

Successfully Defending the Food Liability Claim By Demonstrating a Commitment to Food Safety

By Christian Stegmaier

With more lawyers and less restrictions on legal advertising, the numbers of lawsuits have dramatically risen. A target of much of this increased litigation has been the hospitality industry, including food service establishments.

Among the influx of lawsuits has been the rise of food adulteration claims. From allegations of foreign objects to too hot coffee to improperly prepared food, claimants are pursuing money damages from food service establishments for a multitude of reasons.

A partner of mine has a saying about why plaintiffs bring lawsuits: “Don’t let anyone tell you differently, it’s always about the money.” After having been a lawyer for almost 10 years, I will tell you he is right.

In many – if not most instances – when a food service establishment receives a complaint about its product from a patron, it tries to do the right thing. The establishment may refund the price of the patron’s purchase, offer certificates for free future dining, or even a cash resolution. If there are “damages,” like a doctor’s or dentist’s bill, the establishment may even offer to pay for the costs incurred by the patron. For many claimants, the offers of free meals or the payment of bills is enough. For others, however, an establishment’s overtures come nowhere close to what they believe their claims are worth. Instead, these patrons (and their newly acquired personal injury lawyers) have stars in their eyes and see the chance for further recovery, including payments for “pain and suffering” or punitive damages.

For a food service establishment in a plaintiff’s crosshairs, the name of the game is to defend its practices, its products, and its reputation. When trial by jury is the resolution strategy adopted by the food service establishment, it better be reasonably confident that it can win. An ugly loss, which may create tremendous adverse publicity, may be the death knell for the establishment. The marketplace is saturated with competitors. A reputation that an establishment sells a bad product will allow others to move in on its market share.

In a food claim, an establishment should anticipate that its entire operations will be on trial. It can expect a crafty plaintiff’s lawyer to explore the methods distributors are selected, the way food is stored and handled, and the means the establishment employs to prepare and serve its product. Counsel is looking for chinks in the armor to demonstrate to a jury the establishment is less than zealous in protecting the health and safety of the consuming public.

The establishment must be prepared for such an attack. It therefore must be able to demonstrate the creation, implementation, and enforcement of industry-recognized food safety protocols, which would include a program of periodic training. Such a demonstration is important because it shows to a jury the establishment is not a “fly-by-night” operation; rather, through evidence of training and procedures, the establishment is able to make clear it takes food safety seriously.

By demonstrating its commitment to proper food safety, the establishment puts itself in the position to achieve one of two outcomes: Having a jury disbelieve the plaintiff's story completely based on the lack of a possibility of occurrence (*e.g.*, a claim of glass in a ice cream sundae is rejected when it can be shown the establishment used no glass in its operations); or, where liability is proven, limiting a finding of fault to simple negligence rather than "willful or wonton" conduct, which opens the door to an excessive special damages verdict or punitive damages award (*e.g.*, the jury finds that the plaintiff's injuries are the product of a simple mistake rather than a calculated disregard for the safety of patrons). The more a jury believes a food service establishment works hard to run its operations cleanly, safely, and properly, the less of a chance there will be for an adverse outcome at verdict time.

Christian Stegmaier is a member of the Retail/Hospitality Practice Group of Collins & Lacy, P.C., a Columbia, South Carolina defense litigation firm. Christian welcomes your questions or comments regarding issues of liability in the hospitality sector by either calling him at (803) 256-2660 or emailing him at cstegmaier@collinsandlacy.com. This material is intended to provide information on noteworthy legal issues and is not a substitute for legal advice. For more information, please visit www.hospitalitylawyer.com.