



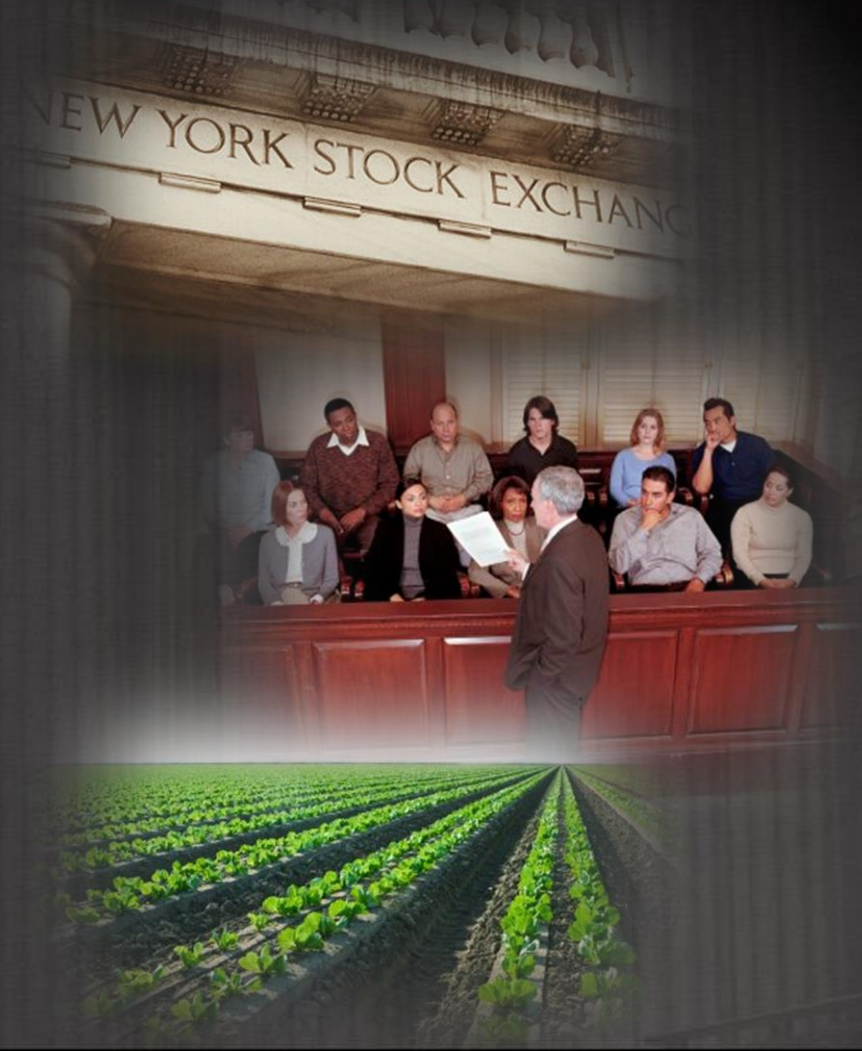
2013 Advisory Council Annual Spring Symposium

MARLER CLARK
THE FOOD SAFETY LAW FIRM

*Food safety from a lawyer's
perspective*

Food Production is a Risky Business

- Competitive Markets
- Stockholder Pressures for Increasing Profits over Long-term Safety
- Brand Awareness Risks
- Not least of all, those pesky lawyers



It is a Global Food Economy



To Put Things in Perspective

- Microbial pathogens in food cause an estimated 48 million cases of human illness annually in the United States
- 125,000 hospitalized
- Cause up to 3,000 deaths

Strict Product Liability



- Punitive Damages /Criminal Liability
 - Did you act with conscious disregard of a known safety risk?

- Strict Liability
 - Are you a manufacturer?
 - Was the product unsafe?
 - Did product cause injury?
- Negligence
 - Are you a product seller?
 - Did you act “reasonably”?

Who is a Manufacturer?

A “manufacturer” is defined as a “product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer.”



RCW 7.72.010(2); see also *Washburn v. Beatt Equipment Co.*, 120 Wn.2d 246 (1992)

It's called STRICT Liability for a Reason



- The only defense is prevention
- It does not matter if you took all reasonable precautions
- If you manufacture a product that makes someone sick you are going to pay
- Wishful thinking does not help

Litigation as Incentive – 20 Years Later

Jack in the
Box



Odwalla



Worthless Excuse No. 1

“I never read the memo.”

- If a document contains damning information, the jury will assume you read it, understood it, and ignored it





TO: MANAGER, OPERATIONS SERVICE AND MAINTENANCE, SAN DIEGO

FROM: Wendy Cocharella

TITLE/POSITION: Shift leader

RESTAURANT: 8466

PHONE: (602) 435-3178

DATE: 6/10/92

IN THE SUGGESTION BOX

Type of suggestion: (Check)

Restaurant Procedure (POS, Admin, Maintenance, etc.)

Quality Improvement (Procedure, Equipment, Systems)

QSC&P Standards

New Product

Other

Describe change/new Product idea I think regular patties
should cook longer. They don't get done and
we have customer complaints

RECEIVED
JUN 23 1992

Describe change/new Product idea I think regular patties
should cook longer. They don't get done and
we have customer complaints

Describe benefit/new Product build If we change this we
will be making our burgers done and edible.

Wendy Cocharella
Signature

6/10/92
Date

ORIGINAL COPY TO: MANAGER, OPERATIONS SERVICE AND MAINTENANCE, SAN DIEGO

SECOND COPY KEPT BY: INITIATOR

REV. 8/88

EXHIBIT
65

FORM NO. 1788



July 24, 1992

Wendy Cocharella
Shift Leader
JACK IN THE BOX #8466
3818 172nd. St. N.E.
Arlington, WA 98223

Dear Wendy:

We have received your suggestion regarding increasing the cooktime for our regular patties.

Your suggestion is currently being researched within the Corporate Office. You will again be notified with more detail as soon as a decision has been made regarding this suggestion.

We would like to acknowledge the time and effort you have taken to contribute to the success of JACK IN THE BOX by enclosing this pen/highlighter. Each person submitting suggestions is eligible to receive one gift per quarter with their first suggestion.

Sincerely,

Randell J. Hoyer

Area Manager

A Division of
Foodmaker, Inc.
1925 Hudson Avenue
San Diego, CA 92108-0148
Shipping Address P.O. Box 988
San Diego, CA 92113-0128
619/573-8123

We would like to acknowledge the time and effort you have taken to contribute to the success of JACK IN THE BOX by enclosing this pen/highlighter. Each person submitting suggestions is eligible to receive one gift per quarter with their first suggestion.

----- ranchin
Mike McQuitty
Janice Eubank, Restaurant Manager JR466
Ed Mulhausen - Northwest
Rex Lynch - Northwest

suggest/jad/sugbox4



August 28, 1992

Wendy Cocharella
Shift Leader
JACK IN THE BOX #3466
3818 172nd. St. N.E.
Arlington, WA 98223

Dear Wendy:

Thank you for your suggestion that we increase the cooktime for our regular patties.

We have researched your suggestion and determined that with the variability of our grill temperatures (350° - 400°) the two-minute cooktime is appropriate. If the patties are cooked longer than two minutes, they tend to become tough. To ensure that you are meeting quality expectations for regular patties, please ensure that the grill temperature is correct and grill personnel are using proper procedures.

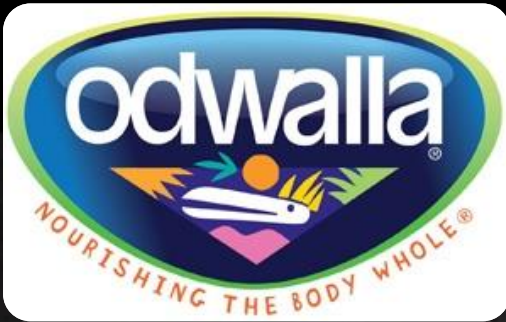
Wendy, thank you again for your suggestion. We appreciate and share your concern for

We have researched your suggestion and determined that with the variability of our grill temperatures (350° - 400°) the two-minute cooktime is appropriate. If the patties are cooked longer than two minutes, they tend to become tough. To ensure that you are meeting quality expectations for regular patties, please ensure that the grill temperature is correct and grill personnel are using proper procedures.

cc: Stephanie Green
Vanessa Fanchin
Mike McQuitty
Janice Eubank, Restaurant Manager #3466
Ed Mulhausen - Northwest
Rex Lyoch - Northwest

FOODSST-1/3ad/FOODSST

A Division of
Foodservice, Inc.
1980 Sutter Avenue
San Diego, CA 92103-0100
Tel: 619-594-2200
Fax: 619-594-2200



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY VETERINARY COMMAND
2050 WORTH ROAD
FORT SAM HOUSTON, TEXAS 78234-6000

August 6, 1996

REPLY TO
ATTENTION OF

Approved Sources
Division


Odwalla
1900 Davis Drive
Dinuba, California 93618

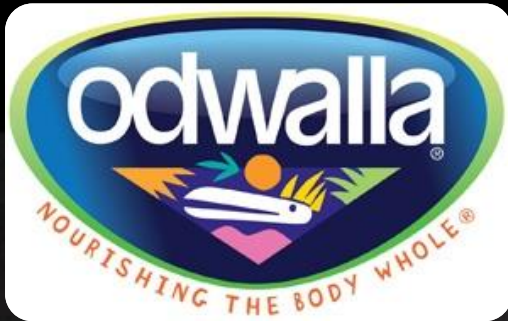
Gentlemen:

We received the report of the June 6, 1996,
initial sanitary inspection of your establishment.

We reviewed the deficiencies noted in the report,
which our inspector discussed with you at the time of
the inspection. As a result, we determined that your
plant sanitation program does not adequately assure
product wholesomeness for military consumers. This
lack of assurance prevents approval of your

We reviewed the deficiencies noted in the report,
which our inspector discussed with you at the time of
the inspection. As a result, we determined that your
plant sanitation program does not adequately assure
product wholesomeness for military consumers. This
lack of assurance prevents approval of your
establishment as a source of supply for the Armed
Forces at this time.


Robert E. Kilburn
Chief, Department of Defense
Approved Sources Division



From: C B
To: SK , FJB
Date: 9/2/96 11:30am
Subject: BSK Testing -Reply -Reply -Reply

It is not the vendors criteria I am concerned about. It is Odwalla's...why are we doing it, why now, what do we WANT TO PROVE...IF THE DATA is bad, what do we do about it. Once you create a body of data, it is subpoenaable...you should look at this as though the Fresno Bee has looked into the results and asked a lot of questions. This should be done in advance so you know what you are in for if you don't like the data. I'm not saying no, I'm just saying that you want everyone in Dinuba on board.

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>>> S K 08/30/96 05:09pm >>>
D , I recently had a conversation with R R about testing within the plant for listeria. I am having him come in on Tuesday and run the first test. I also remember you mentioning that you wanted to run a test with a specific sanitizer. If you can give me a heads up we can talk to R about it. Thanks S .

Are things are Different Today?



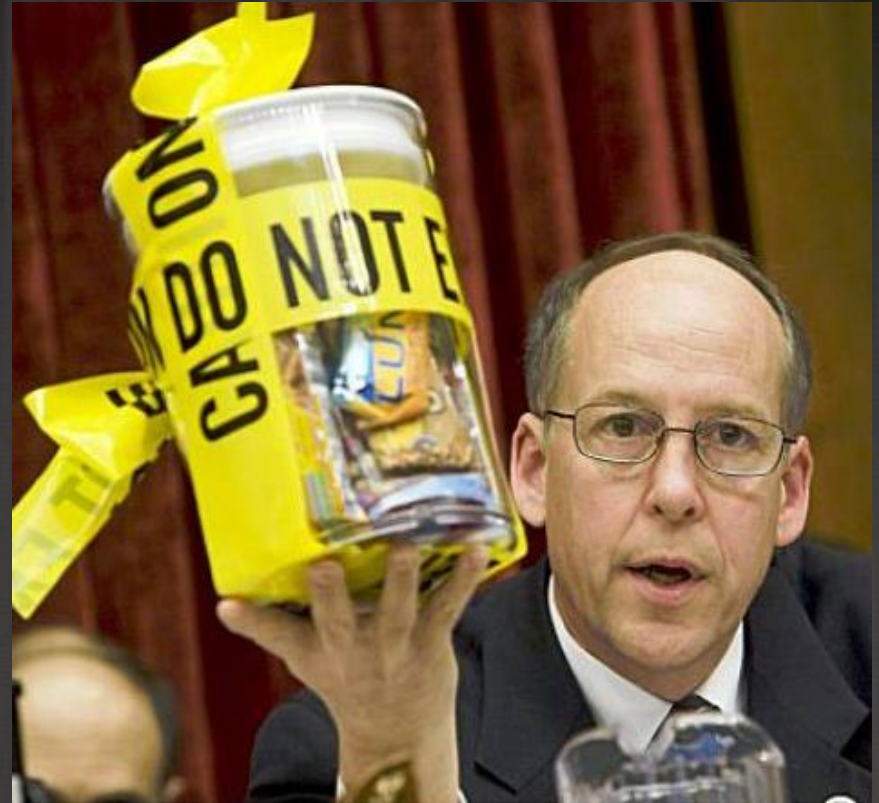
It Started with just a Little Salmonella



- 714 persons infected with the outbreak strain of *Salmonella* Typhimurium were reported from 46 states.. Additionally, one ill person was reported from Canada.
- Among the persons with confirmed, reported dates available, illnesses began between September 1, 2008 and March 31, 2009. Patients ranged in age from <1 to 98 years. The median age of patients was 16 years which means that half of ill persons were younger than 16 years. 21% were age <5 years, 17% were >59 years. 48% of patients were female. Among persons with available information, 24% reported being hospitalized.
- Nine deaths: Idaho (1), Minnesota (3), North Carolina (1), Ohio (2), and Virginia (2).

Then there were Congressional Hearings

- *"Turn them loose," Parnell had told his plant manager in an internal e-mail disclosed at the House hearing. The e-mail referred to products that once were deemed contaminated but were cleared in a second test last year.*
- *Parnell ordered products identified with salmonella to be shipped and quoting his complaints that tests discovering the contaminated food were "costing us huge \$\$\$\$\$."*
- *Parnell insisted that the outbreak did not start at his plant, calling that a misunderstanding by the media and public health officials. "No salmonella has been found anywhere else in our products, or in our plants, or in any unopened containers of our product."*
- *Parnell complained to a worker after they notified him that salmonella had been found in more products. "I go thru this about once a week," he wrote in a June 2008 e-mail. "I will hold my breath again."*



Now a 76 Count Federal Indictment

- Stewart Parnell, the former owner of Peanut Corp. of America
 - Michael Parnell, who is Stewart Parnell's brother and a former supervisor
 - Samuel Lightsey, a onetime plant operator
 - Mary Wilkerson, a former quality-assurance manager
 - Daniel Kilgore, plant manager
- Allegations Include:
 - Mail Fraud
 - Wire Fraud
 - Introduction of Adulterated and Misbranded Food into Interstate Commerce with Intent to Defraud or Mislead
 - Conspiracy



Planning AGAINST Litigation – What Is Really Important

- Identify Hazards
 - HACCP
 - Do you have qualified and committed people?
- What is the Culture?
- Involve Vendors and Suppliers
 - Do they really have a plan?
 - Ever visit them?



Planning AGAINST Litigation – Establish Relationships

They are your best friends!



Lessons Learned From Litigation

You can insure the brand's and the company's reputation

1. Arm yourself with good, current information
2. Since you have a choice between doing nothing or being proactive, be proactive
3. Make food safety part of everything you, your suppliers and customers do