



# Popcorn Lung: Not So Appetizing

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If it smells like butter but it's not, it's probably *diacetyl* (die-**AS**-i-tl), a food additive that gives microwave popcorn and other processed foods their buttery flavor. Recently, Orville Redenbacher and kin have become uneasy over allegations that diacetyl is causing lung disease in workers at microwave popcorn plants across the country. Although small amounts of diacetyl are harmless and naturally found in many foods—especially dairy products, coffee and wine—some claim that exposure to large quantities of highly concentrated diacetyl in the air causes *bronchiolitis obliterans*, commonly known as “popcorn lung disease.” Those who claim to be stricken with popcorn lung disease report symptoms such as shortness of breath, persistent cough, unusual fatigue, and severe skin rashes. There are claims by some that popcorn lung disease causes cumulative injuries and irreversible lung damage.



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Before you toss out the Jolly Time and resign yourself to eating celery sticks while watching your favorite movies, let's look at the facts. First, to date, no conclusive scientific link between diacetyl exposure in the workplace and popcorn lung disease has been established. Studies are being conducted in this area but, thus far, the Occupational Health and Safety Administration (OSHA) and Food and Drug Administration (FDA) have seen no reason to regulate diacetyl exposure in an occupational or consumer setting. Second, as of December 2007, the FDA has received only one report of a consumer whose lungs were allegedly damaged from making microwave popcorn at home. That person reportedly ate two bags of extra-buttery popcorn every night and liked to savor the deep rich aroma of the popcorn as it was pulled from the microwave oven. There is no scientific data—not even a kernel—linking diacetyl to consumer health concerns since the diacetyl levels in food products are so low. Third, the Big Three popcorn profit poppers, ConAgra, General Mills, and American Pop Corn Co., are currently phasing out use of diacetyl in their popcorn products.

So, can we all breathe easier now? Not so fast. While consumers of butter flavoring are currently deemed safe by the scientific community, the National Institute for Occupational Safety and Health (NIOSH) contends that there may be a link between diacetyl and lung disease, and a few workers in popcorn plants have received sizeable jury verdicts (as high as \$20 million) for lung injuries allegedly caused by inhaling diacetyl vapors while on the job.

If (and that is a big IF) the science on popcorn lung disease develops to the point where consumer safety is implicated, consumer plaintiffs are likely to allege failure to warn and negligence theories of liability, along with no fault products liability claims and breach of warranty. In California, there is an interesting issue arising out of existing case law, which holds that a restaurant patron harmed by a substance that is natural to the food served (such as a chicken bone in a chicken meal) cannot recover, while a patron injured by a foreign substance (such as a piece of glass in the meal) can. To the extent that diacetyl litigation develops further in this State, interesting issues, such as whether it matters if the popcorn was served in a commercial rather than a private setting and whether there is a distinction between naturally occurring diacetyl and unnatural quantities or concentrations of it, meets the criteria established by California case law.

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The experienced toxic tort attorneys at Walsworth, Franklin, Bevins & McCall will continue to follow legal and scientific advances in the area of popcorn lung disease and advise and defend our clients based on sound legal theory supported by good science. If you would like more information on this subject, please contact Stephen Onstot at [sonstot@wfbm.com](mailto:sonstot@wfbm.com), Lisa Ackley at [lackley@wfbm.com](mailto:lackley@wfbm.com) or any WFB&M attorney with whom you have an existing relationship.