

# ANATOMY OF A PRODUCT CONTAMINATION EVENT: LESSONS LEARNED

MARCH 8, 2016



# Anatomy of a Product Contamination Event: Lessons Learned

## Agenda

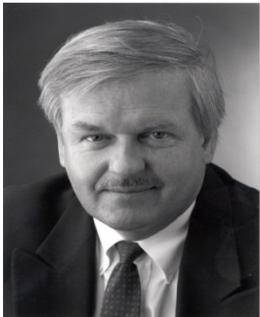
- **Welcome and Introductions** *Greg Benefield, Marsh Food & Beverage Practice*
- **The current landscape** *Dave Theno, Gray Dog Partners, Inc.*
- **Impact on Enterprise Risk** *Lisa Kremer, Marsh Risk Consulting, Enterprise Management*
- **Anatomy of a Loss** *Dave Theno, Gray Dog Partners and  
Chandra Seymour, Marsh Risk Consulting,  
Reputational Risk & Crisis Management*
- **Risk Transfer Options** *Geoff Mills Marsh Product Recall Practice &  
John Denton, Marsh National Casualty Practice*
- **Questions & Answers** *Greg Benefield, Marsh Food & Beverage Practice*

# Introduction



**GREG BENEFIELD**  
Food & Beverage Segment Leader  
Marsh  
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- Currently leads Marsh's Food & Beverage Practice.
- Extensive executive experience in the food, beverage and retail sectors.
- Over 30 years experience providing and coordinating risk management services for large national foodservice clients.
- Unique strategic and analytical approach to implementation of risk management programs.



**DAVE THENO**  
CEO Gray Dog Partners  
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- Was hired as a consultant to fix the E. coli situation at Jack in the Box.
- Retired after 16 years as their Chief Food Safety Officer and Executive VP.
- Currently the Founder and Managing Director of Gray Dog Partners, Inc., a food safety and animal health consulting group.



**LISA KREMER**  
Senior Vice President, Marsh Risk  
Consulting, Enterprise Risk Management  
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- Practice Leader for Marsh's Strategic Risk Consulting, including Enterprise Risk Management (ERM), Business Continuity and Crisis Management
- Over 20 years of consulting experience. Skilled in the development and implementation of strategic risk management principles and practices, particularly in ERM methodologies
- Extensive industry and project scope experience

# Introduction

## Today's Speakers



**CHANDRA SEYMOUR**  
Senior Vice President

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Risk & Crisis Management

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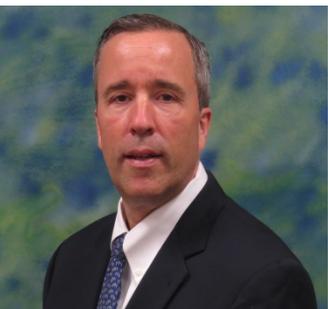


**GEOFF MILLS**  
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**JOHN DENTON**  
Managing Director

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- Senior consultant for Marsh's Reputational Risk & Crisis Management, Resiliency and Response.
  - Over 20 years industry and practice experience supporting diverse set of clients.
  - Combines her business insight and diverse industry experience to guide clients on the full spectrum of crisis management mitigation, preparedness, response, and recovery activities.
- 
- Managing Director and founding member of Marsh's Product Recall Practice which provides risk transfer and risk management solutions in the specialist areas of Product Contamination/Recall and Recall Liability.
  - Extensive management experience in Product Recall and Crisis Management.
  - Provides clients with a range of services designed to better understand and mitigate risk, including customized insurance programs, captive solutions and crisis management consulting services.
- 
- Managing Director and head of excess casualty claims and counsel to Marsh's national casualty practice.
  - Fifteen years as Partner in the private practice of law as chair of insurance coverage practice at a 100+ lawyer firm.
  - Counsels clients and advocates on their behalf in maximizing coverage for large and complex casualty claims including product liability.
  - Advises Marsh brokers and clients on policy language and negotiates with insurers and their counsel to obtain most favorable policy language for Marsh's clients.
  - Has written and spoken widely on issues of insurance coverage and tort claims before groups such as the American Bar Association, Advisen, and others.

# Anatomy of a Loss: The Current Landscape

*Dave Theno, Gray Dog Partners, Inc.*

# The Current Landscape

- **Governance/Business/Regulatory**
  - Increasing demands and requirements.
  - Sorbanes Oxley and accountability.
  - Contractual agreements.
  - Food Safety Modernization Act.
  - Legal system involvement.
  - Financial market impacts.

# The Current Landscape

- **GOVERNANCE**

- Food safety is the one metric you bet your business on every day.
- If food safety is not as important as any other metric, your priorities are not properly aligned.
- Shareholders accountability.
- Orange is the new black.

- **BUSINESS**

- Contractual requirements.
- Liability/Legal ramifications.
- Long-term partnerships.
- Cost management.

- **REGULATORY**

- FSMA requirements.
- Analytical capabilities.
- PULSENET.
- Linked investigations, assessments, local, state and federal

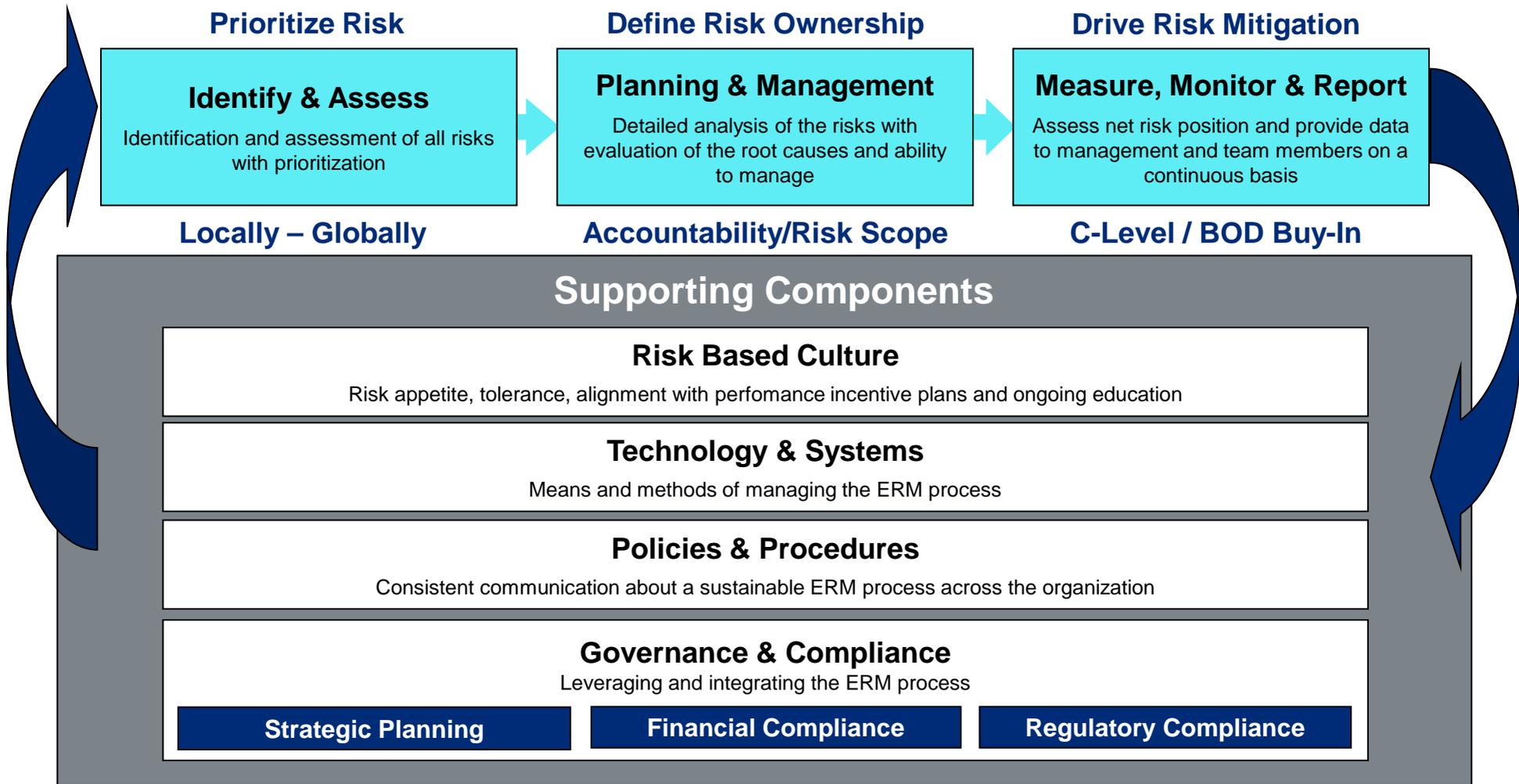
## Impact on Enterprise

*Lisa Kremer, Marsh Risk Consulting,  
Enterprise Risk Management*

# Given the Current Landscape, What Does That Mean for your Organization?

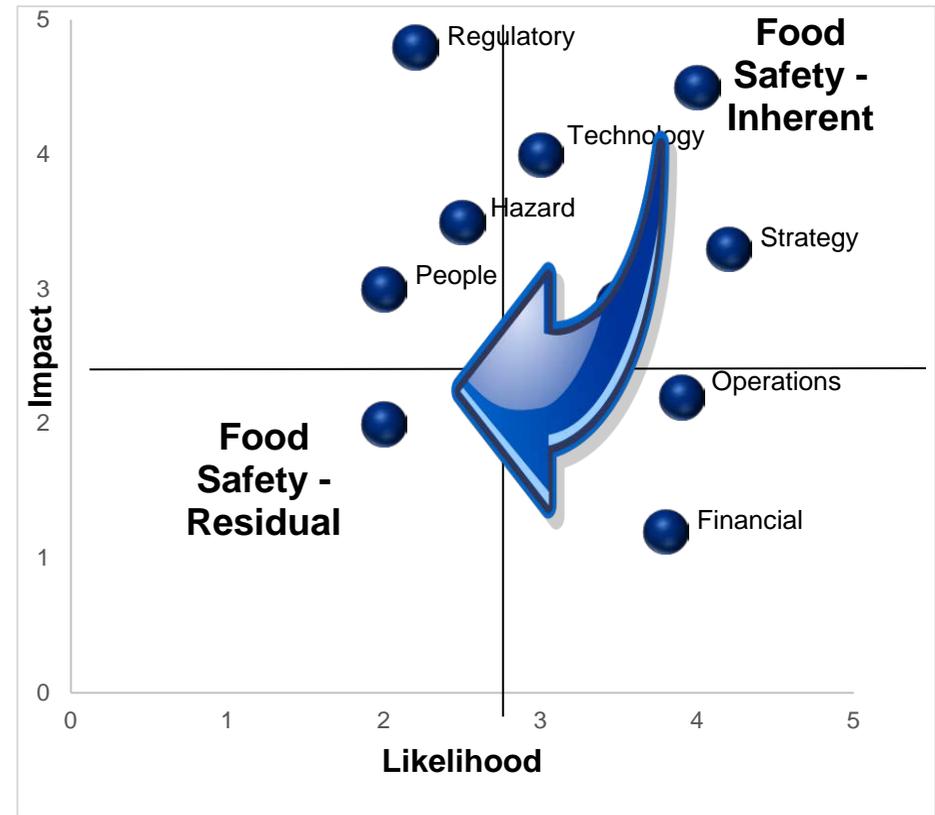
- How, not if.
- Assess your company exposures — inside and outside your four walls.
- Evaluate direct and indirect consequences, both in short term and long term.
- Be proactive — incorporate ERM best practices.

# Marsh's Enterprise Risk Management Framework



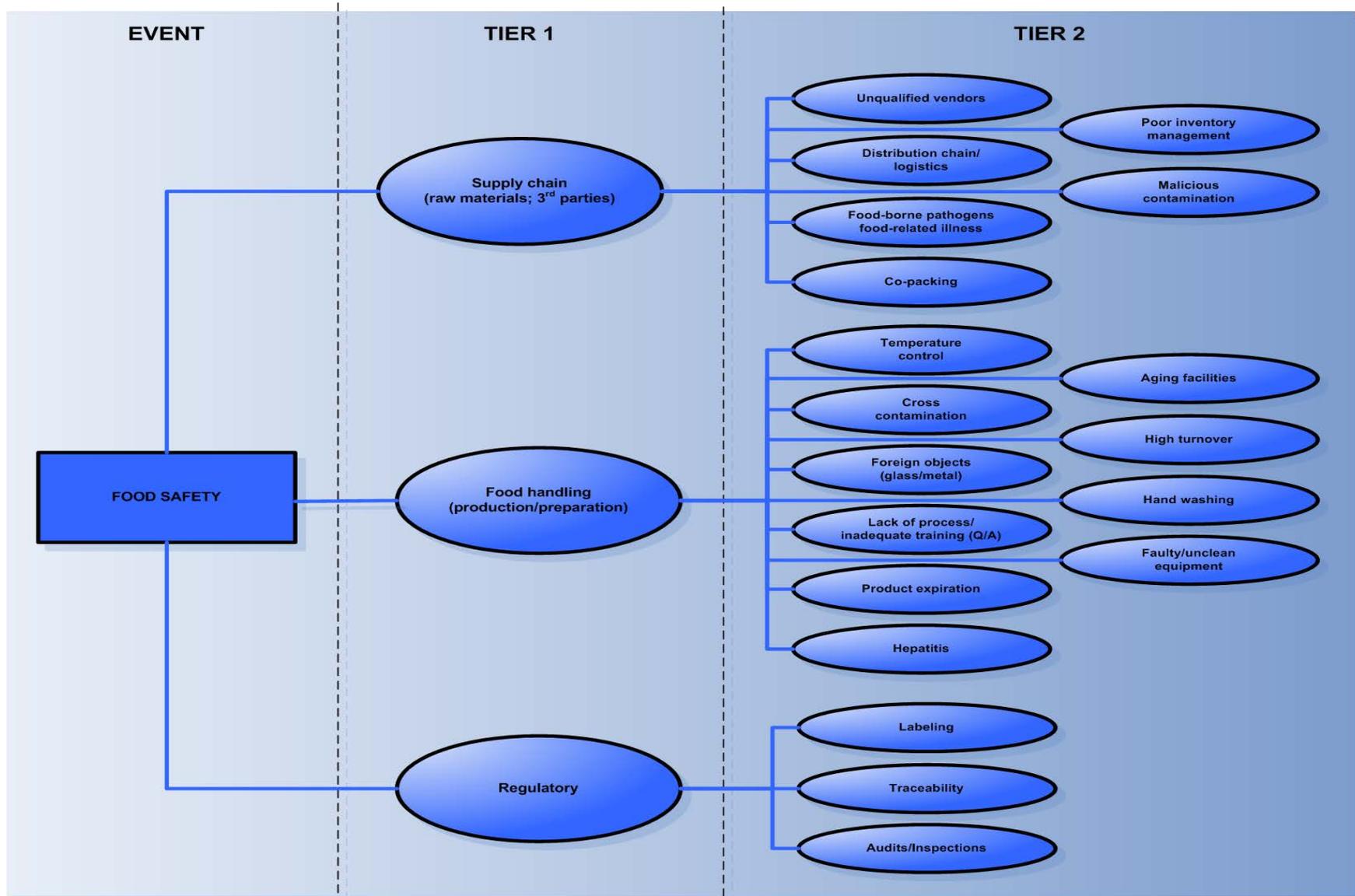
# Applying ERM Principles and Practices

- Undertake an Enterprise Risk Assessment
  - Assess risk.
  - Evaluate controls.
  - Identify gaps.
  - Identify key actions required.



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# Root Cause Analysis



# Benefits of an ERM Approach

- Supports return on risk investment.
- Improves communication.
- Promotes continuous improvement.
- Achieves corporate governance objectives.
- Assures key stakeholders that risks are being managed appropriately.

# Anatomy of a Loss: “You Have No Idea How Bad it Can Get.”

*Dr. David Theno, Gray Dog Partners, Inc.*

# Anatomy of a Loss

- Human tragedy.
- Immediate and long-term financial impact.
- Brand image/confidence.
- Legal proceedings.
- Personal impacts on everyone involved.

# Anatomy of a Loss

- **HUMAN TRAGEDY**

- Children die or have lifelong disabilities.
- Long-term health considerations of victims.
- Family lives changed forever.

- **IMMEDIATE AND LONG-TERM FINANCIAL IMPACT**

- Immediate sales losses of greater than 50% are common.
- Often sales are down greater than 35% for six months or more.
- Stock declines of greater than 50% can occur.
- Personal injury/shareholders/franchise partners. All lawsuits require funding.
- You may lose your business or control of ownership.

# Anatomy of a Loss

- **BRAND IMAGE/CONFIDENCE**

- Loss of trust: customers/partners/regulators
- Loss of goodwill.
- An event will always be a part of your story.
- Anniversaries of the event will always be recalled.

- **LEGAL PROCEEDINGS**

- Everyone that can, will bring legal action against you.
- Victims must take care of them immediately and do what is right for their long term care.
- Class-action suits.
- Shareholder suits/possible SEC investigations.
- Business partners/suppliers.
- Employee-related issues.
- Own the issues up front.

**KEY FACT: *THE TRUTH ALWAYS FINDS A WAY TO COME OUT***

# Anatomy of a Loss

## PERSONAL IMPACT

- Victims: disruption of their lives.
- Shareholders: may lose their retirement.
- Employee layoffs/desertions.
- Leadership prosecutions.
- Personal ownership of the damage done under your leadership. You are personally responsible to those who consume or use your products.

***KEY THOUGHT: IF YOU CANNOT PERSONALLY GUARANTEE THAT THE PRODUCTS YOU PROVIDE WILL BE SAFE, YOU EITHER HAVE TO FIND A WAY TO MAKE IT SAFE, OR LET SOMEONE ELSE WHO CAN MAKE IT SAFE, TAKE OVER YOUR ROLE.***

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# Anatomy of a Loss: Corporate Resiliency

*Chandra Seymour, Marsh Risk Consulting, Reputational Risk & Crisis Management*

***“Whether an organization survives a crisis with its financial condition, operations, and reputation intact is determined less by the severity of the event than by the timeliness and effectiveness of the response.”***

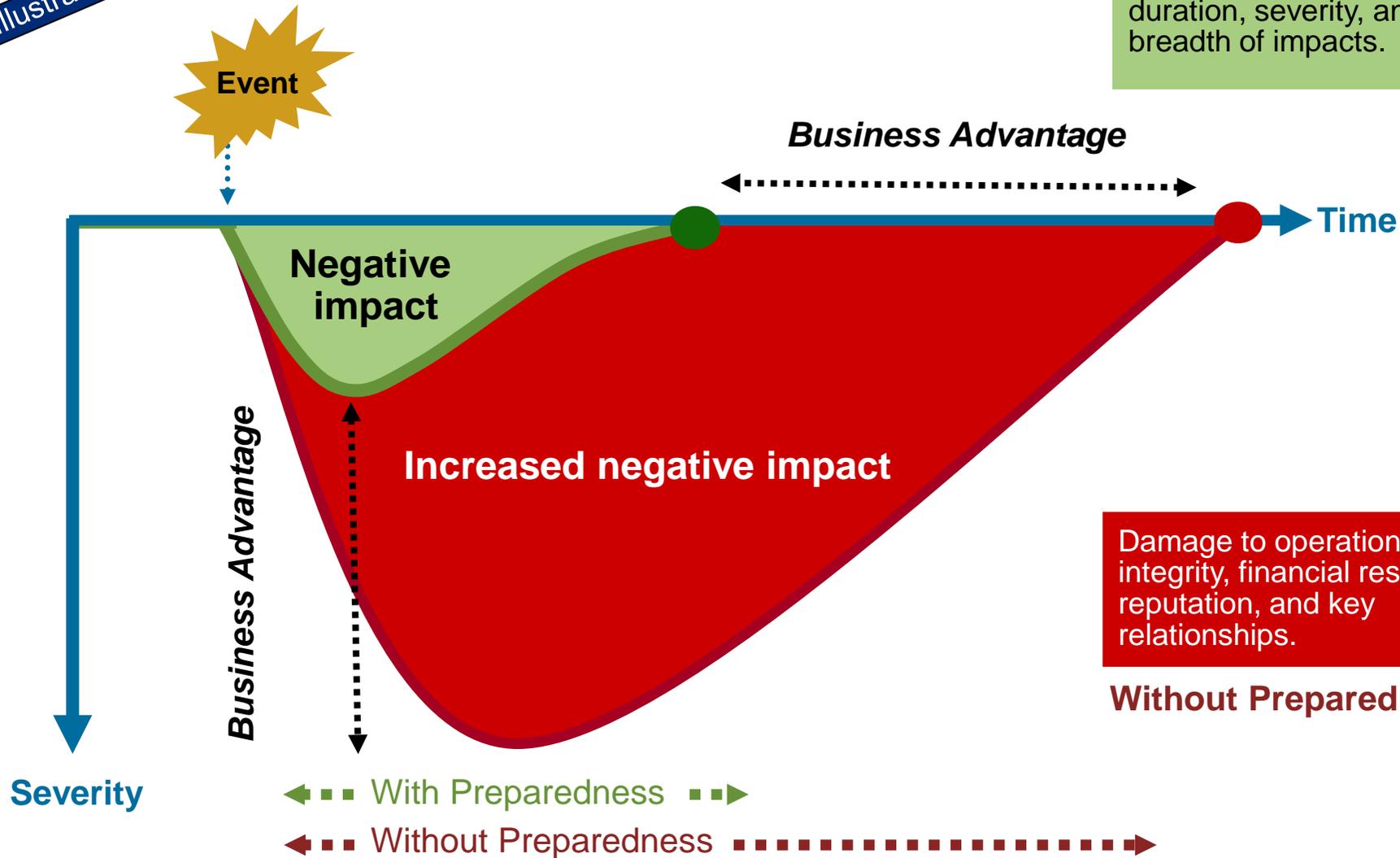
*Source: Helio Fred Garcia (Logos Institute), "Effective leadership response to crisis," Strategy and Leadership (2006) Vol. 34 No. 1.*

# Corporate Preparedness Can Reduce Impact

Illustrative

With Preparedness

Preparedness reduces duration, severity, and breadth of impacts.

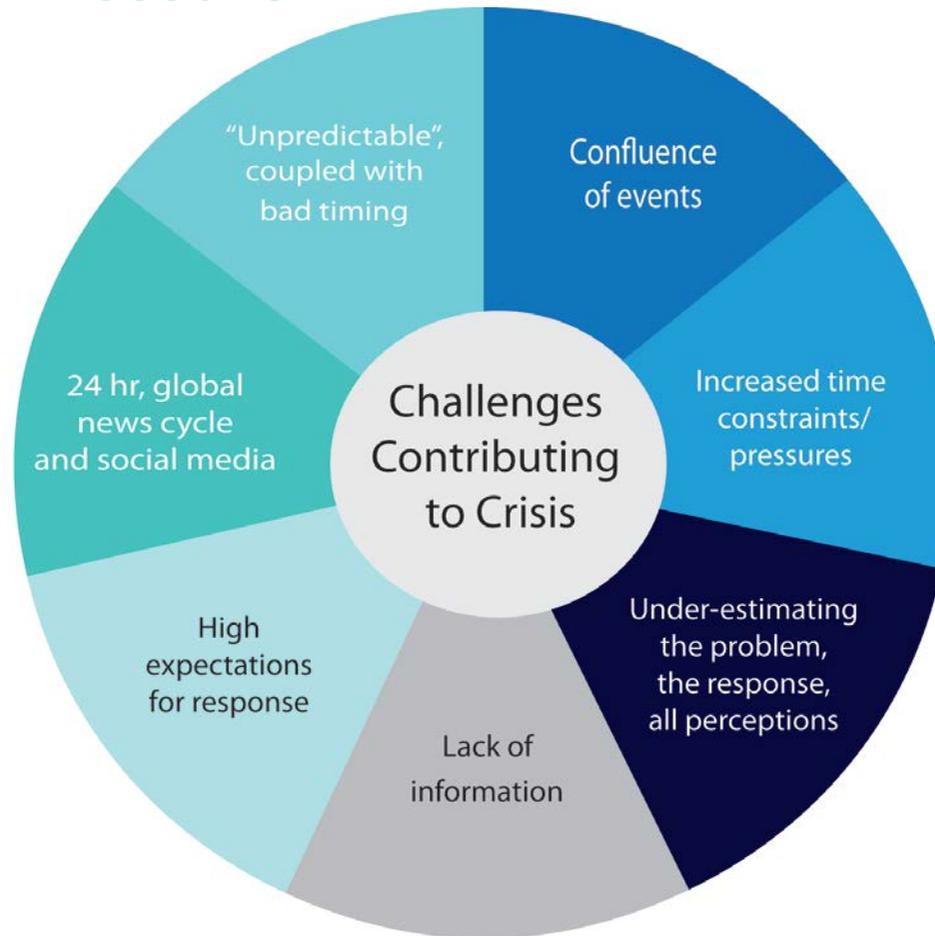


Damage to operational integrity, financial results, reputation, and key relationships.

Without Preparedness

# Why Crises Are Difficult to Manage

## Some Common Lessons



*Crisis, by definition, isn't business as usual.  
Process and planning can reduce "chaos" during crisis situation.*

# Minimizing Reputational Risk

## Four Key Impact Drivers



Detect problems early and get visibility to the right levels of your organization quickly.



Engage well-practiced team(s) to manage not only the event, but also actual and potential impacts.



Transition from chaos to a proactive and controlled response.



Take bold action: Get in front of the situation!

# A Few Do's and Don'ts for a Strong Overall Program



Strong Programs Do This	Work To Avoid These Pitfalls
Integrated and aligned plans.	Stand alone or siloed plans/procedures that may or may not work together effectively.
An overall response structure that describes teams from executive to tactical level.	No clear structure or means of linking various levels of the organization.
Clear teams with pre-identified members and distinct roles and responsibilities.	Ad hoc team with roles being determined “on the fly.”
Common terminology (e.g., what is an emergency vs. crisis?) to simplify communication and ensure common understanding.	Jumbled terminology — no one speaking the same language.
Ability to quickly identify potential crises and push them up the chain.	No means or culture for sharing “bad” news.
Clear links between the resiliency program, risk management and business strategies.	Major disconnects between identified risks and actual resiliency capabilities.

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## Risk Transfer Options

*John Denton, Marsh National Casualty Practice*  
*Geoff Mills, Marsh Product Recall Practice*

# GL Coverage for Food Contamination

- GL policies cover third-party **Bodily Injury** and **Property Damage**.
  - Do not cover financial loss
  - No coverage for claims alleging financial losses as a result of contamination or any financial losses sustained.
- **“Business Risk” Exclusions:**
  - **Your Product Exclusion**
    - F. **Damage to Your Product**

This insurance does not apply to **Property Damage to Your Product** arising out of it or any part of it.

- **Product Recall Exclusion:**

- R. **Recall of Your Product, Your Work or Impaired Property**

This insurance does not apply to damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

1. **Your Product;**
2. **Your Work;** or
3. **Impaired Property;**

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

# GL Coverage for Food Contamination

- **First Party v. Third Party Recall**

- “Impaired Property”

- L. **Impaired Property** means tangible property, other than **Your Product** or **Your Work**, that cannot be used or is less useful because:

- 1. it incorporates **Your Product** or **Your Work** that is known or thought to be defective, deficient, inadequate or dangerous; or
      - 2. you have failed to fulfill the terms of a contract or agreement;

- if such property can be restored to use by:

- 1. the repair, replacement, adjustment or removal of **Your Product** or **Your Work**; or
          - 2. your fulfilling the terms of the contract or agreement.

- Occurrence Reported Policies

- E. **EFFICACY, LOSS OF USE, ETC.**

- Liability of the Insured:

- (3) for the costs incurred for the withdrawal, inspection, repair, recall, return, replacement or disposal of any **Insured’s Products** or work, including, without limitation, architectural or engineering services, or, in connection with any of the foregoing, loss of use thereof; provided, however, that this paragraph (3) shall not apply in respect of costs incurred for the withdrawal, inspection, repair, recall, return, replacement or disposal of products or work of a party other than an **Insured** of which the **Insured’s Products** or work forms a part; or

# General Liability vs. Product Recall Insurance

- Recall may trigger both GL and product recall policies.
- GL covers:
  - The bodily injury/pain and suffering and third-party property damage claims.
  - Third-party recall if insured's product is a component of the third party's product and cannot be remedied by removal of insured's product.
- Product recall covers the resulting economic loss:
  - Business interruption.
  - Brand and sales rehabilitation costs.
  - Recall and replacement costs.
  - Specialty consulting costs.

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# Product Contaminations Happen — A Lot!

CDC estimates that each year roughly 1 in 6 Americans (or 48 million people) get sick, 128,000 are hospitalized, and 3,000 die of foodborne diseases.

Known foodborne pathogens — 31 pathogens known to cause foodborne illness. Many of these pathogens are tracked by public health systems that track diseases and outbreaks.

Unspecified agents — Agents with insufficient data to estimate agent-specific burden; known agents not yet identified as causing foodborne illness; microbes, chemicals, or other substances known to be in food whose ability to cause illness is unproven; and agents not yet identified. Because you can't "track" what isn't yet identified, estimates for this group of agents started with the health effects or symptoms that they are most likely to cause acute gastroenteritis.

# The Fascinating Lunchtime Facts

Foodborne Agents	Estimated annual number of illnesses	%	Estimated annual number of hospitalizations	%	Estimated annual number of deaths	%
<b>31 known pathogens</b>	9.4 million	20	55,961	44	1,351	44
Unspecified agents	38.4 million	80	71,878	56	1,686	56
<b>Total</b>	47.8 million	100	127,839	100	3,037	100

# Why Are There More Incidents?

- Greater testing at all levels of production of ingredients.
- Health departments working together to find common causes for widespread foodborne illness.
- Greater level of scrutiny by governmental authorities.
- FDA recall power — FSMA.
- Increased traceability
- Unlike traditional newspapers, Twitter, Facebook and thousands of blogs have no fact-checking process or editor to attempt to reduce errors.
- Any meaningful information, right or wrong, is spread worldwide in minutes.

What does this all mean?.....

- *There are more reported contaminations and the average loss is getting larger*

# Typical Product Recall Policy Insured Costs

- Recall costs – including testing, destruction, cleaning of plant/machinery, destruction.
- Business interruption.
- Rehabilitation of brand.
- Consulting costs.
- Third-party risk.
  - Liability to customers.

# What Is My Greatest Risk?

The overwhelming **financial risk** of a contamination incident is **not about the number of injured people** and the lawsuits looking for compensation, **it's about the risk of losing your customers.**

- *How will you get them back?*
- *How long will it take?*
- *How much will it cost?*
- *Do you have the cash to afford this process?*
- *Or who will finance this process?*

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# ANATOMY OF A PRODUCT CONTAMINATION EVENT: LESSONS LEARNED

## Questions & Answers

## Upcoming Marsh webcasts and events– *Contact your Marsh rep to learn more*

- **March 23rd 11am EST** – *The New Reality of Risk®* webcast — “Violence in the Workplace: From Bullying to Terrorism”– [Register today.](#)
- **April 10<sup>th</sup> 3:30-5 pm**: RIMS Food & Beverage Reception, San Diego, CA.
- **April 11<sup>th</sup> 3:30 pm-5 pm**: RIMS Retail/Wholesale & Restaurants Roundtable, San Diego, CA.
- **August 23-24, 2:00 pm**: 2016 Restaurant Risk Management Summit. Arby’s Conference Center, Atlanta, GA.
- **September 20-22, 3:30pm**: 2016 North American Retail/Wholesale Roundtable. The Highland Dallas, TX

# Thank You!



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