

We've Got You Covered

Insurance Law Blog



Rise in Food Contamination Calls for Proactive Risk Management in 2013

Posted on January 11, 2013

By Jonathan M. Cohen and Emily P. Grim

Despite improvements in food safety over the last two decades, 2012 saw no shortage of recalls due to food contamination. For example, one Indiana farm recalled all cantaloupes from its 2012 growing season after the fruit was linked to an outbreak of salmonella that killed three and sickened hundreds. Another salmonella outbreak caused health officials to shut down the Vancouver, Washington branch of a popular Mexican restaurant.

The outbreaks of 2012 were not an anomaly. Recent studies show that foodborne illness may be on the rise. According to the Center for Disease Control, approximately 48 million Americans fall ill, 128,000 are hospitalized, and 3,000 die each year due to food contamination. That means that 15% of Americans can expect to have a foodborne illness annually. And, a recent study by the U.S. Public Interest Research Group estimates that the number of Americans falling ill or dying from eating tainted food has increased 44% since 2011.

Several new incidents in the last month suggest that this trend will continue in 2013. In December, the Food and Drug Administration discovered salmonella contamination at the same Indiana farm linked to the August outbreak. Last week, a national restaurant chain issued a recall of a smoked salmon product after its supplier notified the company of a potential bacteria threat.

This trend highlights the importance of careful risk mitigation plans for food companies at all levels of the supply chain. To procure the best risk management portfolio for its needs, a company should begin by evaluating its potential exposure with as much specificity as possible. A company with foreign manufacturers, for example, should not identify its risk merely as “concerns about the supply chain” or “concerns about exposure from foreign manufacturing,” but should break its concern into more specific and detailed aspects of its concerns, such as “concern about shipping interruptions due to weather,” “concerns about interruptions or liabilities arising from pandemics,” or “uncertainty regarding quality control, storage, and expiration dates.” The more a company breaks down risk into specific and detailed concerns, the better that company can evaluate the protections the company has to avoid or pay for those risks.

Next, companies must identify the best way to transfer their risk, whether via insurance coverage, indemnities, or other mechanisms. For example, a food manufacturer might seek one or more policies designed to cover the cost of testing and destroying the product, cleaning contaminated equipment, notifying third parties of the recall, and damage to the manufacturer's reputation. Depending on their position in the supply chain, certain companies might also seek third-party coverage for potential lawsuits by supermarkets for economic losses or claims by customers sickened by contaminated food.

An effective risk evaluation also should identify legal hurdles that could impede a company from accessing coverage. Some policies, for instance, contain contamination or microbe exclusions that insurers likely would assert bar coverage for many recall events. Food companies should be on the look-out for other potential coverage limitations as well, such as limits of liability that could cap a policyholder's recovery or deductibles that could reduce or eliminate coverage for the types of problems that a food company might confront. Even in the face of such exclusions or limitations, though, many policyholders may have strong arguments that these provisions do not apply to the specific types of risks or liabilities the company has. A thorough knowledge of the fast-evolving legal landscape of liability, property, and recall coverage will enable companies to draft the best possible coverage language.

Food contamination may be on the rise, but by performing a comprehensive analysis of risk exposure and potential coverage options, companies can ensure that they have the right protection.