

FOOD FIGHT!

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How to survive an outbreak

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A real life restaurant nightmare: Chi-Chi's, Inc.



The largest Hepatitis A
outbreak in U.S. history



Chi-Chi's, Inc. background

100+ store Mexican restaurant chain located in the Midwest and East

Contaminated green onions served at a restaurant outside of Pittsburgh in October 2003

Company had filed for bankruptcy three weeks before the outbreak

before the outbreak





The numbers

660

People who became sick

550

Number of legal claims filed

4

Deaths

1

Liver transplant

10,000

People who received IG shots

30

Days of nonstop local media attention



CATALYST
corporate renewal solutions

Alvarez & Marsal Capital RE

HUGH HILTON

An ounce of prevention...

...is worth a pound of cure

Review all supplier contracts for:

- Express standards of care;
- Indemnification language; and
- Demand being additional insured

Make sure your suppliers have adequate insurance

Make sure your food handling procedures are up to date

Review the fine print in your insurance policy to understand coverage issues

Have an in-house crisis plan and crisis team in place



Expect the unexpected



Surprise inspection by the state:

No explanation of the purpose of the inspection

360 degree media assault

Sound bites and smoking guns

Guilty until proven innocent

Personal injury lawyer assault

Insurance company coverage experts weigh in

Class action lawsuit





Develop a fact base before you act

Secure and contain the problem



Get your epidemiologist in the field as soon as possible



Use your attorney and crisis communication firm to gather all facts and stories from all media sources



Cause of outbreak



Knowledge is power:

- Know the law because your adversaries will!
 - Product liability law
- Look for recent changes in the law

the law

• look for recent changes in



David A. Ernst

LEGAL PERSPECTIVES



... cost an estimated \$3-\$7 billion
each year

- According to the CDC, microbial pathogens in food cause an estimated 76 million cases of human illness annually in the United States
- 325,000 people hospitalized per year
- Up to 5,000 deaths can be attributed to foodborne illness



The Legal Landscape

If your clients' restaurant sells contaminated food, you can be held liable regardless of whether your employees had anything to do with the contamination

It is called strict liability for a reason

It does not matter if you took all reasonable precautions

So long as the food caused the injury, your company will be held responsible

You may be able to transfer that liability upstream later, but that does not help in the middle of an outbreak





The legal response

550 claims resolved in mediations

No lawsuits, trials and
accompanying litigation expense

99% success rate in mediations with
lawyers and clients



Recommendations: How to survive an outbreak

1

All existing documentation which has any possible connection to the event must be **immediately** secured.

All food purchase documentation for at least three months before the incident

All vendor agreements, contracts, or communication around the relevant time period

All insurance information, both for the company and it's suppliers



Recommendations: How to survive an outbreak

1

(continued)

All food safety documentation for at least three months before the incident

Employee schedules or time records for at least one month before the incident

All health inspection reports for at least three years before the incident

All written food preparation instructions, including ingredients and recipes



Recommendations: How to survive an outbreak

2

You must demonstrate ethical, operational, and legal transparency at all times. Without transparency, your client's brand cannot survive. Transparent: "free from guile, candid or open."

3

Preparing a lawsuit defense is not a priority while you are in the middle of an outbreak situation. Lawyers will still be around a few years later; your restaurant may not.

4

Seek help!! See listing of internet resources in course materials.



Coordinate your investigation

Deploy
your
team:

- A company can not deal with operations and with an outbreak without a team of the following:
 - Epidemiologist
 - Defense Counsel
 - Crisis Communication Firm
 - Risk Management Firm



When ready to act, act decisively & precisely:

Express compassion and sympathy

Promise to do the right thing

Set up a “Hot Line” to triage customer illnesses

- This will minimize long-term payouts

Counsel

- Settled over 500 claims within a year; amazing!

Work with PI Counsel to tone down the rhetoric

Use local people to communicate with the press not a “corporate suit”

Whenever possible, use government agencies to carry the message



| It ain't over 'til it's over

Mining for antibodies

Personal injury attorneys working the press
to leverage a settlement

International trade embargo



Questions?



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- Over 500 lawyers
- Full-service transactional, litigation and regulatory practices
- Strong industry teams, particularly in communications, media, technology, health care, energy, financial services, hospitality and life sciences

