

# **MARLER CLARK**

THE FOOD SAFETY LAW FIRM

# To Put Things in Perspective



- According to the CDC, 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



# The Anatomy of a Foodborne Illness

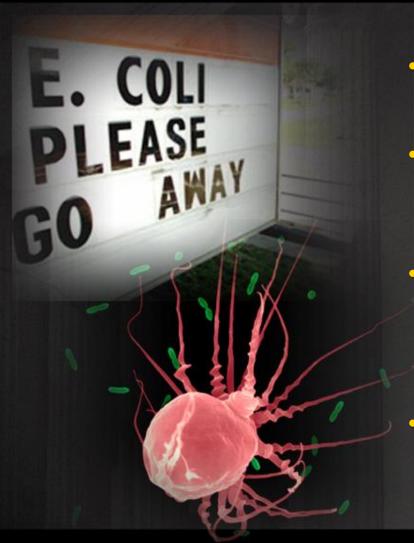


# John Doe v. the Food Industry

- Negligence
- Breach of Warranty
- Strict liability
  - But what if outbreak circumstances are unclear?
  - Production environment takes center stage



## 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



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uly 24. 1992

Wendy Cochinella Shift Leader JACK IN THE BOX #8466 3618 172nd. St. H.E. Arlington, WA 98223

Dear Nendy:

We have received your suggestion regarding increasing the cooktime

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 and 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 suclosing this contribute to the submitting suggestions is eligible to receive one gift per quarter with their first angustion.

Sincerely,

Randell & Hoggan

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 Mconitty Janice Eubank, Restaurant Manager Jases Rex Lynch - Northwest

roggest/jad/sugboat4



to the same of the same San Ca William 6/19/3773-2123





August 28, 1992

Total In the Control of the Control

Westly Cochinella Shift Leader JACK IN THE BOX 89466 3818 172nd, St. N.E. Artiogram, WA 98223

Dear Westly:

Thank you for your suggestion that we increase the cookline for our regular person.

We have researched your segretion and determined that with the variability of our grill semperatures (150° = 400°) the two minute cookstant is appropriate. If the puries we cooked longer than two minutes, they tend to become tough. To ensure that you are mosting quality emperatures for regular protect, please enture that the grill temperature is carried and grill performed are using proper protections.

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

ce: Stephanie Green
Vanessa Franchin
Mike McQuirty
Janice Eubank, Restaurant Manager 18466
Ed Mulhausen - Northwest
Rex Lyoch - Northwest

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### Dole Listeria

- Food residue observed on multiple pieces of equipment
- Cutting boards observed to have deep groves
- Facility floors contained deep cracks, ruts and groves
- No caulk between stainless steel curbs and walls
- Peeling paint and rust on walls
- Gaps along dock plates allowing pest access
- Finished Product and in-process samples collected by FDA during inspection were + for Lm
- Samples matched 19 illnesses in PulseNet database from previous 6 months





### I.M. Healthy and Dixie Dew E. coli O157:H7

- Liquid substance dripping from a hole in the ceiling
- Product and black filth on processing room floor
- Restroom cleaning equipment intermingled with production floor cleaning equipment
- Mixing kettle lid and maintenance tools stored on floor
- Had not disassembled processing equipment since 2015
- Did not routinely sanitize pipes, fittings, gaskets and seals
- Fly infestation in firm's quality control laboratory
- Product was already linked to an E. coli O157:H7 outbreak involving 32 persons





## Vulto Cheese Listeria

- Employee with multiple cuts and abrasions was observed dipping arms up to elbows in cheese vats
- Using wooden boards that are not easily sanitized
- Condensation dripping onto food contact surfaces
- Floors were cracked and pitted
- Over 20 months, 54 out of 198 samples positive
- 10 positives were from FCS from 2014 2015
- (Corrective Action stopped sampling FCS)
- Finished products collected and tested [+]
- 8 Illnesses (which included 2 deaths) between September 2016 through March 2017





# A Nameless Colorado Restaurant



This Photo CC BY-Sa



### Case Details

- Tom and 2 friends; one is a co-worker; all have chicken items
- Onset within 24 hours; loose stool for friend
- No other reported cases
- No recognized outbreak
- No pathogen identified
- But . . . The environmental investigation



# A Nameless California Grower



### Case Details

- AZ Mexican restaurant
- Case control: head lettuce (iceberg)
- No micro positives
- No identifiable environmental restaurant source
- Lettuce from CA
- Lawsuit and discovery
- Location, location



# What Will a Jury Think?

A Jury = 12 Consumers

