

American Conference Institute's 3rd National Forum on

FOOD-BORNE ILLNESS LITIGATION

Advanced Strategies for Assessing, Managing & Defending Food Contamination Claims

October 26-27, 2009 | The Sutton Place Hotel | Chicago, IL

With insight from industry insiders:

Kendra Clark
Corporate Counsel, *Chiquita*

David Herman
Senior Counsel
Grocery Manufacturers Association

Lori Marco
Senior Attorney, *Hormel*

Edward Mitchell
Senior Underwriter Product Recall
XL Insurance

Jeremy Russell
Dir. of Comm. & Government Relations
National Meat Association

Mary Lynn Bedell
Senior Counsel, *Sara Lee*

Todd Sheldon
General Counsel, *Supervalu*

Don Becker
Managing Attorney, *YUM!*

The latest on new policies and investigative priorities of government regulators and agencies. Hear from:

Daniel Engeljohn, Ph.D.
Deputy Assistant Administrator for Policy
Program and Employee Development
Food Safety Inspection Service, USDA

David Goldman, MD, MPH
Assistant Administrator
*Office of Public Health Science
Food Safety Inspection Service, USDA*

Arthur P. Liang, MD, MPH
Director, Food Safety Initiative Activity
Center for Disease Control

Get highly-specialized, practical information from experienced in-house counsel, top scientists, key regulators and leading food-borne illness litigators on:

- Assessing how recent contamination outbreaks are effecting the food-borne illness landscape, and preparing for the rising tide of litigation against food companies
- Assessing **causal link** and disproving liability in an era of improved national surveillance, increased outbreaks, enhanced media/public scrutiny, and a growing number of claims
- Harmonizing your company's policies with **state and federal regulations** to avoid conflict
- Creating a **crisis and recall management plan for an outbreak**: Laying the groundwork to minimize health, litigation and shareholder & **reputational risks**
- The **long term health problems** associated with food-borne illness and how they shape the handling of your case from start to finish
- **Valuation** of a food-borne illness case, shown through a case study of the 2003 hepatitis A outbreak at Chi-Chi's restaurant in Pennsylvania
- Controlling **corporate image** to limit negative exposure
- Calculating **damages** and accurately assessing apportionment of liability through the **supply chain**

Distinguished Co-Chairs:



William Marler
Marler Clark



Alan Maxwell
Weinberg Wheeler Hudgins Gunn & Dial

Master Class on October 27, 2009 | 3:00 p.m. – 5:30 p.m.

**Specialty Insurance Coverage for Food-Borne Illness
Outbreaks & Recalls**

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A sharp rise in outbreaks and food-borne illness litigation – and the complexity of claims....

Attend this conference to benchmark your ability to assess, manage, and defend against the rising tide of lawsuits against food companies

In 2009, the CDC reported that the rate of food-borne illness is not slowing down. Salmonella and E. coli were as common this past year as they were in 2004. While the U.S. food supply remains one of the safest in the world, over the past year the incidents of outbreaks have been in the headlines at an increasingly alarming rate. It is no longer just beef recalls any more. Recent outbreaks have impacted peanut butter, alfalfa sprouts, peppers, tomatoes, and spinach among others and have also led to significant financial devastation to food companies.

As an immediate byproduct of the outbreaks there has been a wave of new litigation, some of which has even resulted in possible criminal indictments for some in the food manufacturing industry. **American Conference Institute's 3rd National Forum on Food-Borne Illness Litigation** will show you how to *assess, manage and defend against the rising tide of food-related litigation*. Through an expert faculty of in-house counsel from food and trade associations, including *Chiquita, Grocery Manufacturers Association, Hormel, National Meat Association, Sara Lee, Supervalu, XL Insurance* and *YUM!*; government regulators and key litigators from both sides of the aisle, this conference will provide even the most seasoned professionals with the most cutting edge comprehensive review of today's paramount food contamination issues facing the food distribution and manufacturing industry.

You cannot miss out on this unique opportunity to gain highly-specialized, up-to-the-minute information. Featuring an interactive panel of government regulators, no other conference allows you to benchmark with the leaders in the industry who shape the future of food-borne illness policy and litigation.

Plus, add value to your attendance by also registering for the conference workshop on October 27, 2009 | 3:00 p.m. – 5:30 p.m.:

Master Class on Specialty Insurance Coverage for Food-Borne Illness Outbreaks and Recalls

This must-attend event will fill up quickly so register today to ensure your place. Register now by calling 888-224-2480, faxing your registration form to 877-927-1563 or registering online at www.AmericanConference.com/food

Who You Will Meet

- In-house Counsel with Food Manufacturers, Distributors, Suppliers and Servers
- Lawyers in Private Practice in the Areas of:
 - Product Liability
 - Food-Borne Illnesses
 - Mass/Class Actions
 - Personal Injury/Toxic Torts
- Insurance Lawyers
- Insurance Claims Counsel

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For more information about this program or our global portfolio of events, please contact:

Wendy Tyler
Group Leader & Business Development Executive
American Conference Institute
Tel: 212-352-3220 x242 | Fax: 212-220-4281
w.tyler@AmericanConference.com

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ALUMNI

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- Search for and contact fellow Alumni
- Post a question or look for answers in our Industry Forums
- Join a live Industry Chat in progress
- Build your own community
- Earn Forum points towards free conferences & workshops

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8:00 Conference Registration and Continental Breakfast

9:00 **Co-Chairs' Opening Remarks**



Alan Maxwell
Partner
Weinberg Wheeler Hudgins Gunn & Dial LLC (Atlanta, GA)



William Marler
Partner
Marler Clark, LLP PS (Seattle, WA)

9:15 **Emerging Trends in Food Safety Litigation: New Risks, Recent Developments and What to Expect in the Year Ahead**



William Marler
Partner
Marler Clark, LLP PS (Seattle, WA)



Alan Maxwell
Partner
Weinberg Wheeler Hudgins Gunn & Dial LLC (Atlanta, GA)

In this opening session, top plaintiff and defense attorneys will provide insight on the types of actions they are focusing on and will help you prepare for and respond to new and innovative claims. Highlights of this session will include:

- Peanut Butter Litigation
 - Where are we now?: pending litigation, criminal indictments, PCA bankruptcy and beyond; what have we learned?
- The pistachio and alfalfa sprout recalls
- Concerns surrounding raw milk – are they warranted?
- Hydroycut and other dietary supplements: how the potential regulation and recalling of these products is impacting food-borne illness litigation arena
- E.coli 0157:H7 ground beef recall
- Benefits and downfalls of the proposed irradiation of leafy greens
- Legislative updates

10:15 Morning Coffee Break

10:30 **In-House Counsel Think Tank: Best Practices on Managing Food-Borne Illness Litigation**

Don Becker
Managing Attorney, Insured Litigation
YUM! Brands, Inc. (Louisville, KY)

Mary Lynn Bedell
Senior Counsel
Sara Lee Corporation (Downers Grove, IL)

Kendra Clark
Corporate Counsel
Chiquita Brands International/Fresh Express Incorporated (Salinas, CA)

Lori J. Marco
Counsel
Hormel Foods Corporation (Austin, MN)

Todd Sheldon
Counsel
Supervalu, Inc. (Eden Prairie, MN)

Moderator



Kenneth M. Odza
Partner
Stoel Rives LLP (Seattle, WA)

In-house counsel from around the country will share their best practices for handling food-borne illness claims. They will share with you their successful strategies for internally managing these claims, as well as what they expect from outside counsel. Topics for discussion include:

Improving companywide policies and practices

- How to create uniformity in the investigation process
- Common pitfalls that should be avoided
- Tailoring your process to adapt to E-Discovery rules

Expertise and Coordination

- Hiring dilemmas: When to stay in-house and when to go with outside counsel
- Determining which factors to consider when hiring outside counsel and how those factors will be weighed: when is it cost-effective to use national counsel?
- Coordinating, both inside and outside the company

Managing Costs

- Managing the exorbitant costs of defending cases that may require retention of expert witnesses and the expense of obtaining the testimony
- Budgeting the overall expense in taking a case through trial yet keeping a case resolvable at a reasonable level without the need for trial
- Avoiding high costs of discovery falling disproportionately on defense
- Controlling cost by keeping routine pattern litigation under control
- Managing outside counsel through realistic and accurate budgets

12:00 Networking Luncheon for Delegates & Speakers

1:15 **Crisis Management and Recall Planning: How to Protect Your Company in the Event of a Food-Borne Illness Outbreak**



David Herman
Senior Counsel
Grocery Manufacturers Association (Washington, DC)



Fred Degnan
Partner
King & Spalding (Washington, DC)

- Responding to negative media coverage: Policies and procedures your company should have in place to avoid the backlash
- Managing the recall process
 - How to effectively remove products from the market place
 - Using technology to your advantage
- Working with state and federal government to streamline the recall process
- Successfully maneuvering your way through the internal investigation process
- Establishing a crisis management team and a crisis management plan
- The recall decision process: time pressure and a less than complete set of data and information
- Handling corporate communications in an outbreak
- Maintaining proper documentation during a recall in anticipation of litigation

2:30 **Federal v. State: The Interplay Between Federal and State Food Safety Regulations and How to Harmonize Your Company's Policies with the Varying Regs to Avoid Conflict**



Paul E. Benson

Partner

Michael Best & Friedrich LLP (Milwaukee, WI)

State lawmakers are beginning to take matters into their own hands and are enacting food safety legislation. With this comes the potential for conflict with federal regulations and confusion for food manufacturers and distributors. This session will provide an in-depth look at what the states are doing and how federal legislation may conflict with current state statutes. Points of discussion will include:

- Newly enacted statutes in states that have dealt with an outbreak: How and what are the states regulating and how this may impact your practice
- Proposed federal legislation: What's in the pipeline and how it may potentially conflict with the current state legislation
- How new legislation is making the food supply safer and how this may impact food manufacturers
- How practical is the new legislation?

3:15 **Afternoon Refreshment Break**

3:30 **Who Pays What? Apportioning Liability Throughout the Supply Chain**



Paul L. Kassirer

Partner

Lester Schwab Katz & Dwyer, LLP (New York, NY)

- Strict liability, negligence, breach of warranty: how various defendants share or don't share in the liability
- Assessing the degree of actual control various players have in the movement of contaminated food through the chain
 - franchisor liability: degree of control when stores are company-owned v. when they are franchisee-owned
 - where to draw the line?
- Handling litigating upstream while protecting the brand
- Trade association liability: when does it kick in?
- Determining future costs of treatment

4:30 **Valuation of a Serious Food-Borne Illness Case: A Case Study of the 2003 Hepatitis A Outbreak at Chi-Chi's Restaurant in Pennsylvania**



Christopher Lee

Partner

Dickie McCamey & Chilcote, P.C. (Pittsburgh, PA)



William Marler

Partner

Marler Clark, LLP PS (Seattle, WA)

In this session, counsel from both sides of the aisle will provide an in-depth analysis of the 2003 hepatitis A outbreak at Chi-Chi's restaurant in Pennsylvania, which resulted in over 650 confirmed cases of hepatitis A. The case study will focus on the Miller v. Chi-Chi's case, in which Richard Miller required a liver transplant as a result of contracting hepatitis A. It will examine the findings of 3 mock juries, used by both sides of the case, who deliberated and discussed lost wages, future medical care and loss of consortium. The verdict of the mock juries will then be shared and a question and answer session will be held.

5:30 **Conference Adjourns**

8:00 **Continental Breakfast**

8:30 **Co-Chairs' Remarks**

8:35 **The Food Safety Regulators Speak: The Latest on New Policies and Investigative Priorities of Government Regulators and Agencies – and How They Will Impact Litigation Going Forward**

Daniel Engeljohn, Ph.D.

Deputy Assistant Administrator for Policy, Program and Employee Development, Food Safety Inspection Service USDA (Washington, DC)

David Goldman, MD, MPH

Assistant Administrator, Office of Public Health & Science, Food Safety Inspection Service USDA (Washington, DC)

Arthur P. Liang, MD, MPH

Director, Food Safety Initiative Activity Center for Disease Control (Atlanta, GA)

Moderator



Ron Simon

Partner

Simon & Luke, LLP (Houston, TX)

In this session, top regulators from the USDA and the CDC will address how new and proposed legislation will impact your client and company in the months and years ahead. They will also provide critical insight on:

- Classifying new strains of pathogens as adulterants: What's next?
- Working with agencies to determine the ultimate source of contamination
- Key trends with respect to food-borne illness, from the regulator's perspective
- How the regulators are investigating and changing policies
- The potential effect on industry of proposed mandatory testing and reporting requirements

9:45 **Coffee Break**

10:00 **View from the Plaintiffs' Bar: The Insider's Take on the Who, What, When, and Why of a Food-Borne Illness Outbreak**



Ron Simon

Partner

Simon & Luke, LLP (Houston, TX)

When faced with a food-borne illness outbreak, what claims are typically filed against manufacturers, distributors and retailers? Learn who gets sued, when and for what. Topics of discussion will include:

- Which cases to accept and which cases you should avoid
- What type of initial investigation should be performed?
- How is liability assessed from the plaintiff's perspective?
- When, where, how and why to file a suit
- What to disclose and what not to disclose when filing the initial claim
- Underlying conditions: what needs to be disclosed and what doesn't, and what happens when underlying conditions surface later

Case Study

10:45 **Assessing Causal Link and Disproving Liability In an Era of Improved National Surveillance, Increased Outbreaks, Enhanced Media/Public Scrutiny, and a Growing Number of Claims**



Shawn Stevens

Partner

Gass Weber Mullins (Milwaukee, WI)

Brad Sullivan

Managing Attorney

Lombardo & Gilles (Salinas, CA)

- Food-borne illness and outbreak surveillance and trends
- The science behind using genetic fingerprinting to identify outbreaks, and how epidemiologists make the determination that a particular food caused a particular illness
- Knowing what to ask for when lawsuits are filed: How to get the necessary information from federal, state and local health officials to better understand your case
- How to effectively use health department resources, exposure histories, medical records, production records and trace-back information to assess liability and strengthen your defense
- How to overcome mistaken allegations or conclusions that your client or product is associated with an outbreak
- How to utilize new, scientific advances, and to work with key experts, to prevail in your case

12:00 **Networking Luncheon for Delegates & Speakers**

1:15 **Long-Term Health Problems Associated with Food-Borne Illness and How They Shape the Handling of Your Case From Start to Finish**



Sarah Brew

Partner

Halleland Lewis Nilan & Johnson, PA (Minneapolis, MN)



David A. Ernst

Shareholder

Bullivant Houser Bailey PC (Portland, OR)

Alan Melnick, MD, MPH

Department of Public Health and Preventative Medicine
Oregon Health and Science University (Portland, OR)

According to the Centers for Disease Control (CDC), food poisoning causes about 76 million illnesses, 325,000 hospitalizations, and up to 5,000 deaths each year. A serious bout of food poisoning can leave an individual feeling the effects of the illness for years. As a result of these illnesses consumers often incur substantial medical expenses and lost time from work. This session will provide you with practical insight on:

- Evaluating the health effects: Long term v. short term
- How to accurately classify an illness as long term
- What pathogens lead to what types of illnesses
- Determining liability in a long term case
- The impact of delayed consequences of food-borne illnesses
- Future medical expense provisions of compensation packages

2:15 **Global Food Safety: Factoring in New Threats Associated With Foreign Food Product Imports**

Jeremy Russell

Director of Communications and Government Relations
National Meat Association (Oakland, CA)

Madeleine M. McDonough

Partner

Shook Hardy & Bacon LLP (Washington, DC)

- Food supply risks and threats: Biological contamination, chemical exposures and contamination, intentional compromise, and food supply degradation due to the impact of the global water crisis
- Rapidly escalating imperatives of supply chain risk management and traceability
- Directions and implications of the changing food safety regulatory framework
- Increasing demands for swift, coordinated recall capabilities and crisis management

3:00 **Conference Concludes**

Post-Conference



Tuesday, Oct. 27, 2009
3:00 p.m. – 5:30 p.m.

Master Class on Specialty Insurance Coverage for Food-Borne Illness Outbreaks and Recalls



Marialuisa Gallozzi

Partner

Covington & Burling LLP (Washington, DC)



Joseph Bermudez

Member

Cozen O'Connor (Denver, CO)

Edward Mitchell

Senior Underwriter Product Recall
XL Insurance (London, UK)

Many companies have waited until after disaster strikes to investigate whether this specialty insurance coverage is for them – sometime because they mistakenly thought it was part of the general commercial liability coverage. With the recent spate of outbreaks, this coverage has seen a dramatic upsurge in popularity. In this intensive, interactive session, get a comprehensive overview of how covered risks are assessed and underwritten, an analysis of the risk and benefits, and practical discussions about all the elements that go into these specialty policies. Topics will include:

- Identifying potential exposures: steps for evaluating potential areas of loss
- Coverage based on the insured's determination of necessity v. the occurrence of specific events in a recall
- Recalls v. Warnings: what needs to be built into the policy to accommodate this distinction?
- Analysis of key clauses and considerations
- Incorporating a company's insurer-approved recall plan into the policy
- Exclusion to watch out for: what do they really mean?
- Detecting – and clarifying – uncertainties in the contract language
- At claims time: what areas tend to cause disputes and how do you avoid them?

Whether you are an insurer assessing your own specialty coverage in this area or in-house with a company and are looking at ways to limit your exposure, this workshop is an excellent opportunity to get the A to Z on this increasingly sought-after coverage.

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Advanced Strategies for Assessing, Managing & Defending Food Contamination Claims

October 26-27, 2009 | The Sutton Place Hotel | Chicago, IL

Hear from:

- Chiquita
- Grocery Manufacturers Association
- Hormel
- National Meat Association
- Sara Lee
- Supervalu
- XL Insurance
- YUM

AND DON'T MISS THE INTERACTIVE WORKSHOP:

Master Class on Specialty Insurance Coverage for Food-Borne Illness Outbreaks & Recall

Oct. 27, 2009 | 3:00 p.m. – 5:30 p.m.

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ORGANIZATION		
ADDRESS		
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Payment Policy

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