



# Underwriters Laboratories – Exploring The Forgotten Island In The Litigation Seas

**“FULL OF FRUIT” – FOR BOLSTERING OR UNDERCUTTING PRODUCT INTEGRITY**

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**U**nderwriters Laboratories Inc. (“UL”) is a nonprofit organization conducting product safety evaluations. UL Marks are on 19 billion products ([www.ul.com](http://www.ul.com)). As of 2005, there are more than 71,000 manufacturers producing UL-certified products and 97 countries where UL customers are located. UL publishes hundreds of safety standards and disseminates safety information globally.

Courts have admitted UL standards and product compliance as evidence of “state of the art.” A product, however, with a UL Mark is not “the end all” of whether it is made safely. UL Standards, product testing, evaluations and audits should be considered in a products liability action, as they may contain a bounty of valuable information for prosecuting or defending a product liability claim.

## **UL’S PRODUCT SAFETY MISSION**

UL examines products voluntarily submitted to determine whether the product meets certain safety requirements. The requirements are the UL Standards. If a product is not covered by an existing Standard, a new Standard is crafted by UL based on developing requirements, which are refined through review by consensus bodies.

## UL MARKS

If a product has been tested and meets UL Standards, a UL Mark is allowed to be placed on the product. Although products from across the world are UL tested, the Mark affixed to a tested product varies by country. There are more than twenty-five different UL Marks used in five geographic regions: Global, Asia, Europe, Latin America and North America. A close examination of the UL Mark is essential, as a UL Mark indicates whether the entire product, or only particular components, was evaluated by UL.

A UL Listing Mark is assigned to a manufacturer demonstrating the ability to produce a product that complies with UL's requirements for reasonably foreseeable risks associated with the product. A UL Classification Mark is assigned to a manufacturer showing the ability to produce a product that complies with UL requirements for one or more of the following: 1) specific risk only, such as shock or fire, 2) performance under specified conditions, 3) regulatory codes, 4) other standards, such as international, or 5) other conditions UL considers desirable. A UL Component Recognition Mark is assigned to a manufacturer that demonstrates the ability to produce a component for use in an end product that complies with UL's requirements. Finally, a UL Performance Verification Mark is assigned to products sampled by UL and tested against specific performance standards, such as national or international performance standards, manufacturer's proprietary standards or UL requirements.

## EVALUATING A PRODUCT BASED ON UL CERTIFICATION

A product bearing the UL Mark is not necessarily shielded from liability. To evaluate a challenged product, request, via third party subpoena discovery, the product's Correspondence File and the

Project File/Listing Report (both the originally issued report and subsequent, revised reports). The Correspondence File contains correspondence between UL and the product manufacturer. The Project File/Listing Report contains test data and UL reports that delineate how a product was tested and whether it met UL's Standards. Areas of inquiry include:

1. Are the challenged product's components identical to those tested by UL? The component parts tested by UL are listed in the Recognition Report. A manufacturer is obligated to ensure that all component parts are the same functional type as those tested by UL - if not, the UL Mark should not be affixed to the product.
2. Was the challenged product manufactured within UL Standards? If the challenged product does not comply with applicable UL Standards, the product should not bear the UL Mark.
3. If the manufacturer produces different models of the same product, was the challenged product type tested by UL or was a different exemplar model tested? If UL did not test the actual model type involved in your failure, those product type differences should be explored.
4. Were the UL testing conditions the same, or substantially similar, as expected conditions during real-world use? If the foreseeable use "in the field" differs from the UL controlled testing conditions, those differences should be considered.
5. Did UL conduct all of the product testing or did UL rely upon the product manufacturer for testing? If UL relied upon the manufacturer, consider whether that entity conducted scientifically valid and appropriate testing by qualified personnel and obtain all documents and testing data to evaluate its reliability and completeness.





6. UL requires some products to bear permanent markings, such as, a date code, manufacturer's name, catalog number and an electrical rating. All of this information can be used to help identify a product and to aid in investigating how the product was tested. Permanent markings are valuable to identify the manufacturing batch for quality control and product identity.

7. Did UL authorize variances?

8. Consider how UL tested and evaluated the subject product: Was the assigned UL staff properly qualified? Did UL perform a full and adequate investigation? Can the test results be replicated? What is the error rate for the testing? Were alternative designs or protective devices considered? Were any UL criticisms or comments wrongly disregarded by the product manufacturer or internally within UL?

As the above reflects, it is especially valuable to seek relevant records and testing from both


the product manufacturer and UL on the UL product testing, evaluation and inspection audits to shed light on the existence of any Achilles' heels on product integrity.

### **DID THE PRODUCT MANUFACTURER FULLY COMPLY WITH ITS FOLLOW-UP SERVICE AGREEMENT?**

After a product has been UL tested, the manufacturer enters into a UL subscriber agreement, wherein a number of contractual requirements are placed upon the UL program subscriber. Some of the important items comprised are:

1. The subscriber is responsible to ensure, through inspection or other means, that the product tested by UL is made in compliance with UL Standards. Accordingly, seek copies of all documents, test data, protocols and quality assurance records used by the manufacturer to validate the product's compliance with UL Standards.





2. A temporary injunction should be instituted if the product is no longer in compliance with UL requirements. Accordingly, seek corporate documents from the manufacturer on defect notices, return goods, replacement parts sold, product changes, product literature revisions and other information, including from the Consumer Product Safety Commission, for any recalls or notices/requests from third parties that a product recall be instituted or considered.

3. UL is permitted access to a subscriber's business or plant at any time for unannounced, quality confirmation visits to ensure the subscriber's compliance with UL requirements. Accordingly, seek documents reflecting UL visits and audits - evidence may exist of manufacturing problems or warnings that "red flag" product safety risks. Consider pursuing corporate designee depositions of UL and the product manufacturer - to determine, inter alia, if there were "red flags" raised during inspections or otherwise.

#### **Did The Manufacturer, Not UL, Conduct The Product Testing?**

UL permits, under their supervision, a manufacturer to conduct testing of a product to determine compliance with UL Standards. Under this program, called Total Certification Program ("TCP"), a manufacturer can reduce the time required to gain product certification, since satisfaction of UL Standards occurs during the design, development and manufacturing processes. According to UL, as of 2005 there were 11 companies and 209 product types involved in the program. If a product manufacturer was a member of the TCP, request the manufacturer's files that contain all data and test results which were generated during the certification process. If the manufacturer used an outside vendor or consult-

ant to assist in the certification process, consider issuing a third party subpoena for their files.

## **CONCLUSION**

In navigating the litigation storms of product defect claims, it is imperative that you and your counsel appreciate the value of exploring the "UL Island" to see if it bears fruit to help your cause in challenging or defending a product's integrity for safety.