

## FOREWORD

*March 5, 2018*

The weekend getaway to Royal Palm Resort & Spa in Phoenix was the perfect respite from Seattle's cold rain. But Monday morning came fast for sixty-one-year-old food-safety lawyer Bill Marler. His wife still sleeping soundly, he quietly eased out of bed, slipped into a bathrobe, and reached for his laptop. He had a case to check on. In 2015, nineteen people in seven western states had fallen ill after eating rotisserie-chicken salad made and sold at Costco stores. Lab tests revealed the presence of *E. coli* O157:H7 in a diced-celery-and-onion blend contained in the chicken salad. Confident the contamination was in the celery, Costco's Salinas Valley supplier, Taylor Farms, voluntarily recalled the blend, but it was too late for the nineteen victims. Marler represented a number of them, including a young woman in Salt Lake City who spent a month in intensive care.

Nineteen-year-old Chloe Rodgerson had just accepted a position as a Disney princess at Disney World in Orlando. A dancer and singer who had previously performed at Lincoln Center and in movies, Rodgerson viewed the Disney opportunity as another step toward realizing her childhood dream of performing in a hit Broadway show. But she never made it to Orlando. Forty-eight hours after eating a chicken salad sandwich with her family in Utah, Rodgerson doubled over with severe abdominal pain. Then she vomited up blood and passed a bloody stool. Within a week, her kidneys failed and she was hospitalized.

After the Centers for Disease Control and Prevention (CDC) linked her illness to Costco, Rodgerson's parents retained a Salt Lake City law firm. The firm, which had no experience with foodborne illness cases, called Marler and asked for his help.

By the time he met Rodgerson, she had undergone three surgeries and was on dialysis while waiting for a kidney transplant. Her large intestine had been removed. Her pancreas was so damaged that she'd become a diabetic. And she had sustained a brain injury brought on by the severity of the toxin.

Marler couldn't help internalizing her situation. He had three daughters, young women like Rodgerson. They were in college or pursuing careers; Rodgerson was tethered to a machine. After just one serving of chicken salad contaminated with *E. coli* O157:H7, she'd gone from an attractive nineteen-year-old with bright prospects to an extreme invalid completely dependent on her parents. Her medical bills exceeded \$2.5 million.

In a mediation held almost three years after the outbreak, Costco and Taylor Farms offered Rodgerson millions. Her Utah-based lawyer would have settled. But Marler walked away from the table and sued Costco one month later. In his mind, the lawyers and insurance companies on the defense side hadn't come to grips with the gravity of Rodgerson's situation: The *E. coli* O157:H7 poisoning had reduced her life expectancy by more than thirty years. She had lost various key organs. She would never be able to have children. Her dream of performing was dead. Seizures, extreme headaches, and susceptibility to infections would be the norm for the remainder of her life. Medical expenses, even millions of dollars' worth, were the least of her problems.

Once Marler's lawsuit entered the discovery phase, Costco and Taylor Farms wanted to take another run at mediation. This time Marler helped everyone in the room look at the situation from Chloe's perspective. "When you don't have a large intestine, you don't absorb water," he explained. "You are a chemistry experiment. Most of us don't think about how much water we drink or what we eat or how much

sleep we get or how much work we can do. For Chloe, living is a full-time job.” Costco more than tripled its settlement offer. And Marler agreed to drop the lawsuit. In the pre-dawn darkness of his Phoenix hotel room, Marler waited for news of developments. A federal judge in Utah was expected to ratify the settlement and dismiss the case any day.

As Marler scanned the headlines on his newsfeed, he noticed an email had come in overnight from a lawyer friend in South Africa. The subject line read, “*LISTERIA*.” For months, Marler had been monitoring a *Listeria* outbreak that had stymied South African health officials. Over a one-year period, nearly two hundred people had died and more than a thousand others had fallen ill, making it the largest *Listeria* outbreak in world history. Early on, Marler had figured the source was most likely a refrigerated, mass-produced food eaten by young and old, white and black, rich and poor. “It has to be South Africa’s equivalent to Spam,” Marler had told his South African colleague months earlier.

The email contained a link to a live feed of the health minister of South Africa announcing that inspectors had finally identified the culprit—an inexpensive brand of a highly processed sandwich meat known as polony. It was unsliced bologna sold in a tube. Tiger Brands, South Africa’s largest food company, was the manufacturer. Since doctors in South Africa were not required to report cases of *Listeria* to the Ministry of Health, the outbreak had gone undetected for almost a year. Nearly half of the victims were newborns that had been infected during gestation.

The backlash from the public was immediate. *How could this happen? Why wasn’t the government watching this? How can we have an outbreak this size?* The country had never experienced a large-scale foodborne illness outbreak, and health officials were scrambling to respond. Marler called his travel agent at home in

Seattle and woke him up. “I need you to get me to South Africa by Wednesday,” he said.

For Marler, going to South Africa was like going back in time. Twenty-five years earlier he’d been a young associate at a law firm in Seattle when the United States experienced its first large-scale foodborne illness outbreak. President Bill Clinton was conducting his first cabinet meeting when he received word that children in multiple western cities were sick with *E. coli* O157:H7 poisoning. The outbreak was ultimately traced to undercooked hamburger meat from the fast-food chain Jack in the Box. Like most Americans at that time, Marler was unfamiliar with *E. coli* O157:H7. But he ended up bringing a class-action suit against Jack in the Box. The case changed his life and, in turn, transformed public policy toward food safety in America, leading to passage of the Food Safety Modernization Act in 2010.

In front of health officials and lawmakers in Johannesburg, Marler recounted his experience with Jack in the Box. Under South African law, he pointed out, manufacturers of food can be held liable under principles similar to those common in U.S. tort law. “There is a way through this crisis,” he said. “But food companies and government regulators must pay attention to the things that matter.”

His remarks were covered by all the papers in Johannesburg. The media also quoted a South African lawyer named Richard Spoor, who was calling for a class-action suit against Tiger Brands.

Marler quickly did some background research on Spoor and discovered he was a highly respected human-rights lawyer who had taken on the gold industry on behalf of workers who had developed lung disease. Through Twitter, Marler sent

Spoor a message: “We should get together.” They met the next day and agreed to join forces. By the time Marler left South Africa, Spoor announced his intention to file a \$2 billion class-action suit against Tiger Brands.

On the day that Marler returned from South Africa, health officials in the U.S. documented a report of an *E. coli* O157:H7 illness traced to romaine lettuce. Before long, 210 people from thirty-six states would be infected. Five people died. *Contaminated water*, Marler figured. *Either that or wind dust from cattle operations.*

In the early part of his career, most of Marler’s *E. coli* O157:H7 cases had stemmed from contaminated meat, mainly ground beef. Subsequent food-safety legislation reduced the incidence of *E. coli* O157:H7 in hamburgers. But the regulations didn’t eliminate the bacteria in cattle, and *E. coli* O157:H7 has become an environmental pathogen, carried by runoff from feedlots. As a result, leafy greens are now a more common culprit in *E. coli* O157:H7 outbreaks than hamburgers. In one of his leafy-green cases, Marler obtained aerial photographs of the farm that had grown the contaminated greens. The photographs showed a dairy farm across the street from the lettuce farm. “Putting a leafy-green operation close to a dairy farm is a recipe for disaster,” Marler explained. “The cow shit has to go somewhere, and these animals carry pathogenic bacteria. It ends up in rural water supplies, which then ends up irrigating leafy greens.”

By late spring 2018, the leafy-green outbreak in the U.S. ranked as one of the largest in history. The Food and Drug Administration and the CDC traced it to water samples taken from a canal in the Yuma Valley. Marler represents 105 of the victims. He can’t help wondering what prevents us from seeing disasters in advance. But he doesn’t have to wonder about how he became the world’s go-to lawyer when it comes to food safety. It all started with Jack in the Box.