

FOOD FOR THOUGHT

A PERIODIC EXAMINATION OF KEY ISSUES AND TRENDS FROM MARSH'S FOOD & BEVERAGE PRACTICE



MANAGING THE FALLOUT FROM A PRODUCT CONTAMINATION EVENT

In the last year, several large food and beverage companies have experienced significant financial losses from product contamination events that resulted in litigation, criminal charges, or reputational damage, and even put some out of business.

For example, one major fast-casual restaurant experienced multiple outbreaks of foodborne illness over a six-to-nine month period that left hundreds ill and the company at the center of a media storm. The fresh, organic ingredients and multiple local suppliers — which the company takes pride in and markets extensively — complicated the Food and Drug Administration (FDA) and Centers for Disease Control (CDC) efforts to identify the contamination source. As part of its response, the company shut down its restaurants for a portion of a day to retrain staff and review health and safety standards.

The contamination incident has led to millions of dollars in losses.

MITIGATING THE FINANCIAL RISKS

Most food and beverage companies hold general liability (GL) insurance policies that can help mitigate the potential costs from a class-action lawsuit related to a significant contamination incident. Although this is an important coverage, it may not be sufficient to mitigate the total costs of a product contamination incident. The largest cost of a product contamination incident is related not necessarily to bodily injury, but to the loss of consumer confidence, customers, and revenue.

Rarely do contamination events cause serious illnesses or deaths. Yet even cases of product contamination that result in little or no harm to consumers can irreparably damage a brand and drive away loyal customers. A company therefore may face not only business interruption, but also high costs to rehabilitate its brand and recover revenue streams.

Product contamination insurance can cover areas not typically covered under a GL policy, including business interruption, brand and sales rehabilitation costs, recall/replacement costs, and the use of a variety of consultants and testing labs. It is important to understand the distinctions between these two types of coverage in order to properly mitigate the financial risks.

FOOD RESPONSE BEST PRACTICES

Food response management plan: The first step following a product contamination incident is to put into action the company's food response management plan to identify:

- What happened?
- How did it happen?
- Why did it happen?



A pre-established food response management plan should address those questions, as well as such issues as the availability of a regional, 24-hour testing lab or partners to assist in testing. Companies that do not have such plans in place generally take longer to identify the source of contamination. Extending the time it takes to get the event under control heightens uncertainty among customers and increases financial losses. Once an event is known, a crisis management plan should be activated to alert executives and senior leadership of the issue and to initiate a response from a broader corporate perspective.

Evaluating partnerships: It's important to understand how suppliers operate, what insurance they have, and how their coverage may interact with yours. When product contamination occurs, companies seek to identify the root cause to not only prevent it from happening again, but to identify whether a supplier or suppliers were involved and potentially share the liability. However, if the product contamination was caused by a supplier, damages typically will not be reimbursed under the supplier's GL or standard product contamination policy. The supplier would need to have recall liability coverage for reimbursement to be insured. If your supplier does not have a recall liability policy, your business could be left with limited sources of restitution.

Crisis communication plan: Today's customers consume information from social media as readily as they consume your products. In good times, companies leverage this to promote their brand online and to maximize sales. However, when something goes wrong, the social media machine can spread bad news rapidly. Unlike traditional news sources, social media platforms are often unfiltered, unedited, and may lack basic fact checking. As a result, a brand's image can quickly be tarnished as news of even a relatively minor product contamination event spreads across cyberspace. It is important to establish a crisis communication plan that expeditiously, efficiently, and clearly expresses what the company response will be to an event. This needs to be developed beforehand, and implemented at the time of a food contamination incident.

TOWARD EFFECTIVE RECOVERY

Product contamination is an extremely difficult risk to predict, while the financial impact of an incident can be crippling. However, by identifying appropriate insurance coverage, developing effective post-incident action plans, and implementing them quickly, food and beverage companies can increase the efficiency of their recovery.

This briefing was prepared by Marsh's Food and Beverage Practice, in conjunction with Marsh's Product Recall Practice.

For more information on this topic, visit marsh.com or contact your Marsh representative or:

GREG BENEFIELD
Food & Beverage Segment Leader
+1 615 340 2449
greg.benefield@marsh.com

MAC NADEL
Retail/Wholesale, Food & Beverage
Practice Leader
+1 203 229 6674
mac.d.nadel@marsh.com

Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

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