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American Conference Institute's 7th National Forum on



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Credits

# FOOD-BORNE ILLNESS LITIGATION



*Advanced Strategies for Defending High-Profile Food Contamination Claims amid Increased Inspections*

January 29, 2014 • Hilton San Francisco Financial District • San Francisco, CA

A Practical Examination of the Science Behind the Contaminants: Hepatitis, Salmonella, E. Coli and Cyclospora

**Arthur P. Liang**

Director, Food Safety Office  
National Center for Emerging and Zoonotic Infectious Diseases  
Center for Disease Control

**William Keene**

Senior Epidemiologist  
Acute and Communicable Disease Prevention  
Oregon Public Health Division

PLUS! Hear from PrimusLabs and Chick-fil-A on: The Role of Third Party Auditors under FSMA

Preparing for FDA Inspections:  
C&S Wholesale Grocers

Conference Co-Chairs:

**Alan Maxwell**

Partner  
Weinberg Wheeler Hudgins Gunn & Dial LLC

**William Marler**

Managing Partner  
Marler Clark LLP

Gain highly specialized and practical information from the leading food-borne illness litigators, in-house executives, and food safety experts on how to:

- Assess how much testing of your products and facilities is enough
- Update document retention protocols post-FSMA and identify how new reporting requirements will impact your litigation strategy
- Minimize litigation exposure arising from more frequent FDA inspections: How to identify high risk foods and facilities
- Use genetic mapping, biofilm and IT systems to win your case
- Defend your case in the court of public opinion: How to address publicity, social media and their impact on your case
- Match liabilities to insurance coverage: Policy triggers, scope of limits and deductions in a complex litigation environment

Featured Session: A "Mock Settlement" with leading defense and plaintiff's counsel – a practical debate on best strategies to assess the scope of the outbreak, liability and damages and how to negotiate a long term resolution

Complete your training with the interactive Post-Forum Working Group: January 30, 2014

Dissecting Causation and the Science Behind the Claim: What You Need to Know about Types of Contaminants, Incubation Periods, and Human Health Effects that Impact your Investigation

Media Partner: **Food Safety News**

## The Headlines Are Clear:



“Outbreak of Stomach Illness is Traced to a Salad Mix”

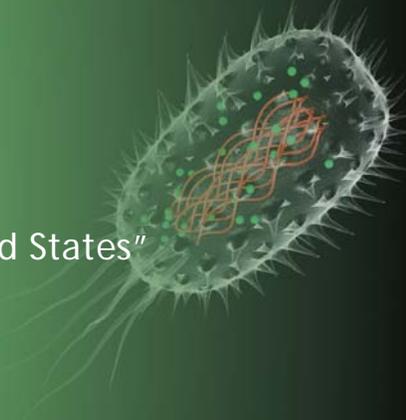
– NY Times, August 2013

“Investigation of an Outbreak of Cyclosporiasis in the United States”

– as reported by the CDC, 2013

“Vegetables Big Culprit in Food Illness”

– Wall Street Journal, January 2013



Developing a comprehensive, risk-based approach to preparing for and defending against food-borne illness litigation is crucial to minimizing cost and preserving your brand’s reputation.

This year has brought critical legislative action from the FDA on imported food safety. While companies figure out what these rules mean for their daily work flow, the food-borne illness outbreaks keep coming. Current outbreaks tied to pomegranate seeds and cucumbers from Turkey and Mexico respectively, point to increased risk of litigation and international supply chain safety concerns.

“Food-related diseases affect tens of millions of people and kill thousands” – [www.cdc.gov](http://www.cdc.gov)

The litigation resulting from food-borne illness and food contamination outbreaks leads to reputational damage, massive legal costs, and a huge burden on your company during discovery – **you cannot afford to be caught unprepared!**

At American Conference Institute’s acclaimed 7<sup>th</sup> **National Forum on Food-Borne Illness Litigation**, you will benefit from benchmarking your defense strategies with not only the leading defense and in-house counsel in this space, but have the unique opportunity to hear directly from those who are bringing the cases against your companies. This diversity of perspectives is what sets ACI’s Food Litigation conferences apart from other events.

Designed to minimize time spent out of the office while still providing the most relevant, high-level content, this one-day information-packed conference will deliver proven-effective strategies on:

- **Minimizing your liability** risks when conducting testing of products and facilities – your responsibility v. that of a third party auditor
- Working with USDA/DHS to **identify high risk foods and facilities** in your supply chain
- Detecting the cause of an outbreak through **data collection and scientific analysis** – how this can be used to support your case
- **Assessing the strength of the claim** to help your negotiation
- How **medical records can be used** to help support your case

Plus! Hear from the CDC and Oregon Public Health Division at the interactive Post-Forum Working Group – What you need to know about Hepatitis, Salmonella, E. Coli, Cyclospora and other contaminants that impact your investigation.

Seats at this one-day forum are limited – Reserve your spot today by calling 1-888-224-2480 or visiting [www.AmericanConference.com/FoodBorne](http://www.AmericanConference.com/FoodBorne) for more information.

## Who You Will Meet:

**Food manufacturers, distributors, suppliers, retailers, restaurants and others tied to the food supply chain:**

- In-house counsel and legal support staff responsible for:
  - Litigation
  - Claims/Insurance
  - Compliance
  - Audit
  - Risk Management
  - Food Safety
  - Regulatory Affairs
  - Government Affairs
- Brand managers

**Private practice attorneys specializing:**

- FDA/Food and drug law
- Food-Borne Illness litigation
- Consumer products litigation
- Mass tort litigation/class action
- Personal injury

**Insurance claims directors and counsel**

**Risk management and food safety consultants**

8:30 Registration Opens

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

**Alan Maxwell**

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

**William Marler**

Managing Partner  
Marler Clark LLP (Seattle, WA)

9:15 **How Much Testing is Enough? Understanding the Role of Third Party Auditors and Who Bears the Liability when Something Goes Wrong**

**C. Harold (Hal) King**

Senior Manager, Food and Product Safety  
Chick-fil-A (Atlanta, GA)

**Ryan Fothergill**

In-House Counsel  
PrimusLabs (Santa Maria, CA)

**David Ernst**

Partner  
Davis Wright Tremaine LLP (Portland, OR)

- What kind of liability the company may incur when using a third party to conduct testing of products and facilities
- How the Title III of the FSMA impacts third party audits and standard of care
- What companies should do when screening third party auditors
- Practical steps to take to implement Section 307 of the FSMA
- What is the scope of a third party auditor in certifying facilities and where it stops
- What is the standard of care for liability and when does a right of action exist?

10:30 Networking Break

10:45 **Preparing for More Frequent FDA Inspections: Top 5 Steps to Strengthen Operations throughout your Supply Chain to Minimize Litigation Exposure**

**Bryan Granger**

Vice President of Corporate Compliance & Government Relations  
C & S Wholesale Grocers (Keene, NH)

**Robert G. Hibbert**

Partner  
Morgan, Lewis & Bockius LLP (Washington, DC)

- How to identify high risk facilities and foods domestically and internationally
- Working with USDA/DHS to identify high risk candidates
- Complying with new registration requirements
- Preparing for increased FDA access to records during inspections
- How to establish procedures to interface with FDA inspectors
- Best practices for identifying highly sensitive documents to avoid FOIA disclosure
- Implementing risk-based preventative controls (cGMPs, SSOPs, hygiene training, recall plan)

11:45 **Microbiological Issues in Liability and Medical Causation**

**Anthony J. Anscombe**

Partner  
Sedgwick LLP (Chicago, IL)

**Mark E. Shirliff, PhD**

Associate Professor, Schools of Dentistry and Medicine  
University of Maryland-Baltimore (Baltimore, MD)

In this interactive panel discussion, hear legal and scientific experts discuss key microbiological concepts important in liability and medical causation. Issues include:

- The phenomenon of microbial biofilm: what it is and why it matters to your case
- The proper role of pulsed field gel electrophoresis (PFGE) in proving medical causation
- Attacking PFGE evidence
- Emerging, more discriminatory genetic testing methods
- The future of microbial epidemiology



**What Past Attendees have said about ACI's Food Litigation conference series:**

“Very well run and relevant conference. The speakers were top authorities on these topics and all provided great insights and ideas.” – The Kroger Co.

“Great conference and speakers” – Yum! Brands

“Excellent information, resources and contacts!” – Metz Fresh LLC



12:45 Networking Lunch

2:00 **Food-Borne Illness Mock Settlement: How to Analyze the Scope of the Outbreak, Assess Liability, and Calculate Damages to Best Execute a Settlement Strategy**

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**Alan Maxwell**

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

**William Marler**

Managing Partner  
Marler Clark LLP (Seattle, WA)

In this “Mock Settlement” session, leaders of the plaintiff and defense bar will debate negotiation strategies on how to best settle your food-borne illness litigation case. Negotiating the best financial resolution for your client is premised upon many different factors – liability, insurance coverage, damages and the scope of the outbreak, among other factors. This interactive debate will give attendees the unique vision from the most senior practitioners into how these cases are settled, and what to look for.

- Best practices for engaging in a valuation discussion – when to begin the process and what to reveal
- Short-term v. long-term classification of a food-borne illness and what this means for settlement
- Assessing strengths and weaknesses of the claim to negotiate the best result
- Determining liability through various parties involved – manufacturer, distributor, supplier
- Addressing “global” liability v. “specific” liability
- How delayed consequences and future medical expenses of food-borne illnesses affect a compensation package

3:00 Refreshment Break

3:15 **Controlling your Message in the Court of Public Opinion to Protect your Brand: How to Develop a Crisis Communications Plan to Address Publicity, Social Media and their Impact on your Litigation Strategy**

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**Sarah Brew**

Partner  
Faegre Baker Daniels (Minneapolis, MN)

- Coordinating a cross-functional crisis management team to produce a swift response to address adverse publicity post-outbreak
- Considering the impact of your litigation strategy on your media response
- How to best synchronize messages conveyed by the company across multiple media outlets
- Strategies for effective use of social media
- Establishing a notification system and document retention policy
- How to preserve business and customer relationships during a high publicity food recall or contamination discovery

3:45 **Connecting the Litigation Paper Trail: How FSMA Reporting Requirements Impact your Litigation Strategies**

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**James F. Neale**

Partner  
McGuire Woods LLP (Charlottesville, VA)

**Ron Simon**

Partner  
Simon & Luke LLP (Houston, TX)

- What to look for in your medical records and how they can help support your case
- Obtaining access to documents from the other side: What to ask for
- What documentation is now required by the FDA during an inspection
- Implementing a document management system to strengthen your litigation procedures
- How FOIA requests can impact your litigation strategy
- Third party and government documents: Lines lists, 483's, and the reportable Food Registry

4:30 **Why Insurance Coverage for Food Contamination Cases Can Be Less than Perfect: How to Ensure that your CGL Policy is Comprehensive and Aligns with Your Risk Management Strategy**

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**John Turner**

Vice President, Product Recall Underwriting Manager – North America  
XL Group (Boston, MA)

**Simon P. Oddy**

Partner  
RGL Forensics (New York, NY)

**Joseph F. Bermudez**

Partner  
Wilson Elser Moskowitz Edelman & Dicker LLP  
(Denver, CO)

- Understanding the types of claims, costs and losses typically resulting from food-borne illness events – how to match liabilities with insurance coverage
- The use of contractual indemnities to minimize supply chain risks
- Practical review of the ConAgra verdict
- What are the benefits and limitations of recall policies: What recall insurance covers, and what it does not
- Understanding the definition of “loss” under your insurance policy

5:30 Conference Concludes

## Dissecting Causation and the Science Behind the Claim: What You Need to Know about Types of Contaminants, Incubation Periods, and Human Health Effects that Impact your Investigation

**Arthur P. Liang MD, MPH**  
Director, Food Safety Office  
National Center for Emerging and Zoonotic Infectious Diseases  
Center for Disease Control (Atlanta, GA)

**William E. Keene, PhD, MPH**  
Senior Epidemiologist  
Acute and Communicable Disease Prevention  
Oregon Public Health Division (Portland, OR)

It is critical to understand the science behind any food-borne illness or contamination to be fully equipped with the tools necessary to put up a strong defense – with non-traditional pathogens making recent headlines, this becomes even more important in order to know how various pathogens manifest themselves in food.

At this interactive post-Forum working group, you will gain a thorough understanding of the technical, medical and scientific terms related to food-borne litigation. Submit your questions beforehand to [foodlitigation@americanconference.com](mailto:foodlitigation@americanconference.com) or bring your questions to the session as ample time will be left for Q & A.

Topics of discussion will include:

- Microbiology and epidemiology and what you need to know about Hepatitis, Salmonella, E. Coli, Cyclospora
- How epidemiologists make the determination that a particular food caused a particular illness
- How genetic fingerprinting can be used to identify outbreaks
- Update on most recent outbreaks stemming from Mexico and Turkey imports
- What type of data is collected, and how it is analyzed
  - Microbiological contamination
  - Chemical residues
  - Pesticides
- Understanding food manufacturing processes and how to identify contaminants

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**CLE Credits** Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

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ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 6.5 hours.

You are required to bring your state bar number to complete the appropriate state forms during the conference. CLE credits are processed in 4-8 weeks after a conference is held.

ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

Questions about CLE credits for your state? Visit our online CLE Help Center at [www.americanconference.com/CLE](http://www.americanconference.com/CLE)

### Don't Miss the Other Day of ACI's Food Litigation Series:



3rd Advanced Summit on Defending

## Food & Beverage Consumer Fraud Litigation

January 28, 2014 | Hilton San Francisco Financial District

Attendees of ACI's annual Food & Beverage Consumer Fraud Litigation program will benefit from the key litigation strategies and regulatory know-how for defending deceptive labeling and packaging claims:

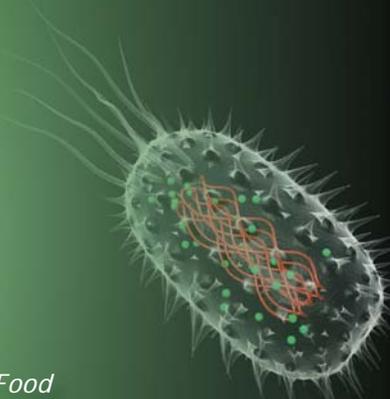
- How to leverage your resources to increase chances of a successful outcome through arbitration, preemption, venue and MDL
- Effectively challenging class certification and reliance
- Minimize your risk of "all natural" and other related claims litigation through smart labeling and advertising initiatives
- PLUS! Join the interactive working group on **Prop. 65 Litigation**

Attend both events and **SAVE**

To register or for full agenda and speaker faculty information, go to [www.AmericanConference.com/FoodFraud](http://www.AmericanConference.com/FoodFraud)

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William Keene  
Oregon Public Health Division

ALSO – Don't forget to register for our 3rd Advanced Summit on

Food & Beverage Consumer Fraud Litigation – January 28

January 29, 2014 • Hilton San Francisco Financial District • San Francisco, CA

## REGISTRATION FORM

### PRIORITY SERVICE CODE

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ATTENTION MAILROOM: If undeliverable to addressee, please forward to:  
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YES! Please register the following delegate for Food-Borne Illness Litigation

### CONTACT DETAILS

NAME \_\_\_\_\_ POSITION \_\_\_\_\_

APPROVING MANAGER \_\_\_\_\_ POSITION \_\_\_\_\_

ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

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I would like to receive CLE accreditation for the following states: \_\_\_\_\_ See CLE details inside.

FEE PER DELEGATE	Register & Pay by Nov 23, 2013	Register & Pay by Dec 28, 2013	Register after Dec 28, 2013
<input type="checkbox"/> Food-Borne Illness Conference Only	\$1295	\$1395	\$1595
<input type="checkbox"/> Food-Borne Illness Conference and Post-Conference Workshop	\$1895	\$1995	\$2195
<input type="checkbox"/> Food-Borne and Consumer Fraud Conferences	\$2195	\$2295	\$2495
<input type="checkbox"/> Both Conferences and 1 Workshop: <input type="checkbox"/> Science or <input type="checkbox"/> Prop. 65	\$2795	\$2895	\$3095
<input type="checkbox"/> Both Conferences and 2 Workshops	\$3395	\$3495	\$3695
<input type="checkbox"/> I cannot attend but would like information on accessing the ACI publication library and archive			

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### Cancellation and Refund Policy

You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **American Conference Institute (ACI)** in writing up to 10 days prior to the conference date and a credit voucher valid for 1 year will be issued to you for the full amount paid, redeemable against any other ACI conference. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. ACI reserves the right to cancel any conference it deems necessary and will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by ACI for changes in program date, content, speakers, or venue.

### Hotel Information

**American Conference Institute** is pleased to offer our delegates a limited number of hotel rooms at a preferential rate. Please contact the hotel directly and mention the "ACI January 2014" conference to receive this rate.  
Venue: Hilton San Francisco Financial District  
Address: 750 Kearney Street, San Francisco, CA 94108  
Reservations: 415-433-6600

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