

HALLMARK MEAT PACKING

PROTECTING PUBLIC HEALTH: The U.S. Department of Agriculture recalled a record 143 million pounds of beef in February from this Chino, Calif., slaughterhouse after determining improper inspection tactics were used. At stake was contamination from “mad cow” disease, E. coli and salmonella.

Recipe for Disaster

With a global supply chain, the U.S. food industry faces higher risks of contamination, interference and costly litigation.

by Bonnie Brewer Cavanaugh

Propelled by globalization, outsourcing and offshoring by American companies, the global food network has morphed into a complex, complicated system—ripe for food contamination claims of epic proportions, with insurers bearing the ultimate financial burden.

A white paper released by the Cozen O'Connor law firm in March—published on the heels of the largest beef recall in U.S. history in February—infers that this mix of ingredients is creating the formula for larger, more widespread

food contamination and product recall incidents than ever before. And, it suggests that the multiple tainted-food episodes of 2007 were only a portent of worse things to come.

While insurers grapple with this new understanding, the cost of such recalls has begun to emerge. In late May, the companies that were sued over deadly contaminated pet foods in 2007 offered a \$24 million settlement to grieving pet owners. The settlement papers were filed in Camden, N.J., on May 22 and at press time were awaiting court approval.

▶ **What's the Issue:** The increasingly global food chain creates greater risk of contamination and recall events for the food industry.

▶ **What's Ahead:** Damage claims continue to rise as more and bigger food-borne illness events occur.

▶ **What Must Happen:** Insurers must convince their U.S. clients to carry adequate risk control programs, especially for emerging food risks.

In mid-June, U.S. federal health officials were trying to locate the source of a 23-state salmonella outbreak in raw tomatoes that injured at least

AP Photo/Damian Dovarganes

228 people and generated recalls in the United States and Canada. While Canada hadn't seen the same-scale outbreak that hit the United States in early June, such restaurant chains there as Tim Hortons, Subway and McDonald's removed all raw tomatoes from their menus in a pre-emptive strike. That followed similar moves by U.S. food purveyors at McDonald's, WalMart, Burger King, Subway, Taco Bell and other chain food stores and restaurants nationwide.

That these mammoth recalls came right after a "catastrophic" year for the food industry in 2007 was no surprise to attorney Joseph F. Bermudez, leader of the food contamination coverage practice area for the law firm of Cozen O'Connor in Denver. He is co-author of the white paper, *Food Contamination Insurance Coverage Issues: An Insurer's Perspective*.

Seemingly unrelated world events are merging to create massive changes to our food chain, he said.

"These are a bunch of different issues that have the possibility of coming together with respect to a perfect storm of catastrophic-type outbreaks," Bermudez said. "We're seeing the very cusp of this; 2007 is the emergence. If this issue is coming out because of recent trends, we're going to see the food industry and insurers having to be prepared to deal with these issues down the road."

The 2007 recall list includes tainted spinach, peanut butter and hamburger. With the exception of apple pie, these items represent common, "all-American" foods, he said.

The expanse of recent food-borne illness outbreaks is another issue. "No longer are outbreaks coming out of a small picnic in a small town," Bermudez said. "We're now dealing with super-regional, national or international outbreaks. You don't see a few outbreaks and a few lawsuits; you're seeing it spread through 37 states."

Regulation to Litigation

Hester Shaw, a consultant in the Global Product Risk Practice of Marsh U.K., gives three reasons for the rise in food recalls in the United



By the Numbers: U.S. Food Imports

80% of seafood, **45%** of fresh fruit and **17%** of vegetables consumed in America are imported.

Americans consume **260 lbs.** of imported food annually on average.

13% of the overall American diet consists of imported food.

50% of all of the apple juice consumed in America is imported from China.

Source: Cozen O'Connor

States and the United Kingdom: increased media coverage; heightened consumer awareness; and an influx of food contamination-related regulations.

Shaw said there's more liability placed on both U.S. and U.K. companies to take corrective action and notify authorities when recalls are actually happening. "The regulatory environment is changing a lot and becoming a lot stronger," she said. "And reporting require-

said. "In an area where there are more regulations, you need more lawyers."

Romy Comiter, head of insurance services at Smart Business Advisory and Consulting U.K. in London, agreed. Plaintiffs' lawyers that once were concentrating efforts on injury claims over lead paint, alcohol and guns are now focusing on the food chain, she said.

"More and more publicity comes up from food contamination claims, and lawyers are pushing the business with studies, writing about it, heightening awareness. They're trying other ways of holding people liable, and it's spilling over into the food industry," Comiter said.

That's particularly true with genetically modified food products, which could produce public nuisance claims and deceptive trade-practice lawsuits, she said. "What could be airborne from the crops? Could you have mutations from other crops that you weren't intending to genetically modify?" Comiter said.

A genetically modified tomato, for example, could end up in a jar of spaghetti sauce "or even on a frozen pizza," Comiter said. If a problem occurred with the tomato, plaintiffs could start by suing the manufacturer of the food product, then move on to the growers, suppliers, retailers and vendors, she said.



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SMART U.K.

ments are becoming altogether more stringent."

As regulation increases, so does scrutiny of the food industry by plaintiffs' lawyers, she said. And that's another emerging trend stemming from globalization of the food chain: a larger number of law firms producing food-chain studies.

"It's a really growing area—a lot of reports are being prepared," Shaw

"It could impact producers and manufacturers globally," Comiter said. "I think the plaintiffs' lawyers are going to be very creative and follow the money."

The insurance industry is focusing on these issues, Bermudez said. Since 2007, insurers who traditionally haven't been involved with the food industry or were just on its periphery have been taking another look

and creating products—like trade disruption policies—that will protect insureds against these emerging kinds of losses, he said.

On to Mitigation

That's why U.S. food manufacturers, growers and distributors need to have risk control programs in place, said Matt Hudnall, commercial accounts industry director with the Travelers Companies Inc.

Travelers launched Industry Edge for Food Manufacturers, a specialized product for underwriting and risk control services, in 1995 after decades of writing food industry accounts, he said.

"Product recall is a critical coverage, at the bare minimum," Hudnall said. "An effective insurance program should include a general liability policy and a property policy that addresses some unique needs of food risk" along with "product recall, umbrellas, then various endorsements," he said. Travelers' package also includes foreign product recall and agriculture coverage.

Brand rehabilitation is another essential coverage that's come about due to the changing international food network. Marsh U.K. works with its food clients to determine the impact that a "poorly managed" recall can have on a firm's share price, Shaw said.

"Statistical evidence has shown it has a direct correlation," she said. "It's very expensive business."

Risk management can protect a food company's reputation, Bermudez said. "Brand is important; it can be tarnished," he said. "Companies should get as close to 100% coverage as they possibly can."

"When we look at an account, we're looking for basic generic programs that are imposed in every type of food company involved in the chain, from farm to fork," said Ed Creedle, senior product safety specialist for Travelers. "We evaluate them; do they have the program in place?"

Regulations set by the U.S. Food and Drug Administration and the U.S. Department of Agriculture are minimum requirements, Creedle said. He

Who's at Risk?

As food importation grows, so does the list of businesses at risk in the global supply chain.

Growers and Ranchers	Processors
Producers	Importers
Packagers	Retail Markets
Distributors	Caterers
Manufacturers	Restaurants

Source: Cozen O'Connor

recommends that all food clients also adhere to Hazard Analysis Critical Control Points, or HACCP standards. These benchmarks are set by the FDA for producers, distributors or manufacturers of meat, poultry, seafood and juice.

"We look at things from a claims standpoint, things that the lawyers are going to see, and make recommendations along those lines," Creedle said.

Marsh U.K. helps its clients identify critical control points in their food supply chain and understand what their potential hazards could be. "Where could your food be contaminated at a certain point? How do you prevent and control the hazard?" Comiter said. Record keeping is essential. "The key is knowing where your risk is coming from and being able to mitigate it early in the chain," she said.

Distribution channels are the biggest areas of risk for fraud and contamination along the food chain, said Carla Reed, a senior vice president with Marsh & McLennan Companies Inc.'s new Global Supply Chain Risk Management Practice in Charlotte, N.C.

Food distributors need to watch world events, such as the recent earthquakes in China and cyclone in Myanmar, which struck two of the world's greatest rice-growing areas, Reed said. For the global food chain, that means food brokers will have to find an alternate source of supply. But will those new suppliers' quality standards be the same?

"Are warehouses where food is stored full of rodents running around? I've seen all sorts of stuff

you would just have a fit over," Reed said. "There are so many things to consider. Companies need to be proactive and understand that the buck basically stops with them."

Food Evolution

Increasingly, consumer preferences for imported and processed foods, and meals sold by fast-food and national restaurant chains, are adding to food chain risk, according to the Cozen O'Connor report. Currently, 13% of the American diet comes from imported foods, and these imports are expected to triple by 2013, Bermudez said.

"We're importing more product than we ever have as a country, and there's always a need to test those new products," Hudnall said.

Consumers also are showing a lower resistance to allergens, Shaw said. A rise in organic food production worldwide has decreased the use of pesticides, which in the past had killed many of the bacteria that are prevalent today, she said.

"People are becoming a lot more sensitive to variances in the food chain. People eat a lot of processed food these days, and processed food is low in microbiological counts," which contributes to an increase in sensitivity, she added.

This is especially true in countries such as the United States and United Kingdom, which have "very strict" safety regulations. "People are becoming sensitive to minor changes in bacteria," Shaw said.

Now that manufacturers, distributors and purveyors of food products have found it more feasible to fly ingredients in from different parts of the world, they've also begun outsourcing, Shaw said. "In the past it was a very local kind of business. In recent years it has become a very global business. Now they realize they can get extra [product] volume from a third-party manufacturer."

And any time a manufacturer adds another party to its supply chain, "an additional risk is placed on the supply chain," Shaw said. Part of her group's directive is to "make sure the right

processes are in place to manage that.”

According to Mark J. Sullivan, managing director and head of loss prevention for Chicago-based Kroll, a risk consulting arm of MMC, “What today’s food companies need to do to mitigate food contamination risk is to protect themselves from potential fraud throughout every link of that food chain.”

Sullivan is a co-author of the annual Kroll Global Fraud Report, released in April. Much like the Cozen O’Connor paper, Kroll states that increased globalization, outsourcing and offshoring by U.S. companies is making the global chain more vulnerable to theft, embezzlement and kickbacks, further weakening the chain.

“Who are you working with? Who have you hired to work for you? They’re big propositions,” Sullivan said. “Really it’s about hiring and screening programs.” That includes not only knowing your own vendors, but their vendors as well, and so on.

Globalization has made it easier



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Cozen O’Connor

and less expensive for a restaurant to use one supplier of a given ingredient, rather than multiple suppliers across the brand’s territory. Yet if a chain restaurant gets all of its ingredients from one supplier and there is a contamination outbreak, thorny issues arise, Shaw said.

According to Bermudez, just four companies produce 70% of the slaughtered meat product in the U.S. food market. “If one of those distributors has a bad day with respect to food contamination, a lot of people could potentially suffer,” he said.

“Whether it’s botulism, listeria or E. coli, it puts a lot of people at risk all at once. There may be an economic

advantage to purchase from one company, but it does raise the risk of potential outbreaks affecting more than one restaurant.” **BR**

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