

Product Liability and Microbial Foodborne Illness

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Chapter 1

Introduction

Food products may cause human illness if they contain microbial pathogens such as bacteria, parasites, fungi, or viruses. Foodborne illness is relatively common in the United States despite intensive efforts by Government agencies and private firms to ensure that food products are safe. The U.S. Centers for Disease Control and Prevention (CDC) has estimated that 76 million foodborne illnesses occur each year in the United States, resulting in 325,000 hospitalizations and 5,000 deaths (Mead et al., 1999). Pathogen-contaminated foods consequently represent an important cause of unintentional injury and death. In fact, contaminated food products caused more deaths each year than the combined totals of all 15,000 products regulated by the U.S. Consumer Product Safety Commission; these products caused 3,700 accidental deaths in 1996 (U.S. Consumer Product Safety Commission, 1998).

This report focuses on foodborne illnesses caused by food-handling errors by firms and the subsequent lawsuits triggered by those errors. Under U.S. product liability law, people harmed by unsafe products (including foods contaminated by microbial pathogens) can take legal action to claim money damages for their injuries. Product liability law specifies when firms are liable for injuries due to their products and are required to pay compensation to injured persons or their survivors. In the case of contaminated foods, product liability is a seemingly powerful mechanism to compensate consumers for economic losses due to foodborne illness, while simultaneously encouraging firms to provide safer food products.

Financial compensation for injuries due to contaminated food products is important because foodborne illness imposes substantial economic costs on society. The annual medical costs, productivity losses, and costs of premature deaths due to five major foodborne pathogens are estimated to be \$6.9 billion (Crutchfield and Roberts, 2000). This estimate represents only a fraction of the total costs due to foodborne illness, which include some costs, such as pain and suffering, that are difficult to quantify and other costs, such as public health expenditures on foodborne disease, that are often overlooked.

Economic theory suggests that firms that make or distribute food products will invest fewer resources in reducing disease-causing contamination if they expect not to pay for injuries due to contaminated products. When firms escape paying compensation, the costs of injuries are borne instead by the consumers who become ill or are shifted to other parties, such as health insurers and employers that provide sick leave benefits. In contrast, if firms expect to bear the costs of injuries due to contaminated products, they will likely invest more resources in reducing contamination. Lawsuits by consumers injured by foodborne pathogens are one signal for firms to spend more for food safety in order to reduce compensation costs. If most firms currently escape paying compensation, increased corporate investments in food safety should lower the overall incidence of foodborne illness and liability costs and result in a more optimal sharing of food safety costs between firms and consumers.

Lawsuits by consumers to recover damages due to foodborne illness can affect the behavior of firms that make or distribute food products. The magnitude of this effect is unknown, however, because information about litigation involving injuries due to food products contaminated by microbial pathogens is scarce. Firms (or their product liability insurers) generally prefer to resolve consumer complaints about foodborne illness outside the courtroom, where they can keep compensation payments confidential, and avoid or reduce adverse publicity about their products. Some lawsuits result in trials, but court statistics do not distinguish cases involving contaminated foods from other product liability cases. Court decisions about liability for foodborne illness may also appear inconsistent because product liability law is complex and the disposition of court cases for contaminated food products is evolving. For example, liability currently varies according to the type of food and pathogen involved in causing illness, reflecting previous court decisions and judges' and juries' assumptions about consumer awareness of the safety of particular foods, as well as existing laws and regulations.

This report examines how foodborne illness is handled under U.S. product liability law. We review liability law for injuries due to food products contaminated by microbial pathogens, and we investigate the incidence of litigation and the characteristics of cases tried in State and Federal courts. Most foodborne illnesses do not result in litigation. Furthermore, only a third of the consumers who go to court receive financial compensation for their injuries. These findings suggest that the direct impact of court decisions on firms is small, although few if any firms are likely to ignore the potential legal consequences of selling contaminated food products that could cause illness or death.

Chapter 2 discusses the characteristics of foodborne illness that may influence litigation involving injuries due to foodborne pathogens. Chapter 3 provides an overview of the general concept of product liability and its economic impacts. For readers interested in Federal and State law regarding liability for foodborne illness, the appendix provides a comprehensive background. Chapter 4 analyzes U.S. jury verdict data on foodborne illness lawsuits for 1988-97.