



Talk to a lawyer about your case ▶

American Conference Institute's 6th National Forum on **FOOD-BORNE ILLNESS LITIGATION**

Advanced Strategies for Defending and Managing High-Profile Food Contamination Claims

November 20, 2012 | Hilton Suites Chicago Magnificent Mile | Chicago, IL

1. **Case Overview:** Contamination and food poisoning litigation. Case law: *Shelton v. American Conference Institute*.

2. **Case Analysis:** The plaintiff's claim is based on the defendant's failure to follow industry standards. The defendant's liability is based on its failure to follow industry standards.

3. **Case Outcome:** The plaintiff won a \$15.6 million settlement.

4. **Case Significance:** This case is significant because it established a new standard of care for food safety.

5. **Case Lessons:** Food safety is a complex issue. Defendants should take steps to ensure compliance with industry standards.

6. **Case Resources:** For more information, visit www.americanconferenceinstitute.com.

Free consultation with an experienced attorney.
Click here.



Upset Stomach

Notable cases handled by Marler Clark, a legal firm specializing in food-borne illnesses

- **1993:** \$15.6 million settlement with Jack in the Box, undercooked hamburgers
- **1996:** \$12 to 15 million settlement with Odwalla Inc., contaminated apple juice
- **2001:** \$11 million settlement with BJ's Wholesale Club, contaminated hamburger
- **2003:** \$6.25 million settlement with Chi-Chi's, contaminated onions

Source: WSJ research

LISTERIA OUTBREAK

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN

Angela Compton, individually and as guardian Ad litem for the minor children MC and CC,

Plaintiff,

Case No. 12-2648

vs

Chamberlain Farm Produce, Inc; and Wal-Mart Stores, Inc.,

AMENDED COMPLAINT

Defendants.

COUNARD & HEILMANN, PLLC
By: Michael G. Heilmann (P33034)
Co-Counsel for Plaintiffs
2320 West Jefferson Avenue
Trenton, MI 48183
(734) 692-0033 (telephone)
(734) 692-0925 (facsimile)

MARLER CLARK
By: William D. Marler
(Pending Pro Hac Vice Admission)
Co-Counsel for Plaintiffs
1301 Second Avenue, Suite 2800
Seattle, WA 98101
(206) 346-1890 (telephone)
(206) 346-1898 (facsimile)

AMENDED COMPLAINT

NOW COMES PLAINTIFF ANGELA COMPTON, by her attorneys, MICHAEL HEILMANN AND MARLER CLARK LLP, pursuant to MCR 2.118(A)(1), to allege and state as follows:

I. PARTIES

1. The amount in controversy is in excess of Twenty-Five Thousand (\$25,000.00) Dollars or is otherwise within the jurisdiction of this Court.
2. At all times material hereto, the plaintiff Angela Compton was a resident of Battle Creek, Calhoun County, State of Michigan.

FSMA AND THE CURRENT STATE OF FOOD SAFETY (LITIGATION): SOME PERSPECTIVES OF A LONGTIME FOOD SAFETY ATTORNEY

Denis Stearns, Professor, Seattle University Law School
Founding Partner/Of Counsel, Marler Clark, LLP, PS
Owner/Principal, Stearns Law, PLLC



Dole & Natural Selections, Fall 2006

How a Tiny Law Firm Made Hay Out of Tainted Spinach

Before health officials warned the public about bad spinach, before grocers yanked fresh spinach off their shelves, before consumers cleaned out their refrigerators, the Seattle law firm Marler Clark had filed its first bad-spinach lawsuit.

Then, as word of the bacteria outbreak began to spread this month, lawyers at the firm posted messages on the firm's E. coli blog, www.ecoliblog.com. They reached out to reporters and waited for the calls and emails to stream in. Now Marler Clark is representing 76 clients. Bill Marler, a 49-year-old partner in the firm, tracks them with Post-it Notes on a U.S. map hanging in his office.



Food safety: No guarantees



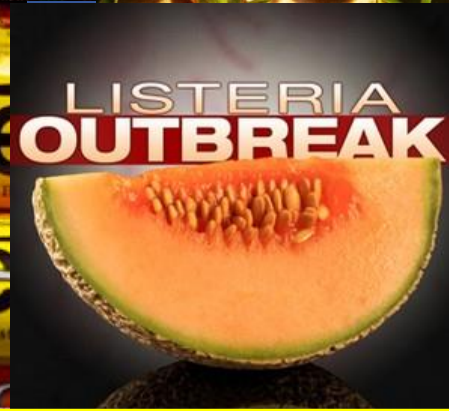
205 people were sickened by E. coli and five died after eating fresh spinach last September. The victims included 2-year-old Kyle Algood of Chubbuck, Idaho.



FSMA's Origin



RECALL



**ONE OUTBREAK, AFTER ANOTHER,
AFTER ANOTHER, AFTER ANOTHER...**



- 714 persons infected in 46 states, from 9/01/08 through 03/31/09
- Nine confirmed deaths



“[The third-party auditor] gave PCA glowing reviews,” said Rep. Henry A. Waxman_(D-Calif.), chairman of the Congressional Committee. "The company was selected by PCA, paid by PCA, and realized that if they didn't give PCA a glowing review, they were not going to get hired again.

2010 Food Safety Modernization Act

“Congress enacted the FSMA – which was signed into law on January 4, 2011 – to modernize food safety laws and regulations by mandating science-based standards and controls; by providing the FDA with greater authority to prevent and address food safety hazards by taking steps to prevent them from occurring; by strengthening the FDA’s inspection and enforcement powers; and by improving coordination among federal, state, and foreign food safety agencies.” *Ctr. for Food Safety v. Hamburg*, 954 F. Supp. 965 (ND Cal. 2013).



111TH CONGRESS
2^D SESSION

S. 510

AN ACT

To amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

2

1 SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CON-
2 TENTS.

3 (a) SHORT TITLE.—This Act may be cited as the
4 “FDA Food Safety Modernization Act”.

5 (b) REFERENCES.—Except as otherwise specified,
6 whenever in this Act an amendment is expressed in terms
7 of an amendment to a section or other provision, the ref-

H.R. 2751 (111th): FDA...

215-144

Passed

House Vote #661 – 12/21/10

S. 510 (111th): FDA Food...

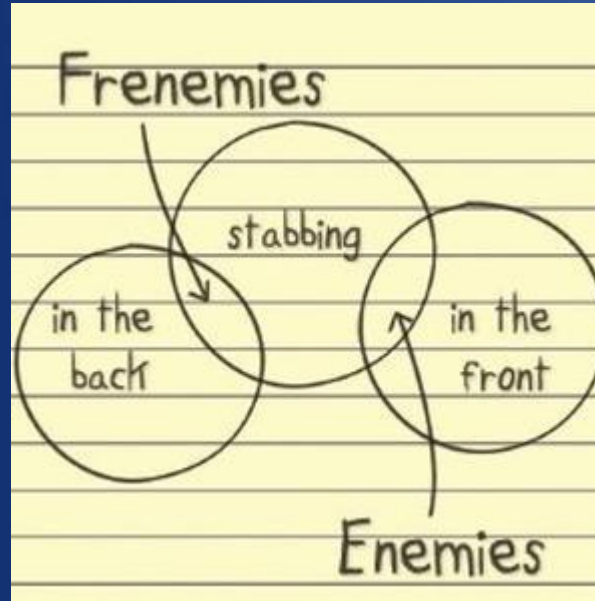
73-25

Passed

Senate Vote #257 – 11/30/10



A BIT OF CONFESSION



FSMA and I are Frenemies

TURNING A BLACK SWAN WHITE...



THE PETRIE-FLOM CENTER
FOR HEALTH LAW POLICY, BIOTECHNOLOGY,
AND BIOETHICS AT HARVARD LAW SCHOOL

Events

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For Students

Events » Conferences » 2013-2014 » New Directions for...

New Directions for Food Safety: The Food Safety Modernization Act and Beyond

February 21, 2014 8:30 AM - 4:30 PM

Conferences

2013-2014

Austin Hall, Ames Courtroom (200)

1515 Massachusetts Ave., Cambridge, MA

▶ VIDEO: Peter Barton Hutt, Keynote: "The Food Safety Modernization Act in Historical Perspective"

▶ VIDEO: Panel 1, Jacob E. Gersen, "Political Economy & Political Psychology in Food Safety"

▶ VIDEO: Panel 1, Michael Roberts, "The Regulation of Food Fraud Under FSMA: A Triggering of Obligations"

▶ VIDEO: Panel 1, Audience Q & A

▶ VIDEO: Panel 2, Denis Stearns, "Turning a Black Swan White: Questioning the Need for Regulation of Non-Industrial Agriculture"



Feral pigs. (Kim Bartlett)

<https://vimeo.com/92547062#t=4m6s>

FSMA FINAL RULES: KEY DATES

2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
<p>SEP 17, 2015 (PCHF) Preventive Controls Human Food Final Rule Published</p> <p>SEP 17, 2015 (PCAF) Preventive Controls Animal Food Final Rule Published</p> <p>NOV 16, 2015 (PCHF) Preventive Controls Human Food Effective Date</p> <p>NOV 16, 2015 (PCAF) Preventive Controls Animal Food Effective Date</p> <p>NOV 27, 2015 (FSVP) Foreign Supplier Verification Program Final Rule Published</p> <p>NOV 27, 2015 (PS) Produce Safety Final Rule Published</p>	<p>JAN 01, 2016 (PCHF) Very Small Businesses retain records to support Qualified Facility status</p> <p>JAN 26, 2016 (FSVP) FSVP Effective Date</p> <p>JAN 26, 2016 (PS) Produce Safety Effective Date</p> <p>JAN 26, 2016 (PS) Farms eligible for the qualified exemption to retain records to support eligibility</p> <p>APR 06, 2016 (ST) Sanitary Transportation of Human and Animal Food Final Rule Published</p> <p>MAY 27, 2016 (IA) Intentional Adulteration Final Rule Published</p> <p>JUN 06, 2016 (ST) Sanitary Transportation Effective Date</p> <p>JUL 26, 2016 (IA) Intentional Adulteration Effective Date</p> <p>SEP 19, 2016 (PCHF)^{1,2,3,4} Large Business</p> <p>SEP 19, 2016 (PCAF)^{2,3} Large Business CGMP compliance</p>	<p>JAN 01, 2017 (PCAF) Very Small Businesses retain records to support Qualified Facility Status</p> <p>JAN 26, 2017 (PS)¹ Sprouts - Large Farms</p> <p>APR 06, 2017 (ST) Large Business</p> <p>MAY 30, 2017 (FSVP)^{1,6} Importer not subject to PC or produce rules</p> <p>MAY 30, 2017 (FSVP)^{1,6} Importer of human food whose Large Foreign Supplier required to comply with PCHF</p> <p>MAY 30, 2017 (FSVP)^{1,6} Importer of animal food whose Large Foreign Supplier is subject to PCAF CGMP requirements</p> <p>JUL 26, 2017 (FSVP)^{1,6} Importer whose Large Foreign Supplier required to comply with: sprout requirements of Produce Safety Rule</p> <p>SEP 18, 2017 (PCHF)^{1,2,3,4} Small Business compliance</p> <p>SEP 18, 2017 (PCAF)^{2,3} Small Business CGMP compliance</p> <p>SEP 18, 2017 (PCAF)^{1,2,3,5} Large Business PC compliance</p>	<p>JAN 26, 2018 (PS)¹ Sprouts - Small Farms</p> <p>JAN 26, 2018 (PS)¹ Sprouts - Small Farms eligible for qualified exemption to comply with other requirements in 112.6 and 112.7</p> <p>JAN 26, 2018 (PS)¹ Other Produce - Large Farms (except certain water requirements)</p> <p>MAR 19, 2018 (FSVP)^{1,6} Importer of human food whose Small Business Foreign Supplier required to comply with PCHF</p> <p>MAR 19, 2018 (FSVP)^{1,6} Importer of animal food whose Large Business Foreign Supplier is subject to the PC requirements in PCAF, but not the CGMP requirements</p> <p>MAR 19, 2018 (FSVP)^{1,6} Importer of animal food whose Small Business Foreign Supplier is subject to PCAF CGMP requirements</p> <p>APR 06, 2018 (ST) Small Business</p> <p>JUL 26, 2018 (FSVP)^{1,6} Importer whose Small Business Foreign Supplier required to comply with sprout requirements of Produce Safety Rule</p> <p>JUL 26, 2018 (FSVP)^{1,6} Importer whose Small Business Foreign Supplier is a farm producing sprouts and eligible for a Qualified Exemption under the Produce Safety Rule</p> <p>JUL 26, 2018 (FSVP)^{1,6} Importer whose Large Foreign Supplier Required to comply with Produce Safety Rule</p> <p>SEP 17, 2018 (PCHF)^{2,3,4} Qualified Facilities (including Very Small Businesses) compliance</p> <p>SEP 17, 2018 (PCHF) Grade "A" milk and milk products: subject to the Pasteurized Milk Ordinance (PMO)</p> <p>SEP 17, 2018 (PCAF)^{2,3} Qualified facilities (including Very Small Businesses) CGMP compliance</p>	<p>JAN 28, 2019 (PS)¹ Sprouts - Very Small Farms</p> <p>JAN 28, 2019 (PS) Sprouts - Very Small Farms eligible for a qualified exemption to comply with other requirements in 112.6 and 112.7</p> <p>JAN 28, 2019 (PS)¹ Other Produce - Small Farms (except certain water requirements)</p> <p>JAN 28, 2019 (PS) Other Produce - Small Farms eligible for a qualified exemption to comply with other requirements in 112.6 and 112.7</p> <p>MAR 18, 2019 (FSVP)^{1,6} Importer of animal food whose Small Business Foreign Supplier is subject to the PC requirements in PCAF, but not the CGMP requirements</p> <p>MAR 18, 2019 (FSVP)^{1,6} Importer of human food Grade "A" milk and milk products whose foreign supplier is subject to PMO requirements</p> <p>MAR 18, 2019 (FSVP)^{1,6} Importer of human food whose Foreign Supplier is a Qualified Facility (including Very Small Businesses)</p> <p>MAR 18, 2019 (FSVP)^{1,6} Importer of animal food whose Foreign Supplier is a Qualified Facility (including Very Small Businesses) subject to PCAF CGMP requirements</p> <p>JUL 26, 2019 (IA) Large Business</p> <p>JUL 29, 2019 (FSVP)^{1,6} Importer whose Very Small Business Foreign Supplier is a farm producing sprouts and eligible for a Qualified Exemption under the Produce Safety Rule</p> <p>JUL 29, 2019 (FSVP)^{1,6} Importer whose Small Business Foreign Supplier required to comply with Produce Safety Rule</p> <p>JUL 29, 2019 (FSVP)^{1,6} Importer whose Small Business Foreign Supplier subject to Produce Safety Rule and eligible for a Qualified Exemption</p> <p>JUL 29, 2019 (FSVP)^{1,6} Importer whose Very Small Business Foreign Supplier required to comply with Sprout Requirements of Produce Safety Rule</p> <p>SEP 17, 2019 (PCAF)^{2,3,5}</p>	<p>JAN 1, 2020 (PS)¹ All produce types - All farm sizes: eligible for qualified exemption for modified requirement in 112.6(b)(1) (label statement)</p> <p>JAN 27, 2020 (PS) Other Produce - Large Farms (remaining water requirements)</p> <p>JAN 27, 2020 (PS)¹ Other Produce - Very Small Farms (except certain water requirements)</p> <p>MAR 17, 2020 (FSVP)^{1,6} Importer of animal food whose Foreign Supplier is a Qualified Facility (including Very Small Businesses) subject to PCAF PC, but not CGMP requirements</p> <p>JUL 27, 2020 (IA) Small Business</p> <p>JUL 27, 2020 (FSVP)^{1,6} Importer whose Very Small Business Foreign Supplier is subject to the produce safety rule</p>	<p>JAN 26, 2021 (PS) Other Produce - Small Farms (remaining water requirements)</p> <p>JUL 26, 2021 (IA) Very Small Business</p>	<p>JAN 26, 2022 (PS) Other Produce - Very Small Farms (remaining water requirements)</p> <p>JAN 26, 2022 (PS) Large Farms - New proposed compliance dates non-sprout agricultural water requirements</p>	<p>JAN 26, 2023 (PS) Small Farms - New proposed compliance dates non-sprout agricultural water requirements</p>	<p>JAN 26, 2024 (PS) Very Small Farms - New proposed compliance dates non-sprout agricultural water requirements</p>

- Produce Safety Regulation (PS)*
- Preventive Controls Human Food (PCHF)
- Preventive Controls Animal Food (PCAF)
- Foreign Supplier Verification Program (FSVP)
- Intentional Adulteration (IA)
- Sanitary Transportation of Food (ST)

CGMP = Current Good Manufacturing Practices
PC = Preventive Controls
PMO = Pasteurized Milk Ordinance

1. Except for certain provisions concerning written customer assurances. Additional two years to comply with these specific requirements.
2. Except for certain facilities that only pack and/or hold raw agricultural commodities that are produce and/or nut hulls and shells. Compliance date for these facilities extended approximately 16 months to match the compliance dates for businesses in the same size categories in the produce safety regulation.
3. Except for certain facilities that would qualify as a secondary activities farm except that they do not meet the ownership criterion. Compliance date for these facilities extended approximately 16 months to match the compliance dates for businesses in the same size categories in the produce safety regulation.
4. Except for certain facilities that color raw agricultural commodities. Compliance date for these facilities extended approximately 16 months to match the compliance dates for businesses in the same size categories in the produce safety regulation.
5. Except for certain facilities solely engaged in the ginning of cotton. Compliance date for these facilities extended approximately 16 months to match the other extension dates that relate to the "farm" definition.
6. Except for the importation of food contact substances. Additional two years



2017



- Thirty-two people infected with the outbreak strains of STEC O157:H7 were reported from 12 states.
- Twelve people were hospitalized. Nine people developed hemolytic uremic syndrome, a type of kidney failure. No deaths were reported.
- Twenty-six (81%) of the 32 ill people in this outbreak were younger than 18 years.

SoyNut Butter Co. bankrupt because of E. coli outbreak

Report Card

Marler Clark Files First Lawsuit against Jimmy John's for 2018 Salmonella Outbreak

By Bill Marler on September 4, 2018

Marler Clark Files First Lawsuit in Chopped Romaine Lettuce E. coli Outbreak

APR 17 2018

“We have already filed more lawsuits, in 2018, involving more outbreaks, than we have in any previous year at Marler Clark.”

~ Bill Marler

OCT 12 2018 PRESS RELEASES

First Lawsuit Filed Against Del Monte in Cyclospora Outbreak

LEARN MORE →

OCT 05 2018 PRESS RELEASES

First Lawsuit Filed against JBS Tolleson in Raw Beef Salmonella Outbreak

LEARN MORE →

SEP 13 2018 PRESS RELEASES

Hill Law Firm Partners with Nation's Top Food Safety Law Firm in Pasha Salmonella Outbreak

LEARN MORE →

/a Newport

MARLER CLARK
L.L.P., P.S.



Can an Audit Protect You Against Lawsuits?

The Short Answer is...



That is...

Unless the Audits and Other
Preventive-Controls Ensure
that the *Food is Safe to Eat*

It's Called "Strict Liability" for a Reason



- The focus is solely on the product; not the conduct of the manufacturer in making it
- A Manufacturer is liable if:
 - The product was unsafe and therefore defective
 - The defective product thereby caused an injury



Can an Audit Hurt You if a Lawsuit is Filed?

The Short Answer is...

Although...

**Proof of negligence also drives
bad publicity, hurts sales, loses
customers, erodes brand-value**





Can an Audit Help You if a Lawsuit is Filed?

The Short Answer is...

Although...



Absence of negligence supports
an alternate-cause defense, and
supports improved public image

**QUESTIONS
OR
COMMENTS?**