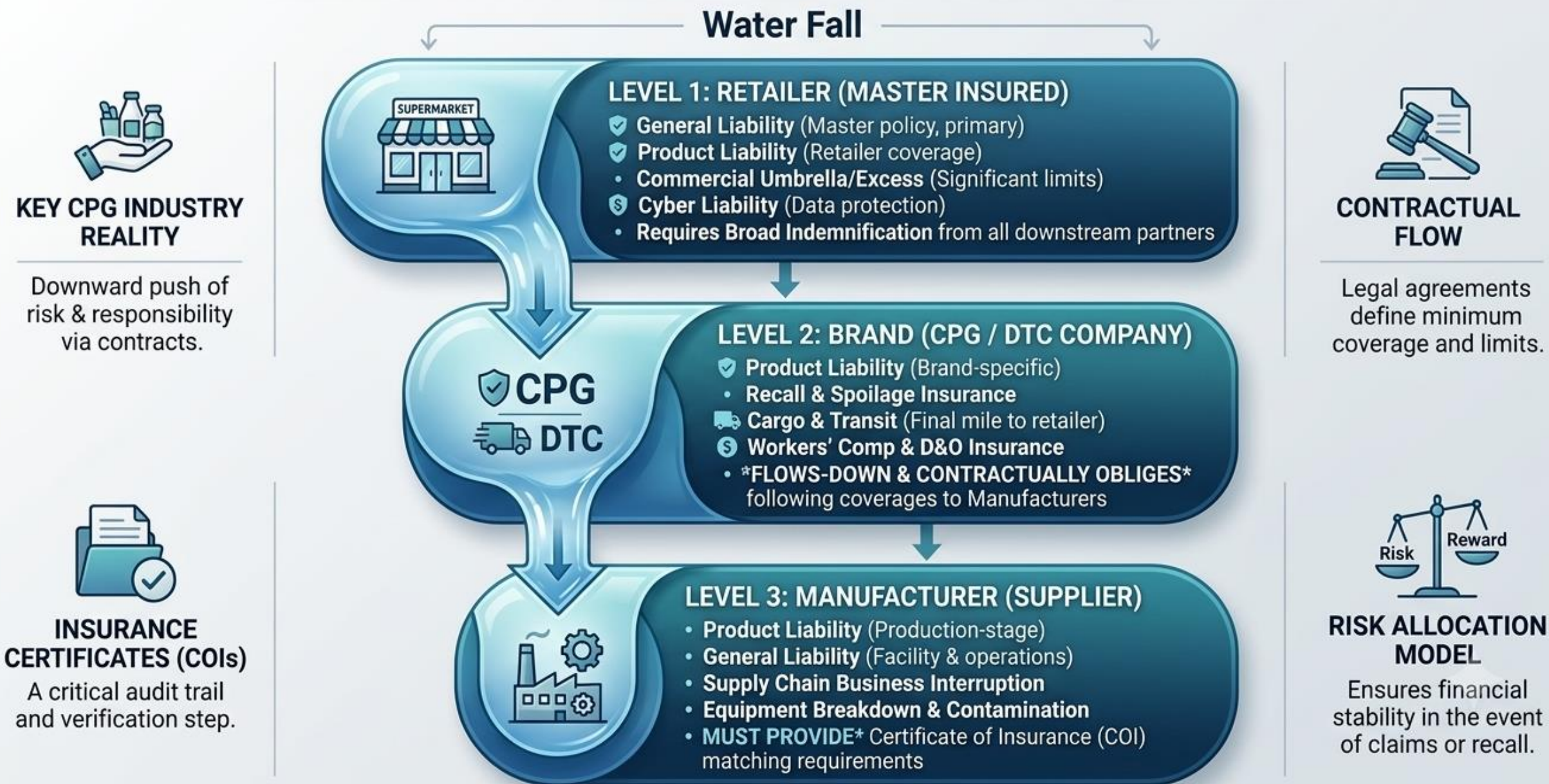


Product Liability & The Chain of Insurance

- Indemnity retailers against consumer claims are a pre-requisite in contracts for stocking/carrying products.
- That contractual obligation is operationalized through a requirement for brand owner to carry massive Commercial General Liability and Product Liability insurance policies.
- Consequences is that this risk is pushed down the chain.
 - Retailers require they be named as an 'additional insured' on the brand owner's policy;
 - Brand contracts with co-packer and suppliers must also name the brand as an additional insured on their policies.



REALITY OF INSURANCE REQUIREMENTS: DOWNWARD FLOW



Product Liability & The Chain of Insurance

Plaintiffs can sue a brand 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

Risks in marketing



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





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

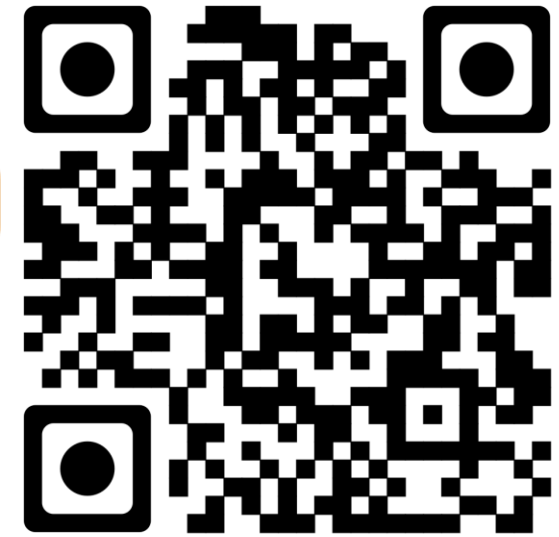
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