

After Four Years of College and Three Years of Law School, I'm an Expert on Pop-Tarts

By Reg P. Wydeven
March 21, 2005

When I was in college and law school, I would tend to stay up late at night either doing school work or playing video games to blow off steam. As a result, I was usually in a hurry in the morning and needed a fast, tasty breakfast to kick-start my day. I would typically grab blueberry Pop-Tarts and a can of Mountain Dew. While my breakfast was not fortified with essential vitamins and minerals, it was jam-packed with sugar and caffeine and loaded with flavor.

Now that I'm responsible after getting married and having children, I try to eat a healthy, balanced diet to serve as a good example for my kids. But because my kids apparently need a combined 37 minutes of sleep a night, I still typically stay up late either working on client files or playing video games to blow off steam. So it's still pretty common for me to grab my breakfast staples – blueberry Pop-Tarts and Mountain Dew.

Until a federal product liability lawsuit was recently filed, I had no idea just how unhealthy Pop-Tarts could be.

On June 1, 1998, Clark Seeley put some Pop-Tarts into his toaster and then briefly left his Albany, New York, home while the pastry was heating. During his absence, a fire started in the kitchen and quickly spread to the rest of the house, causing extensive damage.

Seeley was able to recover about \$145,000 from his home insurance carrier, however, he was still about \$100,000 shy of recouping the entire cost of repairing the damaged caused by the fire. With no where else to turn, Seeley sued Hamilton Beach, the manufacturer of his toaster, claiming it was faulty.

To help prove his allegations, Seeley hired electrical engineer Michael Wald as an expert witness to show the toaster was defective and as a result, caused the fire. In a pretrial motion, Hamilton Beach made a motion to preclude Wald's testimony citing the fact that he had no toaster manufacturing experience and no special insight into the qualities of toaster pastries and Pop-Tarts in particular.

In product liability cases, the judge performs what's commonly known as the 'gatekeeping' role to prevent unqualified people from testifying as expert witnesses and to maintain the barrier between junk science and expert knowledge. To allow a witness to testify as an expert, the subject of the witness's testimony must have been subject to peer review, have a known potential rate of error, or have general acceptance within the scientific community.

Because the scientific community dedicated to studying house fires caused by toaster pastries is sparsely populated, the judge in Seeley's case allowed Wald to testify as an expert. The judge made this decision after reviewing the numerous tests that Wald conducted on various toasters using Pop-Tarts and other brands of toaster pastries.

Wald's tests revealed that toasters generally have a metal strip that bends when heated. At a certain temperature, the strip touches a rod, which closes the switch contacts and turns off the toaster. Every manufacturer except Hamilton Beach has a shield between the rod and the toasting chamber to prevent food debris from clogging the mechanism. Therefore, gunk, such as frosting dripping from a hot Pop-Tart, could impede the movement of the rod and prevent it from turning off the toaster.

Thank goodness I never toasted my Pop-Tarts – I only ate them raw.

This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2005 McCarty Curry Wydeven Peeters & Haak, LLP. All rights reserved.