

Legal Liability and its Economic Impact on the Food Industry

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ABSTRACT

Problems in food processing or foodservice that lead to spoilage, illness or contamination by pathogens or extraneous matter can be costly in terms of legal settlements to the companies involved. Although industry and public health officials have been aware of these risks, the extent and types of costs involved are not usually publicized. This paper gives examples of seizures, fines and settlements. The type of amounts given may depend on severity and length of illness and also whether or not the settlement is determined by Workers' Compensation Board, court or out-of-court action. In court cases, these settlements represent an average of about two-thirds of the total costs, the other amounts being for legal and court expenses. Because some of these awards are becoming prohibitively high for industries, insurance companies and the taxpayer, there are government moves to limit these to \$100,000 and prevent excessive legal fees. The opposition to this will probably be strong enough to prevent any rapid change to the settlement system, and legal action will remain an important component in the economy of the food industry.

This paper does not attempt to review the types of legal processes that apply to the food production and foodservice industries. There are already publications on these, e.g., legal aspects of foodservice management by Sherry (14). Instead, it presents actual fines and damages determined by the court system or in settlements outside of the court that have occurred as the result of a food-borne illness or recall because of contaminated food. These have become more important in recent years because of an awareness that the legal system can bring about some substantial payments both to plaintiffs and lawyers. The two main types of damages result from (a) government regulatory actions and (b) legal suits initiated by individuals or by companies who feel a warranty or contract has been broken. Data on costs arising from such actions are rarely published in journals or books, and much of the material comes from non-reviewed sources, such as newspaper articles, and personal communications. This means that dollar figures available for discussion are limited, and their accuracy cannot always be verified. In this article most data are from the United States and Canada and, therefore, extrapolation of these to other

countries may not be applicable. Whereas laws and codes may vary somewhat within different states and provinces, the federal regulations applying to food both in the United States and Canada are very similar. Information on recalls, seizures and fines is published by the Food and Drug Administration but dollar values for the last two only are noted.

REGULATORY ACTIONS

Regulatory action should occur when an act, code or specific regulation has been broken, and charges may be laid. This action can be implemented at the local, state/provincial or federal levels. Products can be seized, companies and executives fined, licenses withdrawn and officials jailed.

Seizures

These may occur if there has been a violation of a code or regulation, including when the product is considered to be a health hazard and has to be removed from sale. Seizures are normally not used if the manufacturer (owner) will voluntarily recall the product, since a seizure applies only to that amount of product which the agency exercising seizure is able to locate and seize. A recalled product is still the responsibility of the company owning it and the company must pay for any action taken. A food which is seized, however, because of adulteration or misbranding is forfeited to the government which then must bear all the administrative and judicial costs involved. Examples of seizures are shown in Table 1. Voluntary destruction or use of product as animal feed are the main choices facing a manufacturer or importer after a recall has taken place, although reconditioning or reprocessing are possible actions if they are permitted and can be done economically. Examples of destruction are 113,700 lb. of Cheddar cheese from Wisconsin worth \$124,400 in 1965 and 256,275 lb. of Emmental cheese made in Quebec worth \$320,000 in 1977, both because of presence of *Staphylococcus aureus* toxin (16). In 1979, a barge on the Thames, England, holding 450,000 cans of Brazilian corned beef worth \$500,000 sank. Because some of the cans showed microbial growth on sal-

vage the shipment was released for animal feed only (16).

Fines, jail sentences and loss of licenses

Some health authorities turn to the judicial or quasi-judicial systems to encourage voluntary compliance with codes or regulations concerning correct operation of a food business. Court citations may be used additionally as a source of revenue for the appropriate authorities involved. For instance, Dallas, Texas, and New York City receive approximately \$200,000 and \$1,200,000, respectively, from fines related to food violations each year. However, a health department wishing to pursue this route should be well prepared with correct legal advice, and evidence obtained should be valid in a court of law, e.g., correct issuance of a citation, proper collection of samples for laboratory analysis.

Under this system a typical approach would be for an inspector to give a warning if a violation has been identified with the understanding that the problem would be corrected in a few days' time. If this is not done by the time of reinspection a court citation is issued with a pre-set minimum fine, e.g., \$50 per violation to be paid within 10 d. The accused has the option of paying the fine or requesting a court appearance to present his case, although this last option is rarely chosen by the food operator. A persistent violator may be asked to make a mandatory court appearance, where, if found guilty, he will probably be given a considerably higher fine. The maximum fine per violation may be \$500 (e.g., Tulsa, Oklahoma), \$1,000 (e.g., New York State) or as high as \$5,000 (New York City). Because fines can be severe as a result of a court case if there are a number of violations, penalties may be reduced if compliance is made within, say, 30 d, e.g., in New York State examples of such reductions are \$1,500 reduced to \$500 and \$12,000 to \$4,000.

Other severe penalties are jail sentences and loss of licenses. The former is only possible if a criminal action is proceeded with. One example of a criminal case involved the presence of *Salmonella* in frog legs sold by a

Texas company in 1976. The company itself was fined \$15,000 and the owner placed on 1 year's probation after paying a personal fine of \$10,000 (4). In a more serious example, the vice-president of a bankrupt cheese company which produced Mexican-style cheese containing *Listeria monocytogenes* and caused many cases and probably 80 deaths, was sentenced to 60 d in jail and 2 years probation and was fined \$9,300 (8). Government officials may not be immune to prosecution if they are derelict in their duty. In Naples, Italy, a cholera outbreak occurred from locally infected mussels in 1973 and 22 persons died. The chief public health director received a suspended 4-month term and paid a \$240 fine for not ordering the destruction of the mussel beds once the problem had been identified. Four other public health officials and the head of the port authority were also given suspended prison sentences after being charged with negligence for failing to test local water for pollution and prohibiting harvesting of the contaminated shellfish (6).

Revocation of a permit or license can cause economic hardship because no food sales can occur. This type of action, normally carried out at state/provincial or local government levels, can speed up implementation of proper corrective measures.

Some health departments prefer to eschew the court system and concentrate on informal hearings at the department with limited legal representation. Most food operators comply with the rulings and will pay fines or prevent similar violations from occurring again. Persistent violators, however, will probably have to be taken through the courts to have any impact.

LEGAL SUITS

Legal action can be sought by anyone claiming to have a just cause, whether a regulation or code has been violated or not, or even whether the person was ill or injured or not. These claimants are often persons who allegedly paid medical and other bills, lost employment and experienced pain and suffering. In addition, companies can take other companies to court if a purchased product is found

TABLE 1. Quantity and dollar value of some food products seized by the United States Food and Drug Administration from 1964-1973.

Product	Quantity (lb.)	Etiological agent	Dollar value (US \$)	Reference
Bakery mix	63,000	<i>Salmonella</i>	10,710	10
Egg products	524,945	<i>Salmonella</i>	186,026	10
Turkey rolls	8 cases	<i>Salmonella</i>	252	10
Egg noodles	1,881	<i>Salmonella</i>	752	10
"Diet All"	1,550 +	<i>Salmonella</i>	765	10
Dried yeast	11,534 + 1 drum + 29 bags	<i>Salmonella</i>	2,468	10
Milk products	87,572 + 71 bags	<i>Salmonella</i>	17,935	10
Confectionery products	4,400	<i>Salmonella</i>	5,000	10
Chocolate drink mix	17,892	<i>Salmonella</i>	1,335	10
Cocoa beans	14,147	mold/insects	500,000	1
Tuna	?	histamine	4,850	2

to be contaminated. Settlements tend to reflect awards given in other court cases, but special circumstances may influence the judge or jury to be more generous. In the United States, lawyers' fees are based on the final amounts awarded and, therefore, very high claims are often sought.

Court settlements

A food operation may be liable if it causes an injury to a customer or someone else on the premises, or sells food to a person making him ill, or breaks an agreed or implied warranty. For instance, when a customer eats at a restaurant there is an unwritten contract that the food served will be wholesome (14). Whereas fines and seizures and other types of regulatory action are nearly always successfully obtained because a specific code has been violated, legal suits are only sometimes won (e.g., 40% of the 20,000 cases heard in New York State each year relating to food operations). This is because the onus is on the plaintiff to prove injury or breach of contract. Although settlements are usually much less than the origi-

nal claim, some high sums have been awarded. For instance, in 1980 the film star Gina Lollabrigida broke a tooth while eating fried shrimp in a well known restaurant in New York with her dentist. In 1984., as a result of a court action, she was given \$90,000 for the pain and suffering when she bit upon a stone present in the shrimp. The judge ruled in her favor because an implied warranty had been broken and stated that "a restaurant was expected to use ordinary care to remove from served food harmful substances that the consumer would not ordinarily anticipate to find when he bites into a fried shrimp" (7). Other court settlements are listed in Tables 2a, 2b, 3a, 3b, 4a, 4b.

Interest payments

The considerable delay between the event and the settlement in the Lollabrigida case is typical of most court actions (Table 4a). In another court case, 11 of 264 persons ill after eating iced cakes in Ontario in 1978 were awarded \$30,708 in 1983, of which \$10,003 was interest to cover the 5-year interval (Tables 2a, 2b, 5). Interest

TABLE 2a. *Salmonellosis incidents where liability costs were recorded - outbreak information^a.*

Incident no.	Incident location	Date of		No. of cases		Type of agency settling	Type of settlement	Reason
		Illness	Settlement	Ill	With settlement			
1a. } 1b. }	Pennsylvania	1965	1970	≥2	{ 1 1	foodservice estbl. foodservice estbl.	court court	illness illness and loss of job as infected carrier
2. 3a. } 3b. }	Colorado Nova Scotia	1976 1979	1976/77 ?	234 23	{ 1 22	cheese factory hotel hotel	court court court	illness hospitalized case mild cases
4. 5a 5b. }	Northern Ireland Alberta	1981 1981	1983 1981?	116 119	{ 1 14 18	health dept. hotel WCB ^b	out-of- court court WCB	infected carrier infected food workers infected food workers
6.	Alberta	1982	1982?	145	75	WCB	WCB	infected food workers at hotel
7.	Ontario	1982	1982?	196	76	WCB	WCB	infected food workers at hospital
8.	Ontario	1978	1983	264	11	bakery	court	illness
9.	Ontario	1971	1974	7	1	club	court	severe illness (typhoid fever)

^aInformation based on 15,16 and personal communications.

^bWCB = Workers' Compensation Board.

TABLE 2b. *Salmonellosis incidents where liability costs were recorded - settlement amounts.*

Incident no.	Costs at time of settlement (\$)		Liability costs in 1985 dollars			Liability costs as %age of incident costs	Average settlement per person (1985 \$)	Comments
	Settlement	Other legal costs	Settlement	Other legal costs	Total costs			
1a.	7,510	NA ^a	20,506	NA	20,506 +	?	20,506	husband and wife both infected but nurse (wife) got the larger award
1b.	68,299	NA	186,490	NA	186,490 +	?	186,490	
2.	214,151	29,554	380,058	52,458	432,516	61.5%	3,305	
3a.	30,000	5,000	47,269	7,878	193,801	95.3%	47,269	hospitalized case initiated action and received highest award
3b.	88,000		138,654				6,303	
4.	4,500	NA	5,324	NA	5,324 +	7.8%	5,324	
5a.	38,400	27,800	48,837	35,101	83,938	67.6%	3,488	outbreak occurred at hotel. Cases receiving WCB ^b settlement did not receive additional court settlement
5b.	14,000	0	17,805	0	17,805	14.3%	989	
6.	41,552	0	47,700	0	47,700	38.3%	636	outbreak occurred at a hotel
7.	227,548	0	261,219	0	261,219	47.4%	3,937	awards include extra assessment to hospital
8.	30,708	19,000	33,329	20,622	53,951	1.2%	3,030	
9.	3,283	2,000	7,648	4,658	12,306	11.5%	7,648	
Total	not applicable		1,194,839	120,717	1,315,556	17.4%	3,556	

^aNA = not available

^bWCB = Workers' Compensation Board

TABLE 3a. *Staphylococcal intoxication, botulism and viral incidents where liability costs were recorded - outbreak information^a.*

Incident no.	Incident location	Date of		No. of cases		Type of agency settling	Type of settlement	Reason
		Illness	Settlement	Ill	With settlement			
<i>Staphylococcus aureus</i>								
10	Ontario	1978	?	19	several (5?)	hotel	court?	illness, some severe
11.	British Columbia	1978	?	26	1	restaurant	out-of-court	quadraplegic condition caused by blood clot from excessive vomiting
<i>Clostridium botulinum</i>								
12a. } 12b. }	Michigan	1977	?	59	{ 59 25	restaurant health dept.	court out-of-court	severe illness severe illness
13a. } 13b. }	New Mexico	1978	1980-81	34	{ 8 23	club club	court out-of-court	severe illness severe illness
13c. } 13d. }					{ 17	bean canner bean canner	court court	severe illness recovery of costs
<i>Virus</i>								
14.	England	1976	?	800	90	cockle fisherman	court and lost business	illness

^aInformation based on 15,16 and personal communications.

TABLE 3b. *Staphylococcal intoxication, botulism and viral incidents where liability costs were recorded - settlement amounts.*

Incident no.	Costs at time of settlement (\$)		Liability costs in 1985 dollars			Liability costs as %age of incident costs	Average settlement per person (1985 \$)	Comments
	Settlement	Other legal costs	Settlement	Other legal costs	Total costs			
<i>Staphylococcus aureus</i>								
10.	1,000,000	NA ^a	1,719,829	NA	1,719,829 +	56.2%	343,966?	actual number suing not known precisely and \$1,000,000 settlement approximate
11.	885,000	NA	1,522,048	NA	1,522,048 +	84.0%	1,522,048	
Total	NA	NA	3,241,877	NA	3,241,877	66.5%	104,577	
<i>Clostridium botulinum</i>								
12a	187,500	152,500	332,760	270,650	603,410	41.4%	5,640	some ill persons not only sued the restaurant but also the health dept. for negligence 4 separate actions took place as a result of this outbreak. In the last the club recovered costs from the canner
12b.	39,000	NA	62,914	NA	62,914 +	4.8%	2,517	
13a.	764,667	582,333	998,079	759,945	1,957,869	21.7%	124,760	
13b.	153,000		199,665					
13c	1,900,000	1,550,000	2,247,770	1,833,707	5,856,032	64.8%	132,222	
13d.	1,500,000		1,774,555					not applicable
Total	not applicable		4,417,999	2,104,357	6,522,356	42.8%	72,471	
<i>Virus</i>								
14.	← 60,000 →		← 106,483 →		106,483	?	1,183	settlement amount includes legal fees and court expenses

^aNA = not available.

TABLE 4a. *Foodborne disease incidents involving extraneous matter where liability costs were recorded - incident information^a.*

Incident no.	Incident location	Date of		No. of cases		Type of agency settling	Type of settlement	Reason
		Illness	Settlement	Ill	With settlement			
15.	New York	1980	1984	1	1	restaurant	court	broken tooth
16.	Louisiana	?	1968	1	1	soft drink company	court	psychological reaction
17.	Texas	?	1967	1	1	soft drink company	court	psychological reaction
18.	New York	?	1969	1	1	soft drink company	court	psychological reaction

^aInformation based on 7,11.

is not normally specified in judgements made by the court. Table 5 shows the other categories of costs usually considered in a legal suit (a) general damages for pain and suffering and (b) special damages, such as wages lost, medical bills paid. The latter are much more easily defined, but the former are often the larger amounts and depend on the precedent set in other cases or on the personal assessment of the judge and/or jury.

Out-of-court settlements

The delays between the illness and the eventual hearing often stimulate the plaintiff to seek an out-of-court settlement. A plaintiff may also initiate legal proceedings with the hope of a substantial out-of-court sum because he knows the costs to defend the case successfully may be higher than paying a settlement. This happened when 25 victims of a botulinum outbreak sued the investigating

TABLE 4b. Foodborne disease incidents involving extraneous matter where liability costs were recorded - settlement amounts.

Incident no.	Costs at time of settlement (\$)		Liability costs in 1985 dollars		Total costs	Liability costs as %age of incident costs	Average settlement per person (1985 \$)	Comments
	Settlement	Other legal costs	Settlement	Other legal costs				
15.	90,000	NA ^a	93,210	NA	93,210 +	?	93,210	film star sued well known restaurant in New York
16.	200	NA	600	NA	600 +	?	600	undisclosed extraneous matter in bottle. Plaintiff ill for 4 days
17.	2,500	NA	8,055	NA	8,055 +	?	8,055	dead mouse in bottle. Contents drunk by 9-year-old who had stomach aches and weight loss, and was nervous and listless
18.	20,000	NA	57,535	NA	57,535 +	?	57,535	dead mouse in bottle. Mental distress caused intestinal disorders, weight and hair loss. Required medical treatment for over 1 year. Verdict considered to be liberal but not legally excessive
Total	NA	NA	159,400	NA	159,400	?	39,850	

^aNA = not available.

TABLE 5. Legal costs incurred by a baker as a result of 11 claims following illness from consumption of iced cakes, Ontario, 1978 (16).

1. Claims for 11 persons		
a) general damages (pain, suffering, etc.)	\$16,100	32.4%
b) special damages		
i) wages lost	\$3,798	7.6%
ii) hospitalization not covered by insurance	\$245	0.5%
iii) visits to physicians	\$177	0.4%
iv) medication and other medical costs	\$361	0.7%
v) travel	\$24	0.1%
c) interest for claims valid in 1978 awarded in 1983	\$10,003	20.1%
subtotal	\$30,708	61.8%
2. Plaintiffs' attorneys	\$9,000	18.1%
3. Defendant's attorneys	\$8,000	16.1%
4. Expert witnesses	\$2,000	4.0%
5. Total legal and court costs	\$49,708	100.0%

health authority, presumably for negligence and \$39,000 was awarded then because the time and effort to fight the case was considered too great by the authority (15). The consequence of allowing this type of settlement to be made is that other actions may be attempted once it is known a company or agency is prone to payments. Many persons have tried to sue beer companies for extraneous matter found in bottles or cans of beer and allegedly causing illness, because they know the companies do not want adverse publicity. Most responsible food operations do not want the delay, expense and publicity of a trial and will settle out of court, if their liability is

clearly established and the plaintiff's claims are documented and reasonable, and there is a willingness to negotiate. However, companies considered to have plenty of resources may be plagued by greedy or inventive claimants and a prolonged, vigorous court battle may have to be carried out to reduce these in the future.

Most out-of-court settlements are not publicized and, in fact, information may not be allowed to be released by law firms or parties involved as a part of the settlement. Therefore, information on these is generally lacking. From the four examples available the median settlement per case was \$7,003 compared with \$7,582 for 16 court decisions (Table 6).

Workers' Compensation Board awards

Another form of award is that of the Workers' Compensation Board, applicable only to employees, e.g., waiters, cooks, dietitians, where illness or infection acquired on the premises prevents the earning of wages. These are the lowest type of award (median, \$989/case), and in one outbreak employees awarded a Compensation Boards' sum were not allowed to receive further money when they joined guests in a successful suit against the incriminated hotel (15). Annual contributions to Workers' Compensation Boards will increase for negligent institutions after payments have been made by the Board to workers in such establishments.

Types of illnesses affecting amounts awarded

Table 6 also shows that victims of severe illness are more likely to obtain higher settlements, and this is influenced by the type of etiologic agent causing the illness. As to be expected, settlements tend to be greatest when agents causing severe or long lasting disease, and occasionally death, e.g., *Clostridium botulinum* and *Sal-*

TABLE 6. Amount of settlements by etiologic agent, by severity of illness and by settlement procedure (1985 \$)^a.

Etiologic agent	No. of settlements as a result of food-borne illness	No. of cases with settlements	Total settlements (\$)	Settlements per case (\$)	
				Mean	Median
<i>Staphylococcus aureus</i>	2	6	3,241,877	1,620,939	933,007
extraneous matter	4	4	159,400	39,850	32,795
<i>Clostridium botulinum</i> ^a	5	132	3,841,188	29,100	8,681
<i>Salmonella typhi</i>	1	1	7,648	7,648	7,648
other <i>Salmonella</i> spp	11	335	1,187,191	3,544	3,937
virus	1	90	106,483 ^b	1,183	1,183
<i>Type of illness</i>					
severe illness	9	140	7,137,982	50,986	47,269
infected food worker	6	185	567,375	3,067	3,713
normal gastroenteritis	5	239	679,030	2,841	3,305
psychological	3	3	66,190	22,063	8,055
broken tooth	1	1	93,210	93,210	93,210
<i>Settlement procedure</i>					
court	16	344	4,707,283	13,684	7,852
out-of-court	4	50	1,789,951	35,799	7,003
workers' compensation	3	169	326,724	1,933	989
court or out of court	1	5	1,719,829	343,966	343,966
Total	24	568	8,543,787	15,042	6,976

^aExcludes settlement by bean canner to club in New Mexico botulism incident (Tables 3a, 3b).

^bIncludes court costs.

monella typhi, are involved. *S. aureus* intoxication normally results in a gastroenteritis of short duration, but one patient claimed she had so much vomiting and retching that a blood clot reached her brain to paralyze her, and she received \$885,000 as compensation. This condition, arising from a food intoxication, is very rare but the evidence was sufficient for the parties to agree on this large out-of-court settlement. The other 25 ill persons did not seek damages for their milder illnesses (15). The court awards for four single cases involving extraneous matter in food were also high, even though the agent was identified in only one of these (stone causing a broken tooth). In the others dead mice (largely decomposed) and unidentified material stimulated psychological reactions that are often not considered by health authorities to be significant. However, the symptoms of a psychological reaction can be similar to those of foodborne disease caused by a known agent - nausea, vomiting, abdominal cramps, diarrhea and loss of appetite. There will also be a change in the pulse rate, dehydration and general malaise (see also other symptoms in Table 4b). The recovery is prolonged because of the stressed emotional situation. Therefore, from a legal point of view, suffering, in general, is probably greater for psychological reactions, and relatively high judgements have been awarded to some of the victims seeing or eating something repulsive in a food (11).

Court and legal costs

Settlements are not the only costs involved in a legal action. Lawyers and expert witnesses have to be paid,

as well as court costs, if there is a trial. These other costs are occasionally available, but usually they are not publicized. Typically, they are less than half the settlements although each case varies considerably (Table 7). In 1976, cheese in Colorado caused 234 known cases and an estimated 32,000 others who did not see a physician. There were 115 claim payments ranging from \$35 to \$28,100 with an average of \$1,862 for a total of \$214,151 given between 1976 and 1984 (the majority in 1976/77). Attorneys' fees were \$13,460 and court and other expenses, \$15,914. Details of the 1978 Ontario cake outbreak legal actions are shown in Table 5. As in most legal actions, the insurance company paid the costs. If a company survives such a legal action, together with recall costs and lost business, insurance premiums will presumably rise steeply in the following years.

Inter-company legal actions

Another type of legal action is one company suing another, usually for breach of contract. Again this information is rarely released to the public, and it is not known how frequently these suits occur. As to be expected, fairly large sums of money are involved, as can be seen in the four examples shown in Table 8. In the Ontario sausage maker case the meat supplier had to pay damages because his agreement with the sausage maker had indicated the meat would be checked for *Salmonella* and when the organism was found in the sausage, a breach of warranty was implied. A similar argument applied to the caseinate ingredient supplier, although the

TABLE 7. Settlements as proportion of total liability costs in court actions (1985 \$).

Disease	Location	No. of cases	Settlement amount (\$)	Legal and court costs	Total liability costs (\$)	Settlement as percent of total liability costs	Median percent
Salmonellosis	Nova Scotia	23	185,923	7,878	193,801	95.9%	
Salmonellosis	Colorado	115	380,058	52,458	432,516	87.9%	
Botulism	New Mexico	17	4,022,325	1,833,707	5,856,032	68.7%	
Typhoid fever	Ontario	1	7,648	4,658	12,306	62.2%	
Salmonellosis	Ontario	11	33,329	20,622	53,951	61.8%	
Botulism	New Mexico	31	1,197,744	759,945	1,957,869	61.2%	
Salmonellosis	Alberta	14	48,837	35,101	83,938	58.2%	
Botulism	Michigan	59	332,760	270,650	603,410	55.2%	
Total		271	6,208,624	2,985,019	9,193,643	67.5%	62.0%

TABLE 8. Examples of legal action taken by one company against another^a.

Etiologic agent	Location	Dates	Action taken	Settlement (\$) at time of problem	Settlement in 1985 dollars	Comments
<i>Salmonella</i>	Ontario	problem: 1976 court settlement: 1983	sausage manufacturer sued meat supplier because of contaminated raw meat	product loss: 250,000 lost business, etc.: 750,000 total 1,000,000	product loss: 271,250 lost business, etc.: 813,750 total 1,085,000	court decision unexpected by public health and food personnel because chance of finding <i>Salmonella</i> in raw meat is great and onus normally on product manufacturer to provide safe product
<i>Salmonella</i>	California	problem: 1982 settlement (court?): 1984	diet drink manufacturer sued caseinate supplier because of contamination	product loss: 1,500,000 lost business, etc.: 86,000 total 1,586,000	product loss: 1,554,000 lost business, etc.: 89,096 total 1,643,096	settlement covered the loss to the diet drink manufacturer
afatoxin	Arizona	problem: 1978-82 out-of-court settlement: 1984	dairy farmers sued cotton-seed industry because of contaminated cottonseed in cattle feed	all costs: about 400,000	all costs: about 414,400	afatoxin in cotton-seed contaminated the milk which had to be dumped. Dairy farmers claimed loss of \$0.5 million in product and destroyed and \$2 million in lack of sales. Settlement, therefore, did not cover total loss
<i>Clostridium botulinum</i>	New Mexico	problem: 1978 court settlement: 1981	club sued bean canner because botulism outbreak involved bean salad	all costs: 1,500,000	all costs: 1,774,555	club, which had been sued by victims, was recovering costs from bean manufacturer. Evidence stronger that potato salad from the club rather than the beans had been source of botulism, but jury decided otherwise

^aInformation based on 16.

likelihood of the meat having *Salmonella* was far greater than that of the caseinate. Dairy farmers in Arizona did not, apparently, recover their losses for dumped milk and unsold dairy products when cows excreted aflatoxin M₁ after having eaten moldy cottonseed, although it could be argued that they should have taken some responsibility for feeding their cows other food once the contamination problem was generally known. The cotton and seed industries lost over \$50 million each because of this contamination lasting over 4 years. So, the payment of less than \$0.5 million to the dairy farmers was the least of their problems. The botulism episode involving a New Mexico club restaurant and a bean canner was an interesting one from a settlement point of view. The restaurant had served meals between April 9 and 13, 1978, which had led to botulism in 34 persons. Both potato salad and three bean salad were implicated. In 1980, eight victims received a court award of \$764,667 (average per person of \$99,583), and 23 others obtained \$153,000 (average per person of \$6,652) as an out-of-court settlement, the money coming from the club's insurer. At another court case in 1981, 17 victims and the restaurant successfully sued the three bean salad manufacturer (Tables 3a, 3b). The jury disregarded the evidence that incriminated the local club and believed the case against the out-of-state bean canner which paid a total of \$4,950,000.

Prevention of government injunctions

A court case might also occur if a company wishes to stop a control agency from preventing sale of product. This occurred in 1974 when Bon Vivant argued in favor of release of 1.5 million cans held by the FDA (3). Similarly, in 1977, a large food company tried to dismiss an injunction sought by FDA to prevent the company from shipping 1.8 million pounds of frozen green beans containing *Geotrichum*, a mold which is indicative of insanitary practices. The value of the shipment was \$1.2 million (5). Although governments do not always win injunction court hearings, in one of the above two examples the company failed in its bid to stop government action.

Future legal problem

One area that could result in legal action in the future concerns use of water contaminated with industrial and environmental pollutants. Because water is widely used for processing food and also is served as a beverage in foodservice establishments, the food industry and local municipalities may face law suits if there is evidence to link low levels of toxicants, e.g., trihalomethanes or dioxins in potable water supplies with chronic illness. Until now neither the food industry nor governments have yet considered the need to use water free from minute quantities of these chemicals although some limited testing has been done. A few successful court cases could force the need for expensive water purification schemes or use of trucked or bottled water.

CONCLUSIONS

Information on damages arising from foodborne disease or contaminated food ingredients is limited. Yet from what there is the economic impact is great. Many settlements may be \$500 or less, but some high awards have been made in and out of courts, and some have been in the millions of dollars. Although at a national level monies exchanged do not increase or decrease the gross national product, the impact on specific food industries is considerable. For some, it may be salutary and be a warning to improve their sanitation practices. There is no question a good quality control and recall program can reduce the impact of law suits against a company (13). For others it may mean bankruptcy or severe reduction of growth for many years.

For all companies insurance premiums are increasing and may not be available to cover all legal suits. The value of a quality healthy life by the public and judge is reflected in the very large sums often awarded victims of illness. The United States legal system that allows lawyers to claim a portion of the settlement if they are successful simply encourages very large claims. For example, the several hundred listeriosis cases, mainly involving hispanic peoples, in 1985 resulting from consumption of contaminated Mexican style cheese in California has apparently stimulated \$700 million in claims. As the company making the cheese is bankrupt, presumably the insurance company will have to pay. Any settlements of this kind will increase insurance premiums for other manufacturers and this will result in higher priced products offered to the public. If lawyers could agree to be paid on a fee basis regardless of the outcome of the action, as is true in other countries, presumably the settlements would be less.

White House Working Group on Tort Policy is currently suggesting similar changes (9). The Administration's proposed bill will have the following eight elements.

1. *Limit noneconomic damages.* A \$100,000 limit on awards for noneconomic damages including pain and suffering, mental anguish, and punitive damages. Such awards currently are "inherently open-minded, entirely subjective, and often defy quantification," the working group said.

2. *Limit attorneys' contingency fees.* Attorneys' fees, which now reach as high as 50% of a court award, would be limited by a sliding scale. A lawyer would receive no more than 25% of the first \$100,000, 20% of the next \$100,000, 15% of the next \$100,000, and 10% of the remainder. In that way, a \$1 million court award would yield no more than \$130,000 in attorneys' fees.

3. *Provide for periodic damage payments.* Currently most damages are paid in a lump sum. Damages would be paid over the course of the injured person's lifetime.

4. *Eliminate joint and several liability.* Consumers no longer would be able to sue several defendants unless

they could prove all of them were involved in the actual damage. This would prevent attorneys from going for the defendant with the "deep pockets" to gain higher awards.

5. *Retain fault as the basis for liability.* Strict product liability would be applied to all cases. Strict liability must prove there is a defect in a product that makes it "unreasonably dangerous." Companies would be held accountable only for injuries caused by uses that are both reasonable and foreseeable.

6. *Base findings on credible scientific and medical evidence.* This move would eliminate the use of "professional witnesses" who provide testimony on medical and scientific questions before the courts. Courts should rely on government agencies and private institutions with long records of attention to issues on which they testify.

7. *Reduce payments for collateral sources.* If a person will receive payments from government or private sector sources for the problems caused by the damage in question, the court award would be reduced by that amount. This includes private health insurance, workers' compensation and disability insurance.

8. *Develop alternative dispute resolution mechanisms.* Noncourt resolution of liability claims would free the courts from lengthy trials and reduce the size of awards. Many liability suits are nuisance suits that tie up the courts. Use of binding arbitration, mediation, and minitrials is encouraged.

This view is not shared by some lawyers and insurance representatives. They feel that the case for limits to settlements has not yet been proven, and that plaintiffs should not have their rights to a just settlement affected by an arbitrary and low limit of \$100,000. Only the jury system can make a rational award that is appropriate for each individual situation (12).

From all the foregoing it is difficult to accurately predict the future in assessing the economic impact of legal liability on the food industry. Lack of readily accessible data makes it difficult even to measure current effects especially as data published by the press are not always accurate. Since many different jurisdictions are involved, and these may all have their own procedures in how such matters are handled, again no clear picture is possible of a single result having the same consequences in all jurisdictions. Because some legal settlements have been very high and these costs are passed on to food companies, and eventually the public, some consideration, is being given in the United States to limiting liability costs. If this does occur it will probably be some time in the future.

Certainly, the current trend appears to show that liability costs are on the increase, and deviations from good hygienic practices may well result in severe economic penalties. However, the vast majority of knowledgeable and responsible food operators and manufacturers are aware of the consequences of such deviations and are increasingly adopting hazard analysis and critical control point procedures to avoid potential problems.

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