

The Retailer as Anchor

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Cite as: Heavy Metal Certified. "The Retailer as Anchor". <https://heavymetalcertified.com/briefings/brief-5-retailer-as-anchor>. CC BY 4.0.

Abstract

An inflection point on the loading dock

Retailers used to be peripheral defendants in product-liability cases involving products they did not manufacture. Palmquist made them anchor defendants [1].

If you run risk or compliance for a grocery or big-box chain, that is not a legal development you can route to outside counsel and forget. It is a change in your operating environment, and it has already happened. Andy Grove had a name for the moment when one of the forces acting on a business changes by an order of magnitude and the old way of operating quietly stops working: a strategic inflection point. His rough test was whether a force had shifted by something like 10X. The retailer's litigation exposure in this category just did.

The defining feature of an inflection point is that it is visible at the edges of the organization before it is visible at the top. In retail, the edge is the loading dock and the supplier file — which is to say, your desk. You are, in Grove's term, the organization's Cassandra on this: the function that sees the change first and has to make the rest of the building act on it before a complaint does the convincing.

And the exposure is not theoretical. The baby-food cases are already consolidated as a mass tort of roughly 345 claims [3], and the contaminants behind them are endemic — the FDA's own surveillance finds lead, arsenic, cadmium, or mercury in a substantial share of everyday foods [2]. You cannot qualify your suppliers to zero metals; no one can. You can only qualify them to a defensible number, documented and against a published limit. That distinction is the whole of the operational problem.

Why this is structural, not a cycle

The reflex is to treat this as weather — a bad litigation season that will pass, a ruling a later ruling will soften. It will not, and the distinction matters enough to be precise about. Clayton Christensen built much of his work on the difference between a fluctuation, which reverts, and a structural change, which resets the value network around it and does not. Palmquist is the second kind, and the mechanics tell you why.

The plaintiff's move is now simple and durable. Sue the manufacturer, join the in-state retailer that sold the product, and so long as the claim against the retailer is colorable under state law, the case stays in state court. The manufacturer's traditional escape — remove to federal court, then drop the retailer as improperly joined — the Supreme Court has disarmed, because a judgment obtained after a wrongful dismissal can now be vacated years later, with the litigation clock reset to zero. There is no counter-move on the horizon, and there will not be one, because what changed is not the mood of juries or the volume of filings. What changed is the allocation of jurisdiction, decided unanimously. Jurisdictional rules do not soften with the news cycle.

So the retailer is now a permanent fixture in the courtroom for products it did not formulate, manufacture, or test. The incumbent's error, the one Christensen documented across industry after industry, is to meet a structural change with a temporary response and wait for normal to return. Normal

has moved. Plan for the structure, not the season.

Four systems the change lands on

The inflection point does not arrive announced as a lawsuit. It arrives as pressure on four systems you already operate.

Supplier qualification

You qualify suppliers today. For most national retailers that means a GFSI-benchmarked food-safety certification — SQF, BRCGS, FSSC 22000 — plus specifications, certificates of analysis, and an approved-supplier list. Here is the gap: those schemes certify a food-safety management system — sanitation, allergen control, HACCP. None of them is a heavy-metals contaminant program. A supplier can hold an immaculate GFSI certificate and never once have been required, by you, to test a finished lot for lead against a published limit. Your qualification framework has a hole precisely where Palmquist just created exposure.

Indemnification

Your vendor agreements push liability upstream: the supplier indemnifies you, names you as an additional insured, carries a vendor's endorsement. That architecture assumes you can exit the case and let the indemnitor carry it. Palmquist removed the exit. You are now in the case to the end, in a state court, seated next to the supplier — and your indemnification is worth exactly what the indemnitor can pay. For a private-label co-packer with a thin balance sheet and a modest products policy, that can be very little. Indemnification shifts the bill; it does not keep you out of the courtroom, and after Palmquist the courtroom is where the cost is incurred.

Insurance

Product- and general-liability underwriters are repricing this exposure in real time, because the ruling routes more cases into the forum where verdicts run larger and early dismissals are scarcer. Your renewal conversation will change with it. The underwriter who used to ask whether your suppliers were GFSI-certified will start asking what they test for, against what limits, how often, and who holds the data. A supplier-qualification program that answers those questions in one place is becoming a premium variable, not a compliance footnote [4, 5].

Private label

Here the change is sharpest, because the structure removes the party you would otherwise point to. On your private label you are not the retailer who happened to sell the product. You are the manufacturer of record. The co-packer is your only upstream, and your only recourse against it is the indemnification clause just discussed — run against, often, the weakest balance sheet in the chain. Every private-label infant or child-food line is now a single point of failure: retailer for the purpose of being sued, manufacturer for the purpose of being liable, with no brand owner standing between you and the verdict. If you carry private label in an affected category, this is not the fourth item on the list. It is the first.

The operational response

Grove's instinct, facing an inflection point, was never to forecast it more precisely. It was to act, structurally, before the change finished arriving. The structural action here is not new to you in form. It is inspection, and Grove wrote the standard treatment of inspection in operations. The governing principle is to catch the defect at the lowest-value-added stage, because a defect caught at incoming inspection

costs a fraction of the same defect caught after the product is finished, shipped, sold, consumed, and pleaded.

Supplier qualification is your incoming inspection. Moving the heavy-metals question into it is the highest-leverage action available to you, for the reason Grove gave in High Output Management: your output is the output of your own organization plus the output of the organizations next to you that you influence. One qualification requirement propagates across every supplier and every SKU you carry. Nothing else on your desk has that reach.

The response has two layers, and both are familiar from food safety. The first is a gate: a qualification requirement that a supplier in an affected category must meet to earn and keep shelf space — finished-lot testing for the priority metals, against published limits, on a defined schedule, by a sampler independent of the supplier's own production team, under documented chain of custody. The second is monitoring: continuing surveillance that does not stop the line but watches the stream, so a supplier whose results drift is caught before a complaint catches you. You operate both kinds of inspection already. This is the same discipline, aimed at the contaminant Palmquist just made your problem.

There is one thing the response is not, and mistaking it here is expensive. It is not an instruction to build your own heavy-metals laboratory and your own toxicological standard. That is low-leverage, high-cost, and outside your competence — and a limit you set yourself is a limit a plaintiff's expert is free to call arbitrary. The build-versus-buy answer is buy, for the same reason you did not write your own food-safety scheme: where a credible published standard already exists, you anchor to it rather than re-create it.

Where a published standard fits

This is where a third-party standard becomes a component of your response — a component, and not the whole of it. The whole response is yours: the qualification gate, the monitoring layer, the contract terms, the private-label controls. What a published standard supplies is the specification those mechanisms point to, so that you are not inventing a heavy-metals limit, running the laboratories, or defending your own number when it is read back to you.

The Heavy Metal Tested & Certified program was built to occupy that slot. Its limits are published and derived from a separately operated synthesis of the scientific literature, each capped at the lowest applicable government maximum — so the standard is a referenced number, not a private one you have to defend. Its testing is independent and continuous by design: scheduled finished-lot sampling by a party outside the brand's production team, ISO/IEC 17025 laboratories, documented chain of custody, results delivered as structured data. The certification status of every participating supplier is verifiable, so your category team checks it the way it checks a GFSI certificate today. And it maps onto testing your suppliers increasingly owe regardless — California's AB 899, Maryland's Rudy's Law, the direction of the FDA's action levels — so qualifying against it consolidates a burden the supplier is already carrying rather than inventing a new one [6, 7].

One feature earns a retailer something a per-product certificate cannot. A program operating across many brands sees the supply chain that no single brand can: when one participant's testing flags an ingredient source or a growing region, the program issues an anonymized alert to every other participant drawing from the same source. Anchor your qualification framework to a standard like that and it inherits a cross-brand early-warning system on the upstream you share with your competitors — the monitoring layer, at a scale you could not build alone [7].

Be exact about what this does and does not do, because overstating it is its own exposure. It does not make you immune. It does not replace your indemnification or your insurance. It does not certify that any product is safe; the program states as much itself. What it does is raise the floor of demonstrable supplier

safety against a published standard, which lowers the probability of plaintiff recovery and the size of a verdict, and gives you a due-care posture you can put in front of a jury, a regulator, or an underwriter. It is one component. It is the component the other three can anchor to.

First movers write the standard

Now the part that turns a defensive problem into a strategic one — the part Grove and Christensen would both refuse to let you miss.

Supplier-qualification standards are not set continuously. They are set in the buying cycle, and the 2027 cycles are being drafted in calendar 2026, now. Whichever major retailer writes a heavy-metals qualification requirement into its category review this cycle does not merely protect itself. It defines the requirement for the category. Suppliers reformulate and certify to meet the first large buyer's specification because they cannot afford not to, and that specification becomes the default every other retailer inherits. This is Christensen's structural point in its most operational form: when a value network reorganizes, the firm that moves first sets the interface the rest of the network has to adopt. The cost of inaction is not only litigation exposure carried a year longer; it is qualifying your own suppliers, next cycle, to a standard a competitor wrote.

Grove's point is the one to end on, because it is the one you can act on this quarter. An inflection point offers two ways to participate. You can move while the change is still ambiguous, when moving is cheap and you set the terms — or you can wait until it is undeniable, when moving is forced, costly, and on someone else's terms. The retailers who treat supplier qualification as the operational response now, in this buying cycle, will write what heavy-metals compliance means for the category. The ones who wait will qualify their suppliers to a standard somebody else wrote. Only the paranoid survive; here the paranoia is simply early planning, and the planning window is the one open in front of you.

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References

- [1] Hain Celestial Group, Inc. v. Palmquist. 607 U.S. ____ (No. 24-724), decided Feb. 24, 2026 (unanimous; jurisdiction and removal). The retailer-repositioning and forum analysis is developed in K. Pendergrass, *After Palmquist*, the Institute of Contaminant Standards (ICS), 2026.
- [2] Total Diet Study, FY2018–2020. U.S. Food and Drug Administration (lead detected in 15% of samples, arsenic 43%, cadmium 33%, mercury 10%) — heavy metals are endemic to the food supply, not anomalies of a negligent supplier.
- [3] In re: Baby Food Products Liability Litigation. MDL No. 3101, U.S. District Court for the Northern District of California (approximately 345 pending claims as of late 2025).
- [4] Litigation Cost Survey of Major Companies. Federal Judicial Center / U.S. Courts, 2008 (mean outside legal fees approximately \$2.0M per major case; discovery frequently exceeding \$600,000).
- [5] The Cost of Operating Without Credible Third-Party Heavy-Metal Certification. K. Pendergrass, *Journal of Food Metallomics*, 2026. doi: 10.5281/zenodo.18903738. Channel-access economics, delisting/listing-suppression modeled at roughly 15% of annual revenue, and documented retailer/marketplace third-party-testing requirements (e.g., NSF/ANSI 173, ISO/IEC 17025, COA) are treated there.
- [6] California Assembly Bill 899. (2023) (baby-food heavy-metal testing and public disclosure); Maryland "Rudy's Law," HB 97 / SB 723 (2024) (testing and labeling); U.S. FDA, "Closer to Zero" action levels for foods for babies and young children.
- [7] HMTc Infant and Child Foods Program Manual. K. Pendergrass, 2026 Edition, with the companion HMTc Lot

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Bibliographic record

Cite this briefing

