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Legal Implications of Zoonotic-Disease Outbreaks at Petting Zoos and Animal Exhibits

Editor's note: From April 2001 to March 2004, the Journal featured a Legal Briefs column that presented short case studies about legal issues important to environmental health professionals. Vincent Sikora, the author of Legal Briefs during that time, passed away in December 2003. Because his columns were well received by many of our readers and provided practical and relevant legal information, we decided to search for a committed columnist with the appropriate knowledge and experience to restore Legal Briefs. As a result of our search, we found several insightful and dedicated columnists: Bill Marler, Denis Stearns, Drew Falkenstein, Patti Waller, and David W. Babcock, all of the law firm Marler Clark. Their columns will appear in every other issue of the Journal.

*The attorneys at Seattle-based Marler Clark, LLP, PS (www.marlerclark.com) have developed a nationally known practice in the field of food safety. Marler Clark represents people who have been seriously injured, or the families of those who have died, after becoming ill with foodborne illness during outbreaks traced to restaurants, grocery chains, and other food suppliers. The attorneys have litigated thousands of food contamination cases throughout the United States, many of them high-profile, including the Jack in the Box and Odwalla *E. coli* outbreaks; the Malt-O-Meal, Sun Orchard, and Chili's Salmonella outbreaks; the Senor Felix Shigella outbreak; and the Subway and Chi-Chi's hepatitis A outbreaks.*

David W. Babcock, the author of this month's installment, joined Marler Clark as the firm's senior litigation associate in 2001. Representing children and the elderly has been central to Mr. Babcock's practice at Marler Clark, where he focuses on litigation resulting from foodborne-illness outbreaks.

I grew up in the suburbs of Boston. The farmland that colonial settlers had occupied in my town had long since given way to housing developments and high-tech firms. I didn't grow up with exposure to livestock through family farms, agricultural fairs, and civic organizations as many other Americans do. Nevertheless, it is plain that livestock exhibitions are "as American as apple pie."

Unfortunately, these same exhibitions have occasionally been the sources of large outbreaks of zoonotic diseases. Outbreaks of *E. coli* O157:H7 at the North Carolina State Fair in 2004 and at three large public fairs in Florida in 2005 left more than 100 children ill, and dozens in life-threatening battles with hemolytic uremic syndrome (HUS).¹

The good news is that the recent outbreaks—and their attendant legal consequences—have increased awareness. Previously existing standards for safer exhibition of animals are being encoded more forcefully into law. More exhibitors will, one hopes, heed the calls previously issued by the Centers for Disease Control and Prevention (CDC) and by veterinarians: to take steps to reduce the likelihood of zoonotic-disease transmission to animal exhibition patrons—and to young children in particular.

The risk of transmission in exhibition settings of zoonotic diseases in general and *E. coli* O157:H7 in particular is not—or should not be—news. A survey of the literature, including CDC's *Morbidity and Mortality Weekly Report* (MMWR), reveals at least 23 outbreaks of zoonotic disease, including illnesses from *E. coli* O15:H7, associated with animal exhibitions in the United Kingdom and the Unit-

ed States before the recent outbreaks in North Carolina and Florida.² These prior outbreaks included an *E. coli* O157:H7 outbreak associated with a county fair in Medina, Ohio, in August, 2000; two *E. coli* O157:H7 outbreaks in Pennsylvania in 2000 and 2001 associated with farm animals; 92 *E. coli* O157:H7 cases associated with the Wyandot County Fair in Ohio in September 2001; and the largest *E. coli* O157:H7 outbreak in Oregon history at the Lane County Fair in September 2002.

In addition, research has shown that *E. coli* O157:H7 is prevalent even among the prize livestock exhibited at agricultural fairs. A 2003 study on the prevalence of *E. coli* O157:H7 in livestock at 29 county and three large state agricultural fairs in the United States found that *E. coli* O157:H7 could be isolated from 13.8 percent of beef cattle, 5.9 percent of dairy cattle, 3.6 percent of pigs, 5.2 percent of sheep, and 2.8 percent of goats. Over 7 percent of pest-fly pools also tested positive for *E. coli* O157:H7.³

Against this backdrop, CDC published recommendations for reducing the risk that enteric pathogens will be transmitted at petting zoos, open farms, and animal exhibits.⁴ The most updated version of these recommendations can be found on CDC's MMWR Web site.⁵ These recommendations arise out of several documented outbreaks in which enteric pathogens were passed to humans in such settings. Draft recommendations were published in MMWR on April 20, 2001⁶; readers were invited to submit comments and suggestions; and the final recommendations were posted on the Internet on October 26, 2001.⁷ The recommendations encapsulated

on the CDC Web site and in *MMWR* were created by the National Association of State Public Health Veterinarians (NASPHV).

In addition, the Pennsylvania legislature enacted a law mandating standards for animal exhibition sanitation.⁸ The Pennsylvania law requires animal exhibit operators to “promote public awareness of the risk of contracting a zoonotic disease” by posting notices. The law further requires adequate hand-cleansing facilities and prohibits the exhibition of any animal not properly cared for by a veterinarian.

Thus, even before the outbreaks in North Carolina and Florida in the fall and winter of 2004–2005, the risk of disease transmission and the means of reducing that risk were well known. This common knowledge forms the basis of legal liability for both the private and governmental entities that operate animal exhibitions. While laws vary from state to state, the liability of these entities to those sickened through exposure to animals on site would be based in the premises of both liability and negligence. (For a longer discussion of negligence, see “An Introduction to Liability, Negligence, and All Things in Between: Part I” by R. Drew Falkenstein.)⁹

Under premises liability law, the entity or entities responsible for managing an animal exhibition have a duty of care to those it invites onto the premises. This duty includes the responsibility to adequately reduce risks the entity is or *should be* aware of. The duty also carries a responsibility to warn fairgoers of risks present at the exhibition.

The principles of negligence also revolve around the risks to fairgoers that animal exhibitors know of or reasonably should know of. To successfully bring a negligence claim, a sickened person would need to show that the actions of an animal exhibitor fell below a reasonable standard of care in the operation of the exhibit. Failing to implement the well-established recommendations of the CDC and NASPHV constitutes falling below that standard of care.

Both bases for liability on the part of animal exhibitors—premises liability and negligence—carry with them a burden of education on the part of the exhibitor. Because the law holds people to a standard of what they reasonably should know, ignorance of the risks involved is not an effective defense. The law thus provides no impetus to stray from the course of action that is best for both customers and exhibitors in the first place—recognizing the risk and taking steps to reduce it.

Fortunately, the outbreaks in North Carolina and Florida and the subsequent legal actions have led to the production and dissemination of even more instruction on making animal exhibits safer. Following the *E. coli* O157:H7 outbreak in North Carolina, the Terry Sanford Institute of Public Policy at Duke University contracted with the North Carolina Department of Health and Human Services to develop recommendations on regulating petting zoos. The researchers concluded:

In response to the largest outbreak of *Escherichia coli* (*E. coli*) in North Carolina history, we recommend that the North Carolina Department of Health and Human Services (DHHS) issue guidelines and pursue legislation that will control public contact with animals, inform the public of risks related to animal contact, provide transition areas, regulate animal care, and license petting zoos.¹⁰

The North Carolina Legislature subsequently adopted “Aedin’s Law,”¹¹ named after a young child who was severely injured in the outbreak. According to the preamble of the bill, the child was hospitalized for 36 days and will suffer lifelong injury from complications of HUS. Aedin’s Law requires that animal exhibitors acquire a public permit. The bill further requires the North Carolina State Board of Agriculture to adopt regulations in line with those of the Duke University study and CDC.

There are benefits to continuing the tradition of animal exhibits—it is a recreational and educational link to our country’s ongoing agricultural heritage. Slowly heeding the hard lessons learned, private, public, and legal forces are at work to reduce the risks associated with this pastime. Animal exhibitors are unwise to view these changes as a threat, or those working for change as enemies. Likewise, it is shortsighted to resist the recommendations and guidelines offered to make the animal exhibits safer. The long-term existence of animal exhibits to the public cannot be assured in an environment that permits the possibility of large-scale, life-threatening disease outbreaks like those that occurred in North Carolina and Florida. And the best way to keep the lawyers out of it is to keep the children safe. 🐾

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