FOOD: the most Dangerous Product in the United States?

“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.”

Foodborne Illnesses Cost U.S. An Estimated $3 - $7 Billion Each Year

- 76 million cases annually in the US
- 325,000 hospitalized
- 5,000 deaths
Incentives for Companies to Produce Safe Food Products

- **Market Forces** - risk of damage to business reputation, loss of market share, and decreased sales revenue;
  - Contract Specifications as a “market force”
  - Charging a “premium” for safer food
Incentives for Companies to Produce Safe Food Products

- **Food Safety Laws and Regulations** - violations can result in fines, product-recalls, plant-closures or criminal penalties
Incentives for Companies to Produce Safe Food Products

- *Product Liability Law* - forcing firms to bear the full costs of decisions made about product quality and safety by requiring the payment of monetary compensation for the injuries caused by defectively manufactured or unsafe products.
Strict Liability =

“Liability without regard to fault”
Strict Liability Applied:
So What is the Logic???

- Protect the Public
  - Some things are inherently dangerous
- Non-represssive check on freedoms
  - You can do it, just be ready to meet the consequences
- Actor should bear the costs, not the victim—this encourages change
Strict Products Liability

Rationale for strict products liability is a little different because the thing is not inherently dangerous.
So, the new rule of Strict Product Liability:

The manufacturer of a defective product is liable if the defect rendered the product unreasonably dangerous, and the defective product caused the victim’s injuries.
“Manufacturer”

- Differs in every state
- Many states exclude product sellers
- Working definition: entity that designs, constructs, or fabricates the product
“Unreasonably Dangerous”

“A product that is unsafe beyond that which would be expected by the ordinary consumer”

Does ANY ordinary consumer expect to be sold food that makes them SICK?
STRICT Products Liability

- The only defense is prevention
- Diligence does not matter
- If you poison somebody, you pay
- Wishful thinking does not help
A Few Words About Ignorance:

- Ignorance is no defense
- Ignorance is also a bad defense
A Little Ancient History

Jack in the Box
IN THE SUGGESTION BOX

Type of suggestion: (Check)

Restaurant Procedure (POS, Menu, Maintenance, etc.)

Quality Improvement (Procedure, Equipment, System)

Great standards

Describe change/New Product Idea: I think regular patties should cook longer. They don't get done and we have customer complaints.

Describe benefit/New Product Build: If we change this, we will be making our burgers done and edible.

Cook times:

I clearly understand that all ideas and suggestions by me become the property of Panaderia Inc. and I agree to the publication and/or use thereof. Signed: Wendy Cohinella 6/18/92

Wendy Cohinella

EXHIBIT C05
August 23, 1992

Wendy Cochran
Shift Leader
JACK IN THE BOX #8466
3818 17th St. N.E.
Arlington, WA  98223

Dear Wendy,

We have researched your suggestion and determined that with the variability of our grill temperatures (350° - 400°) the two-minute cooktime is appropriate. If the patties are cooked longer than two minutes, they tend to become tough. To ensure that you are meeting quality expectations for regular patties, please ensure that the grill temperature is correct and grill personnel are using proper procedures.

Sincerely,

Randy Hopper
Manager, Operations Service and Maintenance

RJrjed

Attachment

cc:  Stephanie Green
     Vanessa Faschin
     Mike McQuitty
     Janice Realini, Restaurant Manager #8466
     Ed Molhazen - Northwest
     Ray Lysch - Northwest

joseph.curry@jtb.com
Strict Liability For Food: In Sum

- The focus is on the product; not conduct.
- You are liable if:
  - The product was unsafe and thus defective
  - The defective product caused an injury

**STRict LIABILITY IS LIABILITY WITHOUT REGARD TO FAULT**
The Environmental Health Perspective
Governmental immunity then: The king can do no wrong
Governmental immunity now:
The king is occasionally wrong
HRS 662-2

• The State hereby waives its immunity for liability for the torts of its employees and shall be liable in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.
Factors to Consider:

- Defense and indemnification for actions done “in the scope of the employee’s employment”
- Not strict liability
- No punitive damages
- Municipal liability may be different
- Apportionment of fault
Exceptions to Rule of Liability: HRS 662-15

- Execution of a statute or regulation
- Discretionary function or duty
Hypotheticals

- Cross over center line while driving to inspection
- Negligent failure to discover obvious violations that thereafter cause an E. coli outbreak
- Punch the coach of your son’s basketball team who happens to be dining at the site of your inspection
Questions?