

American Conference Institute's  
National Forum on

# FOOD-BORNE ILLNESS LITIGATION



Advanced Strategies for Managing and Defending  
Food Contamination Claims

February 28 & 29, 2008  
Millennium Resort, Scottsdale McCormick Ranch  
Scottsdale, AZ

Don't miss this unique opportunity to understand the science of using a bug's unique "fingerprints" to trace the source of the outbreak in this key session:

## Making the Causal Link: Identifying and Tracing the Pathogen Responsible

**Mansour Samadpour, Microbiologist**  
Institute of Environmental Health

## Stephanie Meyer, MPH

Epidemiologist, Acute Disease Investigation and Control Section Infectious Disease Epidemiology, Prevention and Control  
Minnesota Department of Health

## Alan Melnick, MD, MPH

Department of Public Health and Preventative Medicine  
Oregon Health and Science University

Gain insights from key government agencies:

## David P. Goldman, MD, MPH

Assistant Administrator  
Food Safety & Inspection Services  
USDA

## Arthur P. Liang, MD, MPH

Director, Food Safety Initiative Activity  
Centers for Disease Control

Get highly-specialized, practical information from leading medical experts, top food-borne illness litigators, and corporate counsel on:

- Crisis control: ensuring your incident response plan will limit potential damages when responding to an outbreak
- Evidentiary strategies for obtaining public health records and other key information that will aid your defense
- Assessing qualifications, credibility and testimony of medical experts in the case for successful depositions and testimony at trial
- Suppliers, distributors, restaurants, processors: negotiating the intricacies of third-party lawsuits
- Using individualized factual issues of causation and damages to defeat class certification
- Class certification and de-certification: which individualized factual issues prove successful on causation and damages?
- Calculating ongoing damages through accurate assessment of costs of care

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## Food contamination incidents tripled between 2005 and 2007, and the steady stream of media reports will continue to translate into more and more lawsuits. . .

2007 was the year of the recall, with **e-coli contamination increasing sharply in 2007 over the previous two years**. And it's not just beef recalls and e-coli contamination that are making the news... Peanut butter, spinach, pot pies and pizza; salmonella, listeria and other toxins... All kinds of **food-borne illnesses and the ensuing litigation are on the rise**, as experts point fingers at increased use of offshore food sources, a largely self-regulated industry, and other factors in an attempt to explain the sudden surge. **It's clearly a critical time for food companies, and the lawyers who advise them, to get valuable, practical information to enable you to minimize the likelihood of these situations and the ensuing litigation from occurring – and to manage the litigation appropriately when it arises.**

### Are you prepared to face the rising tide of litigation?

To address these growing concerns, **American Conference Institute** has developed this critical conference on **Preventing and Managing Food-Borne Illness Litigation**. For this unique event, we've assembled a multi-disciplinary faculty of epidemiologists, microbiologists, key regulators and top litigators in the area, and an agenda that covers all the issues that arise in litigating and settling these complex cases. Get strategic and practical insights into:

- Understanding the science behind tracing and identifying a pathogen – so you can make or refute the causal link in your case
- Getting back on track with consumers after a crisis: getting out the right message
- Using Freedom of Information Act (FOIA) requests: why they are such an effective discovery tool in food borne illness cases
- Deposing food-borne illness experts: tips and techniques
- Effect of insurance coverage issues on how you proceed in a third party action
- Analysis of where plaintiffs been most successful in food-borne illness class actions and MDL proceedings

Don't miss this unique opportunity to hear what others are doing in response to this growing, highly-specialized litigation. Get your questions answered and get valuable tips and practice points you can use in your own cases. Spaces will go quickly, so register now for this important event. We look forward to seeing you in Scottsdale in February.

## Who You Will Meet

- In-house Counsel with Food Manufacturers, Distributors, Suppliers and Servers
- Lawyers in Private Practice in the Areas of:
  - Product Liability
  - Food-Borne Illnesses
  - Mass/Class Actions
  - Personal Injury/Toxic Torts
- Insurance Lawyers
- Insurance Claims Counsel

## Continuing Legal Education Credits

Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This *transitional* course is appropriate for both experienced and newly admitted attorneys.



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**8:00 Registration Desk Opens  
and Continental Breakfast Served** **9:00 Chair's Opening Remarks****Alan M. Maxwell**

Weinberg Wheeler Hudgins Gunn & Dial  
(Atlanta, GA)

*Al Maxwell has defended more food-borne illness personal injury claims than any attorney in the country. He is currently involved as counsel for parties or insurers involved in the 2006 spinach E. coli outbreak, 2006 Taco Bell E. coli outbreak, 2007 Botulism outbreak, 2006 and 2007 Salmonella outbreaks (Peanut Butter and Pot Pies) and several recent outbreaks associated with ground beef.*

**9:15 Current and Emerging Food Contamination  
Litigation: Trends, New Risks and Recent Decisions****William Marler**

Marler Clark  
(Seattle, WA)

*Bill Marler has been lead counsel in a number of high-profile cases brought against Con Agra, Dole, Jack-in-the-Box, Sizzler, Wendy's and others. Mr. Marler speaks frequently on issues of safe food and is a principal in Outbreak, Inc., a non-profit business dedicated to training companies on how to avoid foodborne illness outbreaks.*

**Paul L. Kassirer**

Lester Schwab Katz & Dwyer, LLP  
(New York, NY)

*Paul Kassirer and his team have defended nationwide litigation including the Hepatitis A outbreak involving Chi-Chi's and O'Charleys, the E. coli O157:H7 outbreak involving spinach and the E. coli O157:H7 outbreak involving Taco Bell.*

Food-borne outbreaks have been occurring with unsettling frequency around the country over the past months – as has the ensuing litigation. For this informative kick-off session, two top lawyers in this area, from opposite sides of the fence and opposite coasts, will provide you with a valuable snapshot of current litigation trends and developments pertaining to food-borne illness litigation – a useful introduction and overview to the conference that follows.

**10:00 Making the Causal Link: Identifying and  
Tracing the Pathogen Responsible****Mansour Samadpour, PhD**

Microbiologist  
Institute of Environmental Health  
(Lake Forest Park, WA)

**Stephanie Meyer, MPH**

Epidemiologist  
Acute Disease Investigation and Control Section  
Infectious Disease Epidemiology, Prevention and Control  
Minnesota Department of Health  
(Minneapolis, MN)

**Alan Melnick, MD, MPH**

Department of Public Health and Preventative Medicine  
Oregon Health and Science University  
(Portland, OR)

- Causes, symptoms, incubation periods of the most serious and common offenders, including salmonella and E-coli O157:H7
- Opportunities for contamination to arise: what are most common sources along the food chain?
- The science behind using a bug's genetic "fingerprints" to trace the source of the outbreak
- Difficulties associated with tracing back products with a lower shelf life
- Using strain databases to pinpoint the source and severity of outbreaks
- What impact does the public health investigation have on later claims and litigation?

**11:15 Coffee Break** **11:30 Crisis Control: Limiting Potential Liabilities  
through Strategic Response Plans****Justin Segel**

Principal, American Pasteurization Services  
Former CEO, Emmpak Foods Inc.  
(Milwaukee, WI)

**Sarah L. Brew**

Greene Espel  
(Minneapolis, MN)

*Sarah Brew defends manufacturers, distributors and restaurants in food-borne illness cases and serves as national counsel for the world's largest producer of fresh fruits and vegetables. She is currently involved in litigation arising from E. coli O157:H7 outbreaks linked to lettuce, spinach and ground beef. Sarah also counsels clients on product safety, risk management, regulatory compliance and recall issues.*

- Policies you should have in place for responding to negative PR and media coverage
  - involvement of internal and external key policy makers
  - ensuring a cohesive communications strategy
- Responding as the problem unfolds: what to do – and what not to do
- Recalls:
  - how soon?
  - analyzing the potential harm to customers
  - factoring in your credibility to customers and their confidence in you
  - walking the line between too small and too big a recall
- Regulator involvement: what should you do?
- Sending the appropriate message out regarding the extent of the problem and steps being taken to resolve it: overcoming the challenges
- Managing the risks in ongoing litigation posed by working with PR firms or talking to the media
- Getting back on track with consumers after a crisis: getting out the right message

**12:30 Networking Luncheon  
for Delegates and Speakers**

## 1:45 **Assessing the Costs of Care and Calculating Potential Damages**

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### **Ralph Weber**

Gass Weber & Mullins  
(Milwaukee, WI)

*Ralph Weber represents food companies, including one of America's leading meatpackers, in food-borne illness cases across the country. He is involved in tracking epidemiologic investigations by CDC and state officials, managing events prior to and during recalls, and monitoring scientific developments in the ongoing efforts to control and eliminate food-borne pathogens, including E. coli O157:H7.*

- Consequences of e-coli and salmonella infection
- Determining future costs of treatment
  - initially and long-term
  - ongoing monitoring
- Emotional distress claims: what are they typically worth?
- Comparing outcomes for average person, young/old, those with compromised immune systems
- Assessing whether treatment received was necessary/appropriate/excessive/negligent

## 3:00 **Afternoon Refreshment Break**

## 3:15 **Obtaining Medical Records, Public Health Documents, and Other Key Information**

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### **Christopher T. Lee**

Dickie McCamey & Chilcote PC  
(Pittsburgh, PA)

*Christopher Lee represents a variety of international, national, and local manufacturers, processors, retailers, and distributors of food and beverages. His firm has extensive experience in these matters, having been retained as lead litigation, consulting or monitoring counsel on food-related litigation across the eastern United States, for clients including Chi-Chi's, Sheetz, Con-Agra and Topps Meats.*

### **Patti Waller**

Epidemiologist  
Marler Clark  
(Seattle, WA)

- Obtaining documents from state health departments: what's key?
- Using and expediting FOIA requests to advance your case
- Third party documentation: what's critical?
- Getting access to documents the other side has produced in other cases: where to look and what to get
- Medical records that will support your case: what to look for
- What to ask for to catch everything you need without being overly broad in the food-borne illness case

## 4:15 **Eliciting Expert Testimony for Negligence, Chain of Control and Causation**

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### **Kenneth M. Odza**

Stoel Rives LLP  
(Seattle, WA)

*Ken Odza has defended numerous claims arising from food borne illnesses, including those caused by newly detected strains of E. coli. He has extensive experience working with internationally renowned experts in microbiology, epidemiology, nephrology, neuroscience, and food handling.*

- How juries perceive experts in food cases
- Issues on which experts can boost your case
- Microbiologist, epidemiologist, virologist: which to use when
- What qualifications are key for experts who give testimony in this area?
- Using Daubert-based motions successfully in food-borne illness cases

## 5:15 **Day One Concludes**



**DAY TWO: FRIDAY, FEBRUARY 29, 2008**

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## 7:30 **Continental Breakfast** 🍴

## 8:30 **Chair's Opening Remarks**

## 8:45 **The Regulators Speak**

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### **David Goldman, MD, MPH**

Assistant Administrator  
Office of Public Health Science  
Food Safety Inspection Service, USDA  
(Washington, DC)

### **Arthur P. Liang, MD, MPH**

Director, Food Safety Initiative Activity  
Centers for Disease Control  
(Atlanta, GA)

- Roles regarding food safety
- Investigating multi-state outbreaks: what's involved and how should companies being investigated respond?
- How they work with companies on voluntary vs. mandatory recalls
- FSIS recalls
- Agency action regarding determination of ultimate source of contamination

## 9:45 **Coffee Break** ☕

## 10:00 **Trying and Settling Single-Plaintiff Food-Borne Illness Cases**

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### **Alan M. Maxwell**

Weinberg Wheeler Hudgins Gunn & Dial  
(Atlanta, GA)

### **William Marler**

Marler Clark  
(Seattle, WA)

- What plaintiff's counsel see as high-potential cases
- Assessing defense culpability—when to fight and when to settle
- Jury selection considerations for contamination cases
- Using exhibits effectively: examples that worked
- Alleging and defending punitive damages claims

## 11:15 **Critical Considerations When Attributing Fault and Resolving Third Party Claims**

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### **Frederic L. Gordon**

Gordon & Holmes  
(San Diego, CA)

With over 15 years of experience in food contamination cases, Fred Gordon has represented Jack-in-the-Box, Sizzlers, Pat & Oscar's, Chi Chi's and Sheetz in food-borne illness outbreaks, including the largest e-coli and hepatitis A outbreaks in U.S. history.

Although actions brought by consumers because of food outbreaks grab more of the headlines, third party lawsuits are an enormously significant component of food-borne illness litigation. Be it restaurants suing suppliers, suppliers suing distributors – the issues can get complex quickly. Hear from a lawyer who specializes in bringing lawsuits on behalf of restaurants and other entities who, like the consumers, have been the victim of an outbreak. Topics will include:

- To sue or not to sue: key criteria for making the call
- Factoring insurance considerations into your overall approach
- Warranties, guarantees and breach of contract allegations
- Dealing with the bankrupt supplier: special considerations
- Practical strategies for cases where multiple defendants are involved

## 12:00 Networking Luncheon for Delegates and Speakers

## 1:15 Special Considerations for Food-Borne Illness Class Actions and MDL Proceedings

**James F. Neale**  
McGuire Woods LLP  
(Charlottesville, VA)

*Jim Neale currently represents ConAgra in state, federal, and MDL-related litigation stemming from ConAgra's recent voluntary recalls of peanut butter and pot pies. As co-chair of the Food Borne Illness Litigation Practice Group at McGuire Woods, he regularly coordinates large scale food safety litigation in state and federal courts.*

**Ron Simon**  
Simon & Luke LLP  
(Houston, Texas)

*Ron Simon and his firm are currently prosecuting over 1000 food borne illness claims against Con Agra, Hilton Hotels, Dole, Taco Bell, and others. Ron is one of several lead counsel prosecuting salmonella poisoning claims nationwide as a result of the Peter Pan Peanut Butter outbreak.*

- Why class actions are often less successful in this context: what are the roadblocks?
- Under what circumstances are plaintiffs seeking to consolidate actions – and how are defendants responding?
- Using individualized factual issues of causation and damages to defeat class certification
- Rule 23 factors in the food safety arena
- MDL processes and procedures: what you need to know to prevail
- Where have plaintiffs been most successful in food-borne illness class actions and MDL proceedings?
- Cases to watch: which are of most concern to potential defendants – and why?

## 2:15 Ensuring Claim Coverage and Contribution: Essential Insurance Insights for Food Contamination Cases

**John J. McDonough**  
Cozen O'Connor  
(New York, NY)

*John McDonough is Chair of the firm's Food Liability Practice area. He has extensive experience in defending well-known food-related product liability actions, including the Chi-Chi's hepatitis cases, various E. coli cases, and the Robert's American Gourmet salmonella-contamination claims.*

- Using coverage to limit liability for third-party acts or omission
- Putting notification frameworks in place to minimize coverage disputes
- Where do insurance companies dispute payment?
- Basis for denial of coverage
- Remedies available

## 3:15 Q&A Wrap-Up and Conference Concludes

**PRE-CONFERENCE WORK SHOP: WEDNESDAY FEBRUARY 27, 2008**  
2:00 - 5:00 PM

## Master Class on Specialty Insurance Coverage for Food-Borne Illness Outbreaks and Recalls

Speaker TBD

Many companies have waited until disaster strikes to investigate whether this specialty insurance coverage is for them – sometimes because they mistakenly thought it was part of their general commercial liability coverage. With the recent spate of outbreaks, this coverage has seen a dramatic upsurge in popularity. In this intensive, interactive session, get a comprehensive overview of how covered risks are assessed and underwritten, an analysis of the risks and benefits, and practical discussion about all the elements that go into these specialty policies. Topics will include:

- Determining the scope of the coverage: critical considerations
- Identifying potential exposure: steps for evaluating potential areas of loss
- Coverage based on the insured's determination of necessity v. the occurrence of specific events in a recall
- Defining terms: which are most problematic later?
- Analysis of key clauses and considerations
- Incorporating a company's insurer-approved recall plan into the policy
- Exclusions to watch out for: what do they really mean?
- Detecting – and clarifying – uncertainties in the contract language

Whether you are an insurer assessing your own specialty coverage in this area or are in-house with a food co and are looking at ways to limit your exposure, this workshop is an excellent opportunity to get the A to Z on this increasingly sought-after coverage.



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# FOOD-BORNE ILLNESS LITIGATION

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February 28 & 29, 2008

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## PRE-CONFERENCE WORKSHOP

FEBRUARY 27, 2008

Master Class on Specialty  
Insurance Coverage for  
Food-Borne Illness  
Outbreaks and Recalls

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