

ACI's 7<sup>th</sup> National Forum on

# FOOD-BORNE ILLNESS LITIGATION



*Advanced Strategies for Defending High-Profile Food Contamination Litigation  
Amid Increased Food Safety Requirements*

Forum: January 27, 2016 • Post-Forum Working Group: January 28, 2016

Sheraton Fisherman's Wharf • San Francisco, CA

**Hear from the CDC on its Role  
in the Investigation of Food-Borne  
Illness Outbreaks:**

*Heather Huntley*

Senior Attorney  
Office of the General Counsel  
Centers for Disease Control and Prevention  
(Atlanta, GA)

## Forum Co-Chairs

*Sarah Brew*

Partner  
Faegre Baker Daniels LLP  
(Minneapolis, MN)

*William Marler*

Managing Partner  
Marler Clark LLP  
(Seattle, WA)

**Complement Your Experience with this  
Interactive Post-Forum Working Group:  
January 28, 2014**

**A Litigator's Guide to FSMA Compliance –  
A Practical Update on FSMA Requirements  
on Food Safety Protocols and How to Use  
This Information to Guide Your Litigation  
Strategies**

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

- Dissecting Criminal Liability for Food-Borne Illness under *Food Drug and Cosmetics Act*
- *FSMA Update* – How FDA's Increased Authority to Inspect Your Testing Records Could Increase Your Litigation Risk
- Media and Public Outcry from Food-Borne Illness Outbreak – Can You Say Sorry Without Admitting Liability?
- **CSI of Food Borne-Illness:** Cutting Edge Testing Methods You Need to Understand to Defend Your Case

**Take Part in the following Practical Mock and Interactive Sessions:**

### » Mock Settlement Negotiation

When and How to Settle a Food-Borne Illness Personal Injury Claim from the Plaintiff and Defendant Side of the Negotiation Table

### » Benchmarking Wrap Up Session

How Outside Counsel and In-House Litigation Counsel Can Work Together to Control Litigation Costs and Legal Fees

Earn  
CLE  
Credits

## “Recalls of Organic Food on the Rise, Report Says”

— New York Times, August 2015

## “Conagra Fined \$11.2. Million for Salmonella-Tainted Peanut Butter” — New York Times, May 2015

**A**t ACI's acclaimed 7<sup>th</sup> National Forum on Food-Borne Illness Litigation, you can benchmark your defense strategies with not only the leading defense counsel and in-house counsel from food and beverage companies, but have the unique opportunity to hear directly from those who are bringing the cases against your companies – the plaintiffs' lawyers. 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 litigation strategies.

ACI has conducted extensive research to design a unique program with an expert faculty to provide practical solutions to addressing your most pressing concerns surrounding:

- Whistleblower Claims – Understanding Employee Protections Under FSMA Section 402
- How FDA's Increased Authority to Inspect Your Testing Records Could Increase Your Litigation Risk
- Cutting Edge Testing Methods You Need to Understand to Defend Your Case
- How to Settle a Food-Borne Illness Personal Injury Claim – Perspectives from the Plaintiff and Defendant Side of the Negotiation Table

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.

### Compliment Your Trip to San Francisco with this Exclusive One Day Event!

ACI's 4th Advanced Summit on

## DEFENDING FOOD & BEVERAGE CONSUMER FRAUD LITIGATION

*Developing Practical and Effective Strategies for Defeating Class Action Litigation and Minimizing Exposure for Labeling and Health-Related Claims*

January 26, 2016 • Sheraton Fisherman's Wharf • San Francisco, CA

## 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

## 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.

“Excellent information, resources and contacts!”

— Metz Fresh LLC

“Great conference and speakers”

— Yum! Brands

7:30 Registration Begins and Continental Breakfast

## 8:30 Co-Chairs' Opening Remarks

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**Sarah Brew**

Partner, **Faegre Baker Daniels LLP** (Minneapolis, MN)

**William Marler**

Managing Partner, **Marler Clark LLP** (Seattle, WA)

## 8:45 FSMA Update – How FDA's Increased Authority to Inspect Your Testing Records Could Increase Your Litigation Risk

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**Laurie Henry**

Partner, **Shook, Hardy & Bacon** (Kansas City, MO)

**Nicholas Kampars**

Partner, **Davis Wright Tremain LLP** (Portland, OR)

- Understanding what testing records the FDA is entitled to review under FSMA (food safety plan, testing results, customer complaints)
- Determining the scope of Salmonella, Hepatitis, E. Coli records the FDA may request
- Outlining the types of warning letters a food company may receive as a result of FDA increased authority to inspect records
- How warning letters regarding testing violations can trigger food-borne illness litigation
- How to minimize exposure to litigation when complying with this FSMA requirement

## 9:30 Dissecting Criminal Liability for Food-Borne Illness under Food Drug and Cosmetics Act

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**Alan Maxwell**

Partner

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

**Christopher Lee**

Shareholder, **Dickey McCamey** (Pittsburgh, PA)

- Understanding the Supreme Court's *Park Doctrine* and the criminal prosecutions of the "responsible corporate officer"
- What conduct subjected Stewart Parnell, and the DeCosters to individual criminal liability and a sentence of jail time
- How is corporate criminal liability determined? – discussing *U.S. v ConAgra Grocery Products* (criminal fine of \$11.2 million)

10:30 Morning Coffee Break

## 10:45 How to Respond to Media and Public Outcry from a Food-Borne Illness Outbreak – Can You Say Sorry Without Admitting Liability?

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**James Neale**

Partner, **McGuireWoods** (Charlottesville, VA)

**Joanne Henry**

Executive Vice President

**Neuger Communications Group** (Minneapolis, MN)

- How to balance customer goodwill without increasing liability for a food-borne illness outbreak
- Preserving business, shareholder and customer relationships during a high publicity food-borne illness incident
- Preparing and executing the appropriate customer communications during the outbreak
- Strategies for effective use of social media
- Developing a strategy to address publicity issues that arise as the direct result an incident
- Managing internal communications in a recall environment – from switchboard to board room
- Anticipating and preparing for potential litigation that may arise as the result of a food-borne illness event

## 11:30 CSI of Food Borne-Illness: A Practical Review of Cutting Edge Testing Methods You Need to Understand to Defend Your Case

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**Kendra Nightingale, Ph.D.**

Associate Professor of Food Safety & Public Health  
International Center for Food Industry Excellence  
**Texas Tech University** (Lubbock, TX)

**William Marler – Moderator**

Managing Partner, **Marler Clark LLP** (Seattle, WA)

### Whole-Genome Sequencing (WGS)

- Understanding tools used in foodborne disease outbreak detection
- How phenotypic and molecular subtyping methods are used in the identification of pathogen sources responsible for food contamination

### Genetic Traceback

- Outlining the technology that can map the entire DNA sequence of a microbe and allows scientists to distinguish one strain from another
- Discussing how this will allow fast track-back and earlier elimination of food-borne illness outbreaks

12:30 Networking Luncheon

1:45 ***Special Address: Understanding CDC's Role in the Investigation of Food-Borne Illness Outbreaks***

**Heather Huntley**

Senior Attorney, Office of the General Counsel  
**Centers for Disease Control and Prevention**  
(Atlanta, GA)

2:15 ***Mock Settlement Negotiation – Plaintiff and Defendant Attorneys Debate When and How to Settle a Food-Borne Illness Personal Injury Claim***

**Sarah Brew**

Partner, **Faegre Baker Daniels LLP** (Minneapolis, MN)

**William Marler**

Managing Partner, **Marler Clark LLP** (Seattle, WA)

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

3:30 **Networking Break**

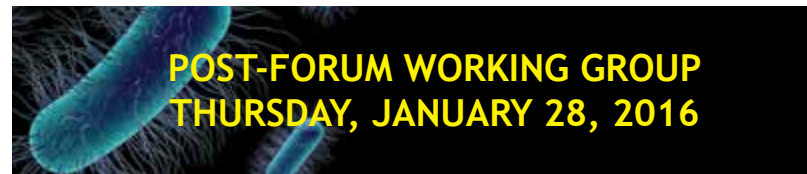
3:45 ***Anticipating Whistleblower Claims with the Employee Protections Under FSMA Section 402***

- Understanding employee protections under Section 402
- Dissecting some of the first whistleblower claims brought under Section 402 (e.g. Costa)
- Establishing an effective process for investigating claims
- Determining the proper escalation procedures for claims and when to get outside counsel involved
- How to treat and communicate appropriately with an internal whistleblower
- What impact does this new regulation have on your litigation risk analysis
- How to work with OSHA in the investigation and enforcement of whistleblower claims

4:15 ***Benchmarking Wrap Up Session – How Outside Counsel and In-House Litigation Counsel Can Work Together to Control Litigation Costs and Legal Fees***

In this interactive wrap up session, come share your tips on how you and your company manage the litigation budget and keep costs in line. If you are outside counsel, take this opportunity to share with in-house counsel how to best work with you to achieve your litigation and settlement goals in the most cost-efficient way.

5:15 **Summit Concludes**



(9:00am – 12:30pm)

***A Litigator's Guide to FSMA Compliance – A Practical Update on FSMA Requirements on Food Safety Protocols and How to Use This Information to Guide Your Litigation Strategies***

**Jolyda Swaim**

Principal

**Olsson Frank Weeda Terman Matz** (Washington, DC)

This session will get you up to speed on FSMA implementation, provide an overview of key developments, and examine practical steps that companies can take to ensure they are taking steps to implement these FSMA rules in ways that offer value to the business and minimize enforcement and litigation risks.

- Hazard Analysis and Risk-Based Preventive Controls
- Produce Standards
- Sanitary Transportation
- Foreign Supplier Verification Program
- Third-Party Certifications and Food Safety Audits
- Recordkeeping and Record Access
- Enforcement Authorities

## Continuing Legal Education 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.

ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board.

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

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)

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## 5 Easy Ways to Register

<b>MAIL</b> American Conference Institute 45 West 25th Street, 11th Floor New York, NY 10010	<b>PHONE</b> 888-224-2480	<b>FAX</b> 877-927-1563	<b>ONLINE</b> <a href="http://www.AmericanConference.com/FoodBorne">www.AmericanConference.com/FoodBorne</a>	<b>EMAIL</b> CustomerService@ AmericanConference.com
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FEE PER DELEGATE	Advance Pricing On or Before Nov 20, 2015	Standard Pricing After Nov 20, 2015
<input type="checkbox"/> <b>Food-Borne Illness</b> Conference Only	\$1195	\$1395
<input type="checkbox"/> <b>Food-Borne Illness</b> Conference + Post-Forum Working Group: FSMA Compliance	\$1795	\$1995
<input type="checkbox"/> <b>Food Borne Illness</b> + <b>Food &amp; Beverage Consumer Fraud</b> Conference	\$2095	\$2295
<input type="checkbox"/> Both Conferences and 1 Workshop: <input type="checkbox"/> Pre-Summit Working Group: Health Claim Substantiation Standards, QR <input type="checkbox"/> Post-Forum Working Group: FSMA Compliance	\$2695	\$2895
<input type="checkbox"/> Both Conferences and 2 workshops	\$3295	\$3495
<input type="checkbox"/> Please reserve ____ additional copies of the Conference Materials at \$199 per copy.		

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Web: [www.starwoodmeeting.com/Book/FoodBev](http://www.starwoodmeeting.com/Book/FoodBev)

The **American Conference Institute** is pleased to offer our delegates a limited number of hotel rooms at a preferential rate. To book a room at the discounted rate please contact the hotel directly and mention "ACI's Food & Beverage Consumer Fraud".

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REGISTRATION CODE

S10-832-832L16-STRM-2.S

ACI's 4th Advanced Summit on

# DEFENDING FOOD & BEVERAGE CONSUMER FRAUD LITIGATION

*Developing Practical and Effective Strategies for Defeating Class Action Litigation and Minimizing Exposure for Labeling and Health-Related Claims*

Summit: January 26, 2016  
Pre-Summit Working Group: January 25, 2016  
Sheraton Fisherman's Wharf • San Francisco, CA

Leading food and beverage litigation experts will share valuable insights related to:

- Dissecting Class Certification Issues of Ascertainability and Commonality
- State of the Food Court — Update on 9<sup>th</sup> Circuit Trends that May Affect Your Strategy
- Assessing the Strength of Your Position — When, Why, and How to Settle a Claim
- Beech-Nut and its Backlash — The Battle Over Prop 65's Fundamentals
- Beyond "Natural" — Outlining the New Mislabeling Claim Trends

ACI's 7<sup>th</sup> National Forum on

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*Advanced Strategies for Defending High-Profile Food Contamination Litigation Amid Increased Food Safety Requirements*

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