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Legal Survival Guide for Food Brands: Insights from a foodborne illness attorney on staying lawsuit-proof in a risky world



Show Announcements:

- Download the Mobile App to view the Exhibitor List, Show Schedule, Floor Plan and our Sponsors.
 - Thank you to our Mobile App sponsor: **Epicor (Booth 4465)**
- Wi-Fi – Sponsored by **Cactus Botanicals (Booth 4237)**
 - Select network: **SupplySideWest23**
 - On the splash page, agree to terms & conditions
 - Enter access code: **cactus4237** (access code is case sensitive)
- Please place all devices on silent mode
- The Expo Hall is open today from 10am – 5:30pm.
- There is an LGBTQ + Allies Networking reception tonight from 5:30-7:30pm in South Pacific Ballroom F.
This reception is in partnership with the Naturally Proud Network.



Legal Survival Guide for Food Brands: Insights from a foodborne illness attorney on staying lawsuit-proof in a risky world

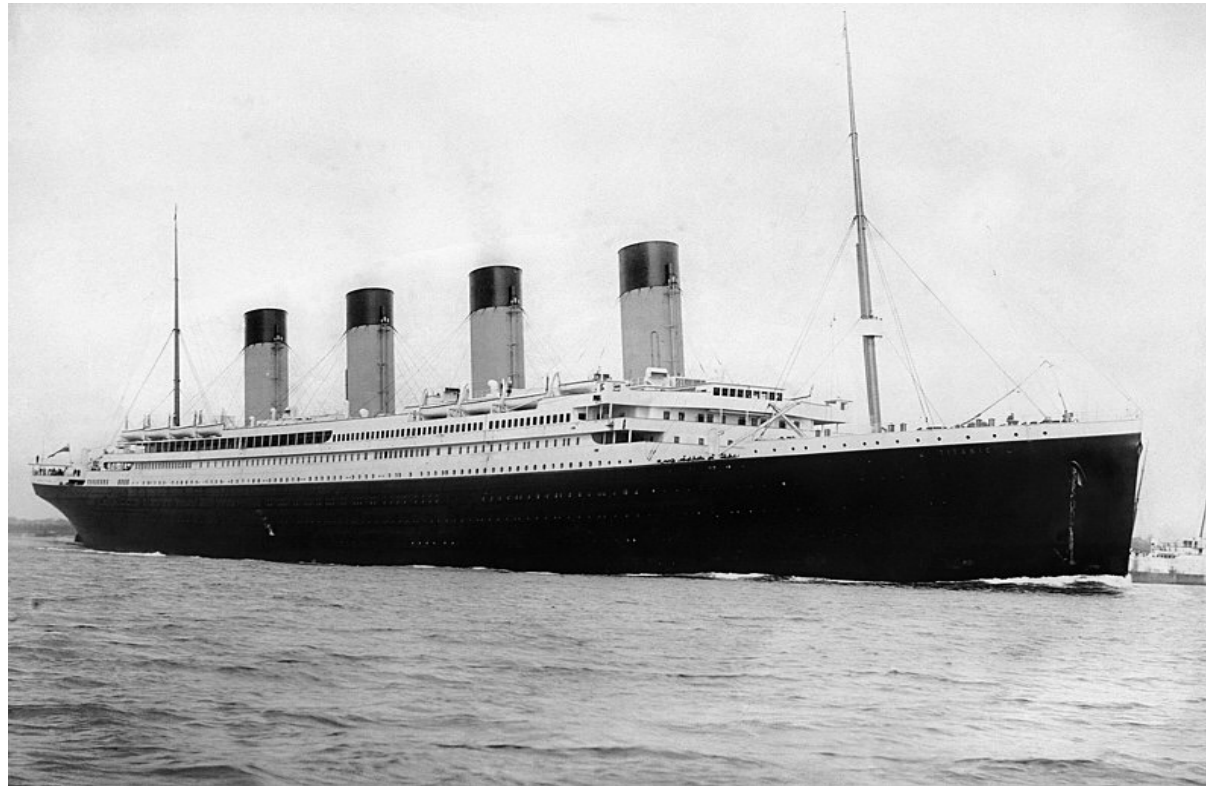


Bruce Clark

Marler Clark Inc., PS



My least favorite comment: “We never had a problem before”



If It's Natural It Must Be Good, Right?

- Company X is an online, subscription-based food manufacturing and delivery service
- Created a new food item using a plant-based ingredient from South America
- Chain of distribution: S. American Co → N. American supplier → N. American Manufacturer → Company X → consumers
- Ingredient not FDA GRAS (21 U.S.C. § 201(s) and 409) for use in question
- WCGW?

Who's Responsible?

- Everyone. That's why we call it "strict liability."
 - It puts pressure on the party (manufacturer) that most likely could prevent/correct the problem
 - It puts the burden of cost on the party that profited from the defective product
 - It puts the focus on the **product**, not the conduct of the manufacturer—*causation* becomes the central Q
 - If you are going to pay an attorney, pay one to make sure your supplier contracts are helpful

You Cannot Afford One Mistake

- Lost profits
- Brand damage
- Recall costs
- Litigation costs
- Business disruption costs
- Remediation costs

Knowledge is Power

- Bacteria first identified in 1676 Antonie van Leeuwenhoek
- John Snow London 1854; Robert Koch anthrax 1876
- PFGE first described in 1991 (OJ Simpson was tried in 1995)
- Human Genome Project started in 1990 and completed in 2003
- WGS is now used in every outbreak
- AI is coming for you

It is Not that Difficult

- The CDC has identified the five most common risk factors that cause foodborne illness:
 - Purchasing food from unsafe sources.
 - Failing to cook food properly.
 - Holding food at incorrect temperatures.
 - Using contaminated equipment (LM).
 - Practicing poor personal hygiene.

Ignorance is Not a Useful Defense

- Compendium of Measures to Prevent Disease Associated with Animals in Public Settings
- Model Aquatics Code
- CDC website: “Foodborne Germs and Illnesses”



This is the true cost



What Do We Do?

- Seek out knowledge; be curious
- Find the people who really know the subject to guide you
- Work with public health professionals
- Protect yourself through contracts
- Know your chain of distribution
- Assume you are vulnerable to disaster
- Gets lots of insurance

C'est Tout, Merci