2013 Advisory Council Annual Spring Symposium

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

- **Strict Liability**
  - Are you a manufacturer?
  - Was the product unsafe?
  - Did product cause injury?

- **Negligence**
  - Are you a product seller?
  - Did you act "reasonably"?

- **Punitive Damages /Criminal Liability**
  - Did you act with conscious disregard of a known safety risk?
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)
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.
IN THE SUGGESTION BOX

Type of suggestion: (Check)
- Restaurant Procedure (POS, Admin, Maintenance, etc.)
- Quality Improvement (Procedure, Equipment, System)
- GFCF Standards
- New Product
- Other

Describe change/New Product Idea: I think regular patty should cook longer. They don’t get done and we have customer complaints.

Describe benefit/New Product idea: If we change this we will be making our burgers done and edible.
July 24, 1992

Wendy Cochitella
Shift Leader
JACK IN THE BOX #8466
3815 172nd St. N.E.
Arlington, WA 98223

Dear Wendy:

We have received your suggestion regarding increasing the cocktail 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,

Randall J. Hays
Manager, Operations

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.

Manager, Operations

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Mike McQuitty
Janice Dub ank, Restaurant Manager JS466
Ed Malhausen - Northwest
Max Lynch - Northwest
August 28, 1992

Wendy Cochonella
Shift Leader
JACK IN THE BOX #9466
3315 172nd St. N.W.
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 (150° - 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.

Sincerely,

cc: Stephanie Geer
    Vanessa Fanchin
    Mike McQuitty
    Janice Eubank, Restaurant Manager #9466
    Ed Mahlman - Northwest
    Rex Lynch - Northwest

SUGGEST 1/4/92/096/683

MARLER CLARK
THE FOOD SAFETY LAW FIRM
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
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 we want everyone in Dinuba on board.

>>> 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 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