

American Conference Institute's 4th National Forum on

FOOD-BORNE ILLNESS LITIGATION

Advanced Strategies for Tackling the Underlying Science
and Defending Against Complex Food Contamination Claims

October 27-28, 2010 | Millennium Knickerbocker Hotel | Chicago, IL

Gain firsthand insights from key government agencies involved in public health investigations of food-borne illness outbreaks:



David Goldman, MD, MPH
Assistant Administrator
Office of Public Health Science
Food Safety Inspection Service, USDA



Jack Guzewich, RS, MPH
Senior Advisor, Environmental Health
Office of Food Defense, Communication
and Emergency Response, CFSAN
Food and Drug Administration



Arthur P. Liang, MD, MPH
Director, Food Safety Office
National Center for Emerging & Zoonotic
Infectious Diseases
Center for Disease Control



Benjamin Miller, MPH, RS
Operations and Response Section Manager
Dairy & Food Inspection Division
Minnesota Department of Agriculture



Stephanie Meyer, MPH
Epidemiologist Senior, Acute Disease
Investigation and Control Section
Infectious Disease Epidemiology
Prevention and Control
Minnesota Department of Health



William E. Keene, PhD, MPH
Senior Epidemiologist, Acute &
Communicable Disease Prevention
Oregon Public Health Division

Distinguished Co-Chairs



William Marler
Marler Clark



Alan Maxwell
Weinberg Wheeler Hudgins Gunn & Dial

Obtain highly-specialized, practical information from leading food-borne illness litigators, in-house counsel, food safety experts and regulators on how to:

- Respond to heightened litigation exposure created by new pathogens and emerging risks in the food supply chain
- Minimize reputational damage and preserve the corporate brand when faced with a high-profile food crisis situation – attacking new issues raised by social media
- Interact with various state, local and federal agencies when a food-borne illness outbreak is suspected
- Effectively and quickly implement a food recall and crisis management plan – update on current traceback, tracking and detectionability procedures
- Assess the causal link while poking holes in your opponent's case to disprove liability
- Strategically address damages and settlement by evaluating your case early on – knowing what facts weigh for and against your client

New Sessions for this year include:

- Detecting the Source of Food Contamination to Build Your Case
- Reverse Dissection of a Food-Borne Illness Case
- Defending Against Class and Mass Food-Borne Illness Litigation
- Ensuring Regulatory Compliance without Creating a Litigation Roadmap



Thomas J. Bondurant Jr., Counsel to Stewart Parnell, President & CEO of Peanut Corporation of America, will provide a timely discussion on criminal exposure to corporate executives in the context of food-borne illness

Witness a Live Mock Direct and Cross Examination of a Testifying Epidemiologist, including commentary from a jury consultant on how to best communicate complex scientific and medical evidence to a jury

Exclusive Working Sessions - October 29, 2010

- A Understanding the Science behind the Claims: What Every Product Liability Attorney Needs to Know about E. Coli and Salmonella
- B Selecting Specialty Insurance Coverage & Negotiating Policy Terms for Food-Borne Illness Outbreaks and Recalls

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The food industry is under the microscope like never before. As reports of food-borne illness continue to rise, it was recently reported that the estimated annual cost of illness caused by only one strain of e.coli is \$478,381,766.¹

How much of this expense is your company prepared to bear?

Constant media scrutiny, an increased focus by the current Administration on the efficiency of the U.S. food safety system and the predicted passage of a substantially impacting food safety reform bill, have the food industry on high alert.

Despite the reputation the U.S. carries as having one of the safest food supplies in the world, with increasing consistency, the food industry is seeing a rise in contamination outbreaks in all types of food ranging from beef and poultry, leafy greens and alfalfa sprouts to peanut butter and frozen prepared foods. This crisis is impacting companies all along the food supply chain *from farm to fork*. As such, many experts within the industry are predicting that **food-borne illness will soon become the #1 cause of litigation facing the food industry.**

In an environment such as this, your client cannot afford to be caught unprepared.

Now is the time for food companies, and the lawyers who advise them, to get updated on:

- What **new pathogens** are infecting our food supply – and how to best **trace and isolate** them in the context of a food contamination incident
- How to **maintain control of the corporate message** and the media while **preserving your relationship and reputation** with the consumer and corporate stakeholders
- Selecting the **best scientific/medical expert** for your case – what to look for in a consulting vs. testifying expert
- The **investigative priorities** of government regulators – and how they will impact litigation going forward

Are you armed with your best strategies to face this rising tide of litigation?

As an added benefit of attending this acclaimed conference, gain firsthand insights on current food safety challenges impacting on food-borne illness litigation claims from the **Food and Drug Administration, Food Safety Inspection Service, Centers for Disease Control, Minnesota Department of Agriculture, Minnesota Department of Health, and the Oregon Public Health Division.** Take note as you learn how the agencies work collaboratively during an outbreak investigation to trace, detect and isolate sources of food contamination.

A unique opportunity to get **highly-specialized, up-to-the minute information** in a setting where you can **network with your peers** while also getting **answers to your specific questions and concerns**, if you are involved at all with food-borne illness litigation, this is one event you don't want to miss!

Also new for this year – witness a live mock direct and cross examination of a real-life testifying epidemiologist in a food-borne illness case.

Add value to your attendance by joining us at the **Master Class Sessions** on October 29:

- A Understanding the Science behind the Claims: What Every Product Liability Attorney Needs to Know about E. Coli and Salmonella
- B Selecting Specialty Insurance Coverage & Negotiating Policy Terms for Food-Borne Illness Outbreaks & Recalls

Register now by calling 888-224-2480, faxing your registration to 877-927-1563 or registering online at www.AmericanConference.com/foodlit

¹U.S. Department of Agriculture, Economic Research Service, Foodborne Illness Cost Calculator: STEC 0157, May 13, 2010

Who You Will Meet

Food manufacturers, distributors, suppliers, retailers, restaurants and servers legal counsel and compliance executives with the following titles:

- In-House Counsel/Litigation Counsel
- Claims/Insurance Counsel
- Quality Assurance
- Compliance
- Food Safety
- Regulatory Affairs
- Audit
- Risk Management

Private practice attorneys specializing in:

- Food-Borne Illness Litigation
- Food & Agribusiness Law
- Food Liability Law
- FDA Law
- Consumer Products Litigation
- Product Liability/ Mass & Class Actions
- Toxic torts/personal injury
- Franchising

Insurance claims counsel

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Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

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- Build your own community
- Earn Forum points towards free conferences & workshops

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Day One – Wednesday, October 27, 2010

8:00 Registration and Continental Breakfast

9:00 Co-Chairs' Opening Remarks



Alan Maxwell
Partner
Weinberg Wheeler Hudgins Gunn & Dial LLC
(Atlanta, GA)



William Marler
Managing Partner
Marler Clark L.L.P., P.S.
(Seattle, WA)

9:15 Public Health Investigations Revealed: An Inside Look at Epidemiology Investigations, Pathogen Testing & Data Collection



David Goldman, MD, MPH
Assistant Administrator
Office of Public Health Science
Food Safety Inspection Service, USDA
(Washington, DC)



Jack Guzewich, RS, MPH
Senior Advisor, Environmental Health
Office of Food Defense, Communication
and Emergency Response
Center for Food Safety and Applied Nutrition
Food and Drug Administration
(College Park, MD)



Arthur P. Liang, MD, MPH
Director, Food Safety Office
National Center for Emerging & Zoonotic Infectious Diseases
Center for Disease Control
(Atlanta, GA)



William E. Keene, PhD, MPH
Senior Epidemiologist
Acute and Communicable Disease Prevention
Oregon Public Health Division
(Portland, OR)



Benjamin Miller, MPH, RS
Operations and Response Section Manager
Dairy & Food Inspection Division
Minnesota Department of Agriculture
(St. Paul, MN)

- Understanding what role each agency plays once a food outbreak is detected
 - scope of investigatory powers
 - agency cooperation and interaction
 - what type of data is collected, from whom and when
- Debunking the behind-the-scenes of an epidemiology investigations step-by-step
- Understanding how the government reverse engineers a food outbreak
- Evaluating new and emerging methods being utilized for testing pathogens

10:45 Morning Break

11:00 The State of Food-Borne Illness: Update on New Risks in the Food Supply Chain, Litigation Trends & Proposed Food Safety Legislation



Robert E. Brackett, Ph.D.
Senior Vice President and
Chief Science and Regulatory Affairs Officer
Grocery Manufacturers Association
(Washington, DC)



David Acheson MD
Managing Director - Food and Import Safety
Leavitt Partners, LLC
(Salt Lake City, UT)

During this session hear from Dr. David Acheson, Former Associate Commissioner of Foods, Food and Drug Administration and Dr. Robert Brackett, Former Director of the Center for Food Safety and Applied Nutrition, Food and Drug Administration, as they provide a state of the industry address on emerging issues in the area of food-borne illness litigation. Topics of discussion during this session will include:

- An overview of emerging pathogens infecting the U.S. food supply – where does new exposure lie?
- Recent recalls – what have we learned?
- Best practices for responding to litigation exposure created by new and emerging food safety/supply risks
- Update on the current status of the pending Food Safety Modernization Act and the impact on the industry

11:45 Protecting the Brand & Defending Your Case in the Court of Public Opinion



Leo Knowles
Senior Vice President & Chief Counsel
ConAgra Foods Inc.
(Omaha, NE)



Gene Grabowski
Senior Vice President and Chair, Crisis & Litigation Practice
Levick Strategic Communications
(Washington, DC)

- Developing a strategy to address publicity issues that arise when a case is filed as the direct result of government action
- Coordinating a rebuttal response to address plaintiff exploitation of an isolated incident
- Considering the impact of your litigation/defense strategy on your media response
- Synchronizing messages conveyed by the company across media outlets, corporate communications, outside counsel
- Tackling the increasing use of social media, networking sites and blogs that are often utilized to “get the word out” during a food-borne illness outbreak
- Effectively responding to shareholder inquiries and customer complaints once litigation is imminent
 - preserving business and customer relationships during a high publicity food recall/contamination incident
 - quantifying the potential impact on business performance and profit should a case ensue

12:30 **Networking Luncheon**



1:45 **Expert Selection: What to Look for When Screening and Selecting a Scientific Expert for Trial**



Joseph J. Bottiglieri

Partner

Bonner Kiernan Trebach & Crociata LLP
(Washington, DC)

- Knowing which type of expert is needed to address various elements of your case
- Understanding differences in the roles and educational backgrounds of various types of experts - epidemiologists, microbiologists, gastrointestinal and infectious disease experts and treating physicians
- Distinguishing testifying vs. consulting experts and the purpose each expert serves in helping you build your case
- Resources for finding the best expert – knowing where to look
- Fact-checking your expert – how much deep-digging needs to be done, review of credentials, published articles, past cases

2:15 **Mock Witness Examination of a Testifying Epidemiologist**



Cindy K. Andrews Ph.D.

Senior Director

DecisionQuest
(Chicago, IL)

Direct Examination: How to Elicit the Best Scientific Data from Your Expert



Ronald B. Lee

Partner

Roetzel & Andress
(Cleveland, OH)

Cross Examination: Discrediting the Credentials and Data of the Expert



Fred Pritzker

Attorney

Pritzker Olsen, P.A.
(Minneapolis, MN)

During this session, witness a live direct and cross examination a real-life epidemiologist commonly called to testify during food-borne illness trials. Observe how counsel representing both sides question this witness on the stand as they demonstrate how to effectively address complex issues of scientific evidence, including:

- Strategies for addressing the presence or lack of physical evidence (culture confirmed vs. no culture confirmed)
- Statistical data focusing on the number and location of various incidents related to those of the victim

- The symptoms and characteristics exhibited by various types of bacteria found in food
- The history and occurrence of various types of food-borne illnesses and their cause
- Best practices for communicating technical/scientific information to the jury in lay terms

3:30 **Afternoon Refreshment Break**

3:45 **Detecting the Source of Food Contamination to Build Your Case**

Dave Theno

CEO/CBIO

Gray Dog Partners, Inc.
(Del Mar, CA)

*Former SVP & Chief Food Safety Officer
Jack in the Box*

Dr. Melvin N. Kramer

President

EHA Consulting Group, Inc. (Baltimore, MD)

- How to work with state, local and federal agencies to determine the ultimate source of contamination
- Traceback protocols - how effective are genetic fingerprinting and other emerging forms of technology to track the spread of food contamination throughout the supply chain
- Evaluating your company's internal tracking procedures for food contamination to ensure proper documentation is maintained both within your company and the larger distribution network
 - using internal tracking procedures to quickly assess the degree of control each entity plays in the movement of contaminated food through the chain
- Detectionability – knowing which methods are most effective at testing various sources of food-borne illness
 - identifying which methods are most effective or ineffective at eliminating bacteria
 - irradiation
 - ammonia treatments

4:30 **Overcoming Insurance Coverage & Policy Limitation Challenges for Food-Borne Illness Cases**



Joseph F. Bermudez

Partner

Nelson Levine de Luca & Horst
(Denver, CO)



Edward Mitchell

Senior Underwriter Product Recall

XL Insurance
(London, UK)

Christopher de Wolfe

Corporate Risk Manager

Mars Incorporated
(McLean, CA)

- Understanding the terms of your coverage when faced with a food-borne illness, contamination or recall incident
- Deciphering the limitations of your liability, property and specialty insurance



- Handling coverage issues involved with the traditional insurance portfolio
 - endorsements – knowing when they're given and when to seek them
 - property damage, business interruption or insured event – triggers and limits
 - liability to third parties
 - potentially applicable exclusions
- Handling multiple parties and addressing liability within the food supply chain in conjunction with your insurance coverage
 - enforcing indemnity agreements among the chain of distribution/commerce
 - working through settlement with the insurance carrier and other parties – manufacturers, suppliers, distributors, retailers
- How to effectively use declaratory judgment actions when the insured has been denied coverage
- What to do when a manufacturer (or company within the chain of commerce) is underinsured or has no assets

5:30 **Conference Adjourns to Day Two**

Day Two – Thursday, October 28, 2010

9:00 **Co-Chairs' Remarks**

9:15 **Strategies to Manage Food-Borne Illness Litigation & Coordinate with Outside Counsel**

Douglas Besman
Senior Litigation Counsel
Nestle USA, Inc.
(Solon, OH)

Jeffrey Conner
Vice President
Associate General Counsel and Assistant Secretary
Dole Food Company, Inc.
(Westlake Village, CA)

- What in-house counsel look for/need from their outside counsel when defending against a food-borne illness litigation – weighing the pros and cons of managing the litigation in-house vs. utilizing outside counsel
- Determining client expectations early on – identifying what is most important to the client and why
- Handling the internal investigation and minimizing business interruption – collecting evidence to establish who did what and when within the company and the chain of commerce
- Balancing opposing tensions between the client and defense counsel regarding what the appropriate defensive action is – settlement, litigation, client admissions
- Controlling litigation costs and managing budgets for outside counsel, discovery and litigation prep

10:15 **Morning Break**

10:30 **Implementing Effective Recalls – Preventing Pitfalls that Could Lead to Downstream Litigation**



David Herman
Senior Counsel
Grocery Manufacturers Association
(Washington, DC)



Dean N. Panos
Partner
Jenner & Block LLP
(Chicago, IL)

Will Daniels
Senior Vice President for Food Safety
Earthbound Farm
(San Juan Bautista, CA)

- Managing the recall process - how to effectively remove products from the market place
- Working with state and federal government to streamline the recall process
- The recall decision process: balancing time pressure and a less than complete set of data and information
- Establishing a crisis management team and a crisis management plan
- Maintaining proper documentation during a recall in anticipation of litigation

11:30 **Reverse Dissection of a Food-Borne Illness Case: How to Poke Holes in Your Opponent's Case & Disprove the Plaintiff's Theories of Liability**



Alan Maxwell
Partner
Weinberg Wheeler Hudgins Gunn & Dial LLC
(Atlanta, GA)



William Marler
Managing Partner
Marler Clark L.L.P., P.S.
(Seattle, WA)

During this unique session, Al Maxwell and Bill Marler will engage you in a comprehensive discussion of how counsels on each side address the key elements of a food-borne illness case. Learn how to:

- Determine which cases to accept or reject
- Strategically evaluate issues of liability
- Consider the timing and disclosure of information at various stages of the case
- Assess the weak and strong points of your case to negotiate the best financial resolution for your client

12:30 **Networking Luncheon**

1:45 **Apportioning Liability Throughout the Supply Chain**



Sarah Brew
Shareholder
Nilan Johnson Lewis, P.A.
(Minneapolis, MN)

- Allocating risk and responsibility through indemnity provisions and insurance requirements
- Utilizing certificates of analysis, audits, product certifications and other methods to manage upstream accountability
- Controlling sophisticated user, product alteration and potential downstream risks
- Assigning liability to trade associations, auditors or other third parties – when is it viable?
- Handling upstream and downstream litigation while protecting the brand

2:15 **Understanding the Criminal Implications Raised by Food-Borne Illness Litigation**



Thomas J. Bondurant Jr.
Partner
Gentry Locke Rakes & Moore LLP
(Roanoke, VA)
*Counsel to Stewart Parnell, President & CEO
Peanut Corporation of America*

- An overview of the applicable federal criminal statutes in food-borne illness prosecutions
- Understanding how the federal criminal justice system works in the context of food-borne illness prosecutions
 - the Players – who does what and when, scope of authority
 - case referrals
 - investigatory powers
 - indictments and trial
- Special issues concerning attorney-client privilege in the context of criminal investigations
 - ensuring your management is clear about when attorney-client privilege is triggered as well as what the limitations of the privilege are
 - understanding who the client is and delineating to your management, regulatory affairs and compliance officers what the limits of confidentiality and attorney-client privilege are, particularly once a government investigation has been launched
- To self report or not to self report – weighing the pros and cons
- Trends and the future of food-borne prosecutions – understanding what type of conduct takes cases over the brink

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3:00 **Afternoon Refreshment Break**

3:15 **Defending Against Class and Mass Food-Borne Illness Litigation**



James F. Neale
Partner
McGuireWoods LLP
(Charlottesville, VA)

- Identifying early on what, if any, mitigating action can be taken
- Knowing what facts work for or against your client when arguing class certification issues and tackling class characteristics involving allegations of food-borne illness – numerosity, commonality, typicality, predominance
- Conducting a consolidation analysis to determine whether it is best to MDL or remove the case to another jurisdiction

4:00 **Where Food Regulation & Litigation Meet: Ensuring Compliance with Regulatory Requirements without Creating a Litigation Roadmap**



Brad Sullivan
Managing Attorney
Lombardo & Gilles
(Salinas, CA)

- Handling warning letters and government investigations – managing the liability risk associated with increased government access to company records and filings
- Inspections – know what the government can/can't do when conducting an inspection at your facility
- Creating a food safety plan that won't later act as a roadmap for regulators
- Understanding what types of behavior can trigger negative attention from the government that could lead to downstream litigation

4:45 **Conference Concludes**

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Wendy Tyler
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Interactive Master Class Sessions

Friday, October 29, 2010

A Understanding the Science behind the Claims: What Every Product Liability Attorney Needs to Know about E.Coli and Salmonella

9:00 am – 12:30 pm (Registration Begins at 8:30 am)



Arthur P. Liang, MD, MPH
Director, Food Safety Office
National Center for Emerging & Zoonotic Infectious Diseases (proposed)
Center for Disease Control (Atlanta, GA)



Stephanie Meyer, MPH
Epidemiologist Senior, Acute Disease Investigation and Control Section
Infectious Disease Epidemiology, Prevention, and Control Division
Minnesota Department of Health (Minneapolis, MN)

According to the CDC's April 2010 *Morbidity and Mortality Weekly Report on the Incidence of Infection with Pathogens Transmitted Commonly Through Food*, "to optimally prevent food-borne illness, the routes of exposure to these pathogens must be understood better so that additional targeted control measures can be developed ..."

As a product liability attorney it is critical to ensuring the best representation of your client that you fully understand the science underlying the food-borne illness claims your clients are confronted with. A thorough understanding of the technical, medical and scientific terms will enable you to better attack the causal link between your client and the alleged contaminated food if you possess a full grasp of how various pathogens manifest themselves in food, are transmitted and even eventually isolated.

During this interactive and practical working session, learn from a panel of epidemiologists and scientists experienced in investigating the causes of food-borne illness and infectious disease and as they provide you with a comprehensive overview of how key pathogens are transmitted through food.

Topics of discussion will include:

- Microbiology and epidemiology 101 – what are e.coli and salmonella?
- Understanding how diseases are transmitted
- Delineating which types of salmonella and e.coli are found in which foods
- Distinguishing how various types of diseases are investigated – incubation periods, preservation of evidence, conclusive vs. inconclusive symptoms
- Food manufacturing processes and identifying contaminants - irradiation, detectionability

B Selecting Specialty Insurance Coverage & Negotiating Policy Terms for Food-Borne Illness Outbreaks and Recalls

1:30 pm – 5:00 pm (Registration Begins at 1:00 pm)



Stephen A. Weisbrod
Partner
Gilbert LLP (Washington, DC)

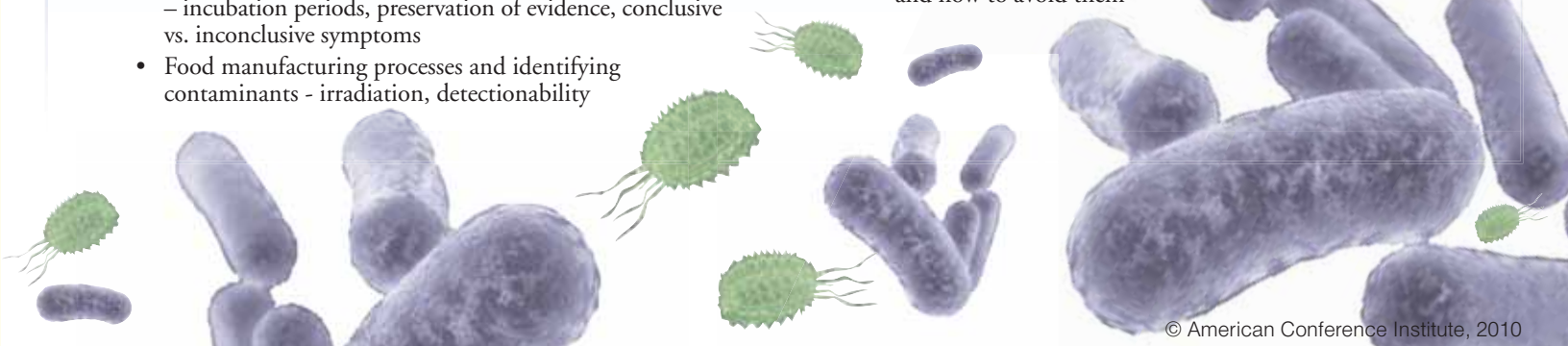
Florian Beerli
Vice President, Crisis Management
Crum & Forster (North Haven, CT)

As cases of food contamination and related illness continue to rise, companies all along the food chain are wondering – what additional protection is available to ensure against liability in the context of a large-scale food contamination or recall event? Often times, it is not until after disaster strikes that a company actually realizes how much a single food-borne illness outbreak can cost – from product recall, shipping costs and re-stocking fees to the unending costs associated with litigation and settlement – and many of these costs are not covered under general commercial liability coverage.

In direct response to the sharp increase in food outbreaks and the associated costs companies must bear, this popular master class session has been specifically designed to provide you with a comprehensive overview of what additional coverage may be available and how covered risks are assessed and underwritten.

Topics will include:

- Making certain your company has the best insurance coverage available for food-borne illness litigation
- Conducting a gap analysis to determine what you have vs. what you need - identifying the availability of coverage to address product recalls, contamination and food tampering
- Identifying potential exposures in order to determine potential areas of loss
- Knowing which types of risks and costs are/are not covered
- Conducting an analysis of benefits provided
- Recalls v. warnings – knowing what needs to be built into the policy to accommodate this distinction
- Exclusions to watch out for – what do they really mean?
- Detecting – and clarifying – uncertainties in the contract language
- When submitting claims, what areas tend to cause disputes and how to avoid them



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FOOD-BORNE ILLNESS LITIGATION

Advanced Strategies for Tackling the Underlying Science and Defending Against Complex Food Contamination Claims

October 27-28, 2010 | Millennium Knickerbocker Hotel | Chicago, IL

Gain firsthand insights from key government agencies involved in public health investigations of food-borne illness outbreaks:

- Food Safety Inspection Service, USDA
- Food and Drug Administration
- Center for Disease Control
- Minnesota Department of Agriculture
- Minnesota Department of Health
- Oregon Public Health Division

Also, a new feature for this year, witness a **live mock direct and cross examination of a testifying epidemiologist.**

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Litigation Counsel, Product Liability Attorney, Food Safety, Regulatory Affairs



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APPROVING MANAGER _____ POSITION _____

ORGANIZATION _____

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American Conference Institute is pleased to offer our delegates a limited number of hotel rooms at a preferential rate. Please contact the hotel directly and mention the "ACI - Food-Borne Illness Litigation" conference to receive this rate:

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