

NOTABLE FOOD CASES

Jack in the Box *E. coli* O157:H7 Outbreak Litigation

In 1993, four children died and over 500 others were severely injured after consuming *E. coli* O157:H7 contaminated hamburgers purchased at Jack in the Box restaurants in the western United States. Brianne Kiner, a nine-year-old girl who was the most severely injured survivor of the outbreak, suffered from Hemolytic Uremic Syndrome (HUS), a complication from her *E. coli* infection, which caused severe kidney damage. Brianne's large intestine was removed, and her pancreas damaged. She became an insulin-dependent diabetic. Brianne fell into a 42-day coma while she was ill, and suffered mild cognitive impairment. William Marler represented Brianne in her \$15.6 million settlement with Jack in the Box. Brianne's settlement was the largest personal injury award in Washington State history.

Chi-Chi's Hepatitis A Outbreak Litigation

Over 650 people were confirmed ill with hepatitis A after eating undercooked or raw green onions at a Chi-Chi's restaurant at the Beaver Valley Mall in Monaca, Pennsylvania, in 2003. Four persons died after contracting the virus. In addition, more than 9,000 persons who had eaten at the restaurant during the period of potential exposure, or who had been exposed to ill persons, obtained Immune globulin shots as protection against the hepatitis A virus. Marler Clark represented eighty individuals who contracted hepatitis A infections. The firm settled claims on behalf of all clients, including the claim of a man who went into acute liver failure, and received a transplant, for \$6.25 million. Marler Clark also settled a class action lawsuit on behalf of all individuals forced to receive Immune globulin shots to prevent infection with hepatitis A after being exposed to the virus.

Chili's *Salmonella* Outbreak Litigation

Over three hundred people who ate food from a Chili's restaurant in Vernon Hills, Illinois between June 23, 2003 and July 1, 2003 were reportedly infected with *Salmonella* Javiana. An investigation conducted by the Lake County Health department revealed a host of deficiencies and safety violations that were said to have contributed to the outbreak, or made it worse. These included the operation of the restaurant one or more days without available hot water, the operation of the restaurant for part of the following day with no available hot water, a general lack of hand-washing that caused contamination of multiple food items, and a dish-machine sanitizer that failed due to lack of repair. Twenty-eight employees tested positive for the bacteria. After filing five individual lawsuits and a class action lawsuit seeking punitive damages, Marler Clark settled the claims of 53 individuals who were sickened in the outbreak in August, 2004.

Gateway Cold Storage Anhydrous Ammonia Litigation

In November, 2002, nearly four dozen children and two teachers at Laraway Elementary School near Chicago became ill after consuming ammonia-tainted chicken fingers provided by the National School Lunch Program. The chicken had been fumigated and shipped to school districts after being contaminated in an anhydrous ammonia leak at a St. Louis-based US Department of Agriculture commodities storage facility in November, 2001. The Illinois Attorney General convened a grand jury to look into the incident, and charges were filed against several government and corporate officers. Marler Clark filed a lawsuit against Gateway Cold Storage and Lanter Refrigeration on behalf of seventeen students and two teachers who became ill after consuming chicken tenders for school lunch. The firm settled the claims of 54 clients for confidential sums in August of 2004.

Finley School District *E. coli* O157:H7 Outbreak Litigation

Marler Clark represented eleven children against Finley School District in a lawsuit when ten schoolchildren became ill with *E. coli* O157:H7 infections after eating undercooked hamburger served in tacos at Finley Elementary School in 1998. Faith Maxwell, a preschooler who was infected and developed HUS after playing with one of the schoolchildren who tested positive for an *E. coli* infection, was the most severely injured child tied to this outbreak. A Washington State jury awarded the children \$4.6 million, with the majority going to Faith, who was awarded \$1 million for future medical expenses and \$2 million for future pain, suffering, and loss of enjoyment of life, such as lost wages and emotional distress. She also was awarded \$600,000 as compensation for her past suffering.

Brook-Lea Country Club Salmonella Outbreak Litigation

Two outbreaks of *Salmonella* Enteritidis at the Brook-Lea Country Club in Rochester, New York, in June and July, 2002 resulted in 106 illnesses. After an 18-day period in which kitchen staff and patrons became ill, a Health Department investigation traced the source of several *Salmonella* infections to infected food handlers at Brook-Lea Country Club. The club was fined because management was aware of the potential health risk, but failed to report ill workers to health authorities. Marler Clark represented seventy victims from these outbreaks in a lawsuit that alleged Brook-Lea Country Club management did nothing to discourage or prevent the possibility of further infections among its patrons or staff after it became aware of the apparent outbreaks.

Subway Hepatitis A Outbreak Litigation

Two Subway sandwich shops were determined to be the source of a hepatitis A outbreak that sickened at least 31 King County, Washington, residents in 1999. They most often begin two to six weeks after exposure, and can last for up to two weeks. While preventative treatment is effective when administered within fourteen days of exposure to the virus, after fourteen days, preventative treatment is not an option. By the time health authorities determined the source of this outbreak, dozens had been sickened, and preventative measures could not be taken. Marler Clark filed a class-action lawsuit on behalf of Anita Schuerhoff and 28 other victims who contracted hepatitis A after eating at Seattle and Shoreline, WA Subway outlets, and settled this lawsuit for \$1.6 million. A class-settlement was also obtained on behalf of persons forced to get immune-globulin inoculations as a result of exposure to infected friends and family members.

Odwalla *E. coli* O157:H7 Outbreak Litigation

The Centers for Disease Control and Prevention linked 66 *E. coli* O157:H7 infections and one death to unpasteurized Odwalla apple juice in 1996. William Marler and Denis Stearns represented several children who were infected with *E. coli* and developed Hemolytic Uremic Syndrome (HUS) in connection with this outbreak. Five of the children Marler and Stearns represented developed HUS during the course of their illnesses, and were hospitalized for weeks while they underwent kidney dialysis. A federal grand jury in Fresno, California, concluded that Odwalla broke food safety laws in the shipment of tainted apple juice, and the company pleaded guilty to more than a dozen misdemeanor charges, paying \$1.5 million in criminal fines. The company settled with the families of the infected children for an amount reported to be between \$12 and \$15 million.

ConAgra *E. coli* O157:H7 Outbreak Litigation

ConAgra's recall of 19 million pounds of ground beef due to *E. coli* O157:H7 contamination in the summer of 2002 was the largest ground beef recall in history. Dozens of people became ill as a result of consuming contaminated ground beef, several children developed HUS, and an Ohio woman died. Marler Clark represented thirty individuals and families of individuals who were infected with *E. coli* in connection with this outbreak. The firm settled all the cases for confidential sums.

Dominguez v. Lamppost Pizza and Draft Beer Maintenance Company

In December, 2000, Steven Dominguez drank a sample of beer at the Lamppost Pizza restaurant in Huntington Beach, California. He immediately felt an extremely painful burning sensation in his mouth, throat, and stomach, which he tried to alleviate by drinking water. He then started vomiting blood. Mr. Dominguez had consumed a toxic solution consisting of potassium hydroxide and beer. The day before Mr. Dominguez was poisoned, Draft Beer Maintenance Company had cleaned the tap line connecting the draft beer keg to the bar tap with a chemical cleaner. That line had not been flushed following its cleaning, and contained a significant concentration of potassium hydroxide. Mr. Dominguez was hospitalized for nearly a month after the incident, requiring surgery, and will need extensive surgery in the future. His case settled for an undisclosed sum.