2016 Emerging Trends in Product Recall and Contamination Risk Management

A crisis may be unpredictable, but it should not be unforeseeable
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The product recall and contamination insurance market continued to expand and develop in 2015. Coverage is becoming more commonplace with an increasing number of companies purchasing policies to supplement their risk management programs. New carriers provided additional capacity and policy wording continued to develop around new exposures and case law. Several high profile events influenced the manner in which underwriters view and approach risks while regulators and the media continued to focus on issues of product safety.

This publication seeks to provide readers with updates on the risk management of product recall and contamination. It also summarizes some of the significant events during the past twelve months, reviews new rules and regulations, and provides updates on the insurance marketplace including tools available to assist firms in evaluating and mitigating their risk.
2016 Food Safety Risk Management Trends

- Food Products
  - Restaurants and Food Service
  - Automotive Products
- New FSMA Rules
  - Safe Food Act of 2015
  - Surveillance and Sampling
- Social Media
  - Supply Chain Integrity
  - Vendor Management
- Increasing Capacity
  - New Carriers
  - Wording Clarity
- Regulatory Changes
  - Surveillane and Sampling
- Carriers Market Changes
  - Increasing Capacity
  - New Carriers
  - Wording Clarity
- Industry Focus
  - Social Media
  - Supply Chain Integrity
  - Vendor Management
- Recall & Contamination Events
  - Food Products
  - Restaurants and Food Service
  - Automotive Products
Significant Product Safety Incidents of 2015

Major Food Safety Incidents

2015 began with one of the largest and most publicized product recalls in history. On March 13, 2015, Blue Bell Creameries of Brenham, TX announced the company’s first recall in 108 years. Blue Bell voluntarily recalled all of its products made at all of its facilities, including ice cream, frozen yogurt, sherbet and frozen snacks, because they had the potential to be contaminated with Listeria monocytogenes. A public letter was issued on March 27, 2015 to customers and retailers on the company’s website apologizing for any anxiety or inconvenience the recall had caused.

According to the Center for Disease Control (“CDC”), illness onset dates ranged from January 2014 to January 2015. Listeriosis is a life-threatening infection caused by eating food contaminated with the bacterium (germ) Listeria monocytogenes (Listeria). A total of ten people with listeriosis related to this outbreak were reported from four states: Arizona, Kansas, Oklahoma, and Texas. All ill people were hospitalized and three deaths were reported from Kansas.

Although Blue Bell ice cream is only available in about 30% of the nation’s supermarkets, it is one of the top three best-selling ice cream products in the country. Blue Bell shut down all its’ operations and laid off 1,450 employees as a result of the outbreak. On July 14, 2015, Blue Bell announced that prominent Texas business investor Sid Bass had become an investor with the company.

Additionally, in early 2015, a diverse range of products were recalled by numerous U.S. based companies due to potential peanut powder contamination of the spice cumin. Consumers with severe allergic reactions to peanuts were at significant risk due to this undeclared allergen. Several companies received shipments of the ground cumin that contained the undeclared peanuts, which were subsequently used as an ingredient in products ranging from soups and sauces to meat products. The source of the contamination was traced back to Turkish suppliers of the spice. What made this recall more difficult was that frequently the ingredients listed “spices,” and did not specify ground cumin.

The cumin contamination sparked global food safety concerns with the United Kingdom government’s new food crime unit launching an investigation sparking off the “Nuts-for spices crisis” in the UK which spread across Europe. It was reported as being a scandal even more serious than the horsemeat crisis of 2013.

The recall of cumin was expanded to include recalling products that contained paprika when a supplier to one of the UK’s major supermarkets found undeclared traces of almond protein in batches of paprika used in various products. Paprika is also the other most popular ingredient in European cooking.

As the alert escalated, food watchdogs in Denmark, Sweden and Norway recalled about three dozen products containing almonds in place of paprika.
Significant Product Safety Incidents of 2015

On September 4, 2015, Andrew & Williamson Fresh Produce voluntarily recalled all cucumbers sold under the “Limited Edition” brand label after the CDC, and the FDA investigated a multistate outbreak of Salmonella Poona infections linked to imported cucumbers from Mexico. One-hundred-sixty-five people were hospitalized and four deaths were reported.

The above joint investigation utilized the CDC’s PulseNet system to identify illnesses that were part of this outbreak. Since 1996, PulseNet has connected foodborne illness cases together, in order to detect and define outbreaks. DNA “fingerprinting” was performed on Salmonella bacteria isolated from ill people using a technique called pulsed-field gel electrophoresis, or PFGE. PulseNet manages a national database of these DNA fingerprints to identify possible outbreaks.

Food Service and Restaurant Contamination

Food service and restaurant chains also suffered defining food safety events in 2015 with Chipotle Mexican Grill being the most high profile. Chipotle was implicated in a series of food borne illness outbreaks that caused significant damage to the company’s brand and reputation. Chipotle, a firm known for its’ locally sourced ingredients, hormone free meats and “food with integrity”, had outbreaks across ten states, with more than five-hundred people reportedly sick. The outbreaks that started in the Pacific Northwest during the late summer quickly spread across the country and included reports of E. coli and salmonella contamination, as well as two separate norovirus incidents.

Shares in the Chipotle company stock dropped from $750 to the low $400’s. This represents a drop in value of $6 Billion. The company reported a 14.6 % decline in sales in the last quarter of 2015. Chipotle has estimated that $14- $16 million will be spent on dealing with its contamination issues.

Chipotle has undertaken the following remedial measures: a comprehensive reassessment of their food safety practices, which includes enhanced DNA-based testing of all fresh produce before it is shipped to restaurants; shelf-life testing to ensure that quality specifications are maintained throughout the shelf life of an ingredient; improvements in vendor and supplier testing; and enhanced internal training of employees.

In early 2016, a class action lawsuit was filed against Chipotle alleging that the company provided misleading information to investors. Specifically, the suit, filed in the U.S. District Court by a New York-based investor, states the company made materially false and misleading statements to investors, hid essential information regarding lack of quality controls and lied in public statements following an outbreak of customer illnesses. This lawsuit comes after a subpoena was served on the company as part of a federal criminal investigation by the U.S. Food and Drug Administration’s Office of Criminal Investigations.
International Incidents

Two noteworthy international incidents occurred in Australia, during 2015, both of which received widespread media attention.

In February 2015, Patties Foods recalled Nannas and Creative Gourmet brands of frozen fruit due to potential Hepatitis A contamination. It was believed that the potential contamination was a result of fruit that had been sourced in China. The media reported that more than thirty people contracted Hepatitis A, however, microbiological and viral tests did not find the disease present in berry samples that were tested. The financial impact for Patties Foods was significant. Analysts estimate that the recall resulted in a reduction of 88% of Patties Foods’ full year net profits. Share prices also dropped by roughly 12%. This did not include the costs associated with the recall itself or the significant brand and reputational damage that Patties Foods suffered. In December 2015, Patties Foods sold its berry business to a privately owned company from Victoria, Canada.

Additionally, in late 2015, Australia experienced thirteen recalls of coconut drinks within a two-month period. These recalls were all due to potentially undeclared allergens in the dairy products used. It is difficult to measure the impact of these recalls as most of the involved companies were relatively small importers who were then on-selling to end consumers and restaurants in the Asian market. The financial impact on these small companies will, no doubt, be devastating. The incident was such a concern for the Department of Agriculture that it began inspecting the labels of all imported coconut milk drinks at the border. All labels that did not declare milk were subsequently sent for testing. One importer faced criminal charges after a ten-year old died after consuming a coconut drink with a undeclared milk in it. The importer received fines of nearly $20,000. Another small child was hospitalised due to an anaphylactic reaction.

Malicious or Deliberate Product Contamination

Although much less common, deliberate contaminations do occur and can be much more difficult to control than accidental contaminations. New Zealand had another food-safety issue with its dairy industry. In November 2014, several unsigned letters accompanied packages of infant formula laced with poison 1080. The packages were sent to the national farmers’ group and Fonterra Cooperative Group Ltd, the world’s largest dairy exporter. Demands were made that New Zealand stop using the poison for pest control by the following March.

The threats prompted officials to test 40,000 cases of raw milk and product samples. No trace of the poison was found. Similarly, Fonterra, which controls nearly 90% of New Zealand’s milk supply, stated that internal tests conducted since January had not found any traces of the poison in any of their dairy products, including infant formula powder.

Despite finding no evidence of contamination, one of the country’s largest grocery chains, said it would no longer keep baby formula on open shelves. Instead it placed it behind staffed counters under security camera surveillance. In addition to the domestic consequences, dairy products make up almost 30% of overseas sales in this export driven economy. Such incidents had a negative effect on New Zealand’s reputation as a safe supplier of food.

Automotive Product Recalls

For the fourth consecutive year, the number of U.S. automotive recalls has increased. Even more concerning is that the statistics released by NHTSA showed an almost three-fold increase in the number of recalls over the prior year.

The largest and most significant of these recalls involved air bag manufacturer, Takata. The air bag inflators were made with a propellant that can degrade over time and led to ruptures that have been blamed for six deaths.
worldwide. Takata eventually recalled nearly 34 million of these inflators making it the largest automotive recall in U.S. history. In all, twelve automakers have been involved in the recall.

NHTSA’s analysis of test results and engineering reports from independent organizations revealed that a major factor in the airbag malfunctions was moisture infiltrating the defective inflators over extended periods of time. The moisture caused changes in the structure of the chemical propellant that ignited when an air bag was deployed.

On November 3, 2015, the Department of Transportation’s National Highway Traffic Safety Administration issued two orders imposing a civil penalty of $200 million on Takata. The orders represented the largest civil penalty in NHTSA’s history for violations of the Motor Vehicle Safety Act. Interestingly, it was also the first time that NHTSA used its authority to accelerate recall repairs to millions of affected vehicles. The Consent Order also imposed an unprecedented federal oversight on Takata for the next five years. Included in this Consent Order is the selection by NHTSA of an independent monitor to assess, track and report the company’s compliance, including its phase-out schedule and to oversee the Coordinated Remedy Program.

As part of the Consent Order, Takata, has admitted that it was aware of a defect, but failed to issue a timely recall, a violation of the Motor Vehicle Safety Act. In connection with the Consent Order, NHTSA also issued findings that Takata provided NHTSA with selective, incomplete or inaccurate data dating back to 2009 and it also provided the same to its customers. As a result, Toyota, Mazda, Nissan, and Honda have all dropped Takata as their airbag supplier.

2014 Auto Recalls by Component

- Airbags: 20,807,538
- Ignition keys/switches: 16,299,079
- Electrical/electronics including stability control, lighting: 4,964,662
- Brakes: 4,754,297
- Powertrains including hybrid systems: 3,882,814
- Steering: 2,552,484
- Fuel system, leaks: 2,050,443
- Body structure: 1,748,885
- Suspension: 1,697,464
- Seatbelts: 1,631,278
- Seats including child-seat latches: 1,253,729
- Engine and Cooling: 1,054,061
- Tires, tire-pressure-monitoring systems, wheels: 617,223
- Accessories and labels: 153,737
- Throttle: 19,202

2000 10,000,000
2002 20,000,000
2004 30,000,000
2006 40,000,000
2008 50,000,000
2010 60,000,000

Number of annual vehicles recalled

www.nhtsa.gov

2014 Auto Recalls by Component

1. Airbags
2. Ignition keys/switches
3. Electrical/electronics including stability control, lighting
4. Brakes
5. Powertrains including hybrid systems
6. Steering
7. Fuel system, leaks
8. Body structure
9. Suspension
10. Seatbelts
11. Seats including child-seat latches
12. Engine and Cooling
13. Tires, tire-pressure-monitoring systems, wheels
14. Accessories and labels
15. Throttle
2015 continued the trend of significant recall activity, while the vast majority of events involved food and beverage products, major automotive recalls also dominated the news.

The recalls listed below are a summary of some of the more significant recall events that have taken place over the past 33 years.

### Historically Significant Recall Events 1982-2015

<table>
<thead>
<tr>
<th>Product</th>
<th>Company</th>
<th>Year</th>
<th>Country</th>
<th>Recall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tylenol</td>
<td>McNeil Labs</td>
<td>1982</td>
<td>U.S.</td>
<td>Product Extortion Incident involving over 30,000,000 bottles of pain relever due to suspected cyanide tampering. Estimated costs in excess of $100,000,000 with majority of loss due to lost sales and product replacement.</td>
</tr>
<tr>
<td>Perrier Water</td>
<td>Perrier Water</td>
<td>1990</td>
<td>U.S./France</td>
<td>Benzene contamination resulting in recall of 160,000,000 bottles. Brand never re-established to pre-recall sales level. Estimated at $40,000,000 in lost sales plus value of destroyed product.</td>
</tr>
<tr>
<td>Pepsi</td>
<td>PepsiCo</td>
<td>1993</td>
<td>U.S.</td>
<td>Alleged tampering of Diet Pepsi products with needles. Loss in excess of $35,000,000 due to lost sales, rehabilitation and advertising costs.</td>
</tr>
<tr>
<td>Jack-in-the-Box</td>
<td>Foodmaker</td>
<td>1993</td>
<td>U.S.</td>
<td>E. coli contamination of ground beef on West Coast. Numerous bodily injury claims and 4 adolescent deaths. Loss in excess of $100,000,000 primarily due to lost sales and rehabilitating the brand.</td>
</tr>
<tr>
<td>Cheerios</td>
<td>General Mills</td>
<td>1994</td>
<td>U.S.</td>
<td>Contamination of grain by grower using improper pesticide. Loss in excess of $75,000,000.</td>
</tr>
<tr>
<td>Ground Beef</td>
<td>Hudson Foods</td>
<td>1997</td>
<td>U.S.</td>
<td>E. coli contamination of ground beef patties. Recall of more than 20,000,000 lbs. of ground beef. The most crippling effect was not direct recall costs, but the loss of Hudson’s best customer, fast-food giant Burger King. Company no longer in business.</td>
</tr>
<tr>
<td>Hot Dogs</td>
<td>Sara Lee</td>
<td>1998</td>
<td>U.S.</td>
<td>35 million pounds of meat product recall for listeria. The recall itself cost about $76 million. In addition, an additional $25 million was spent to renovate the facility.</td>
</tr>
<tr>
<td>Coca-Cola</td>
<td>Coca-Cola Company</td>
<td>1999</td>
<td>Belgium/Europe</td>
<td>Loss in excess of $100,000,000 as recall of products expands from Belgium to 6 European countries.</td>
</tr>
<tr>
<td>Snickers and Mars Bars</td>
<td>Snickers and Mars Bars</td>
<td>2005</td>
<td>Australia</td>
<td>Product extortion in Australia alleging poison contamination forces recall and destruction of over 3,000,000 candy bars. Loss estimated in excess of $10,000,000.</td>
</tr>
<tr>
<td>Cadbury Chocolate</td>
<td>Cadbury Schweppes</td>
<td>2006</td>
<td>United Kingdom</td>
<td>Salmonella contamination resulted in recall of over 1,000,000 chocolate bars. Estimated loss in excess of $50,000,000.</td>
</tr>
</tbody>
</table>
### Historically Significant Recall Events 1982-2015

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Company</th>
<th>Year</th>
<th>Location</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pet Food</td>
<td>Menu Foods</td>
<td>2007</td>
<td>Canada/U.S.</td>
<td>Melamine contamination of wheat gluten used in various pet foods due to Chinese supplier resulted in recall of 60 million containers of pet food. $42,000,000 in losses attributed to the recall alone, not including lost sales.</td>
</tr>
<tr>
<td>Pet Food</td>
<td>ConAgra Foods</td>
<td>2007</td>
<td>U.S.</td>
<td>Peter Pan Peanut Butter losses estimated at $78,000,000 in recall costs plus $55,000,000 in lost sales. Facility refurbishment estimated at $15,000,000.</td>
</tr>
<tr>
<td>Pot Pies</td>
<td>ConAgra Foods</td>
<td>2007</td>
<td>U.S.</td>
<td>The company voluntarily recalled all of its Banquet and private label pot pies out of concern for salmonella. Direct recall costs were approximately $27 million in the second quarter.</td>
</tr>
<tr>
<td>Tomatoes / Peppers</td>
<td>Various</td>
<td>2008</td>
<td>U.S.</td>
<td>Tomatoes / Peppers Tomatoes / Peppers outbreak incorrectly linked to tomatoes by the FDA costs the tomatoes industry more than $100 million in related losses with one estimate as high as $350,000,000. Eventually, the contamination is traced to jalapeno and serrano pepper farm in Mexico.</td>
</tr>
<tr>
<td>Deli Meat Products</td>
<td>Maple Leaf Foods</td>
<td>2008</td>
<td>Canada</td>
<td>Deli Meat Products Listeria contamination found in corned beef and roast beef products. Recall expanded to 243 different meat products produced by Maple Leaf Foods. The packaged meats recall significantly affected the business by an estimated $59 million to $69 million before taxes, including $19 million in one-time direct costs.</td>
</tr>
<tr>
<td>Peanuts</td>
<td>Peanut Corp. of America</td>
<td>2008</td>
<td>U.S.</td>
<td>Peanuts Salmonella contaminated peanuts affecting more than 200 companies and 2000 different products. Industry losses estimated at over $1B. PCA declares bankruptcy. Kellogg had reported losing $70 million due to the recall.</td>
</tr>
<tr>
<td>Cookie Dough</td>
<td>Nestle</td>
<td>2009</td>
<td>U.S.</td>
<td>Cookie Dough National outbreak of illness from E. coli 0157 been linked to the product. Company estimated recall would cost between $30-$50 million.</td>
</tr>
<tr>
<td>Hydrolyzed Vegetable Protein</td>
<td>Basic Food Flavors</td>
<td>2010</td>
<td>U.S./Canada</td>
<td>Hydrolyzed Vegetable Protein Salmonella contamination results in recall of 177 different products. Affected bulk, ready-to-eat and ready-to-cook products in the U.S. and Canada.</td>
</tr>
<tr>
<td>Eggs</td>
<td>Wright County Egg Farm</td>
<td>2010</td>
<td>U.S.</td>
<td>Eggs Recall of over 500 Million shell eggs due to salmonella contamination. GMA estimated loss at $100 Million to the shell egg industry.</td>
</tr>
<tr>
<td>Infant Formula</td>
<td>Abbott Labs</td>
<td>2010</td>
<td>U.S.</td>
<td>Infant Formula 5 million containers of top-selling Similac powdered infant formula recalled due to possible contamination by beetles or larvae of the bugs. The company advised that returns of the purchased formula may reduce third-quarter revenue by an estimated $100 million.</td>
</tr>
<tr>
<td>Event Type</td>
<td>Company</td>
<td>Year</td>
<td>Region</td>
<td>Summary</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------</td>
<td>------</td>
<td>--------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Ground Turkey</td>
<td>Cargill Meat Solutions Corp.</td>
<td>2011</td>
<td>U.S.</td>
<td>Largest meat recall in history with 36 million pounds of ground turkey (representing 6% of annual consumption for the industry) recalled because of potential salmonella contamination. The recall and subsequent plant closure led to 130 employees being laid off and one of the “weakest quarters” ever for their meat division.</td>
</tr>
<tr>
<td>Cucumbers/Sprouts</td>
<td>European Farmers</td>
<td>2011</td>
<td>Europe</td>
<td>Cucumbers initially implicated in over 4,000 illness and at least 48 deaths. German Federal Ministry of Food, Agriculture and Consumer Protection, later announced that seeds of fenugreek imported from Egypt were likely the source of the outbreak. EU farmers claimed losses of $611 million.</td>
</tr>
<tr>
<td>Chicken Products</td>
<td>YUM! Brands</td>
<td>2012</td>
<td>China</td>
<td>Accusations of poultry being fed toxic chemicals leads to significant brand damage and China first-quarter loss of 41%. Same store sales down 20% in first qtr 2013.</td>
</tr>
<tr>
<td>Whey Protein</td>
<td>Fonterra</td>
<td>2013</td>
<td>New Zealand</td>
<td>False report of botulism-causing bacteria. Fonterra booked loss of NZ$14 million provision for costs associated with the replacement of recalled products. Customer Danone sued Fonterra in NZ High Court after an estimated loss of $407 million in free cash flow due to whey protein used as an ingredient in their product.</td>
</tr>
<tr>
<td>Frozen Foods</td>
<td>Rich Products Corp.</td>
<td>2013</td>
<td>U.S.</td>
<td>E. coli contamination results in recall of over 10 million pounds of potentially contaminated products. Loss estimated at in excess of $10 million for recall expense, value of products and lost profit.</td>
</tr>
<tr>
<td>Yogurt</td>
<td>Chobani</td>
<td>2013</td>
<td>U.S.</td>
<td>Leading Greek Yogurt manufacturer issues recall due to mold associated with dairy products. The resulting negative publicity, destroyed product and refunds caused significant financial damage. Actual loss costs unknown.</td>
</tr>
<tr>
<td>Automobiles</td>
<td>General Motors</td>
<td>2014</td>
<td>U.S.</td>
<td>General Motors announced more than 60 recalls involving 29 million vehicles. Second-quarter profits were down 80% from the prior year and included the impact of $1.2 billion in recall-related repairs.</td>
</tr>
<tr>
<td>Fruit</td>
<td>Wawona</td>
<td>2014</td>
<td>U.S.</td>
<td>Nationwide recall of stone fruits and baked goods containing potentially tainted fruit.</td>
</tr>
</tbody>
</table>
### Historically Significant Recall Events 1982-2015

<table>
<thead>
<tr>
<th>Category</th>
<th>Company</th>
<th>Year</th>
<th>Location</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beer</td>
<td>Constellation Brands</td>
<td>2014</td>
<td>U.S.</td>
<td>Recall of Corona Extra Beer due to glass contamination leads to more than $10 million in recall-related costs.</td>
</tr>
<tr>
<td>Ice Cream</td>
<td>Blue Bell Creameries</td>
<td>2015</td>
<td>U.S.</td>
<td>Blue Bell voluntarily recalled all of its products made at all of its facilities, including ice cream, frozen yogurt, sherbet, and frozen snacks because they had the potential to be contaminated with Listeria monocytogenes. Estimates of the loss of income and recall related expense were estimated in excess of $100 million.</td>
</tr>
<tr>
<td>Air Bag Inflators</td>
<td>Takata</td>
<td>2015</td>
<td>U.S.</td>
<td>Largest automotive recall in U.S. history with 34 million units recalled from 12 automakers. NHTSA imposes a $200 million civil penalty against company.</td>
</tr>
</tbody>
</table>
The FDA Take First Steps in FSMA Implementation

During 2015, the Food and Drug Administration ("FDA") took major steps to prevent foodborne illness by finalizing rules implementing the Food Safety Modernization Act ("FSMA"). For the first time, this included establishing and enforcing safety standards for human, animal food and produce farms in addition to regulating accountability for imported food to meet U.S. safety standards.

The FDA also issued a rule establishing a program for the accreditation of third-party certification bodies, known as auditors, to conduct food safety audits of foreign food facilities.

The FDA has now finalized five of the seven major rules that implement the core of FSMA. These historic rules build on the preventive control rules the FDA finalized during September 2015. The rules mandate modern preventive practices in food processing and storage facilities. Additionally, the rules work together to systematically strengthen the food safety system to better protect public health.

New Rules Implementing the Food Safety Modernization Act are as follows:

1. Preventative Control for Human Foods requires that covered facilities must establish and implement a food safety system that includes an analysis of hazards and risk-based preventive controls.

2. Preventative Rules for Animal Foods establishes a "Baseline Current Good Manufacturing Practices" ("CGMP") standards for producing safe animal food that takes into consideration the unique aspects of the animal food industry.

3. The Produce Safety rule establishes science-based standards for growing, harvesting, packing, and holding produce that is designed to work effectively for food safety across the wide diversity of produce farms. The main focus here is on standards.

When followed, the standards are designed to help minimize the risk of serious illness or death from consumption of contaminated produce. Public comments and input received during farm visits have shaped this rule into one that will reduce the risk of harmful contamination.

4. The Foreign Supplier Verification Program rule requires food importers to verify that foreign suppliers are producing food in a manner that meets U.S. safety standards and are achieving the same level of food safety as domestic farms and food facilities.

5. The rule on Accredited Third-Party Certification is part of FSMA’s new food import safety system. This rule establishes a program for the accreditation of third-party certification bodies (auditors) to conduct food safety audits and to certify that foreign food facilities and food produced by such facilities meet applicable FDA food safety requirements.

Safe Food Act of 2015

Early in 2015, lawmakers introduced bills to create a single food safety agency. Sen. Dick Durbin (D-IL) and Rep. Rosa DeLauro (D-CT) introduced bills in both houses of Congress that would establish a single, independent federal food safety agency.

There are currently fifteen agencies within the Departments of Health and Human Services that are involved in food safety oversight. The proposed Safe Food Act of 2015 will consolidate all the authority for food safety inspections, enforcement and labeling into the Food Safety Administration (independent of any federal department) and would further build upon the improvements made in FSMA.

Within the current food safety system, there is a great deal of redundancy and overlap of responsibility which directly leads to duplication and wasted money. DeLauro used an example of “eggs” to reference the current system’s fragmentation. She stated, “One agency manages the health of hens, another oversees the feed that they eat, another sets egg quality standards but
does not test them for Salmonella.” “While still in its shell, the egg is the responsibility of the Food and Drug Administration, but once it’s processed into an egg product, it becomes the responsibility of the Food Safety and Inspection Service.” A single agency would help detect fairly minor problems before they turn into major outbreaks, thus helping achieve the ultimate goal of making America’s food supply even safer. “The Safe Food Act is a strong vision for the future of food safety,” said Chris Waldrop, director of the Food Policy Institute at the Consumer Federation of America.

**Surveillance and Sampling Capabilities**

The food industries and local, state, and federal agencies have been collaborating to develop and implement more effective ways to identify and trace contaminated foods linked to foodborne illness outbreaks. Lessons learned during outbreak investigations have been employed to help improve food safety practices and regulations, and to help prevent future outbreaks.

The Center for Disease Control (“CDC”) recently released statistics analyzing their Foodborne Disease Outbreak Surveillance System. This system provides multistate foodborne outbreaks that occurred in the United States during 2010–2014. During this 5-year period there were a total of 4,163 foodborne disease outbreaks with identified pathogens reported to the CDC. Of the 4,163 outbreaks, less than 3% were recognized as multistate outbreaks; however, these multistate foodborne disease outbreaks accounted for a disproportionate number of outbreak-associated illnesses, hospitalizations, and deaths relative to their occurrence. Specifically, these outbreaks were responsible for 11% of illnesses, 34% of hospitalizations, and 56% of deaths.

FSMA is grounded on preventing problems before they happen. “Sampling,” according to the FDA is an important part of this preventive approach. As a result, the FDA is developing a new microbiological surveillance sampling model designed to identify patterns that may help predict and prevent future contamination by disease-causing bacteria.

There are different kinds of sampling methods that the FDA uses that fall within three broad categories: environmental; product; and emergency response/emerging issues sampling.

**Product Sampling**

The FDA takes samples of food products ready to go to market, as well as in-process and raw ingredient samples, to ensure they do not reach consumers with harmful contaminants. The FDA also verifies the products contain ingredients at levels as listed on the product labeling.

**Environmental Sampling**

The FDA also conducts environmental sampling, by taking samples from the environment surrounding the food, whether it’s a facility or a transport vehicle. This type of sampling is important because environmental contamination of production facilities or transport vehicles may contribute to contamination of the finished product.

**Emergency Response/Emerging Issues Sampling**

This type of sampling can take the form of either environmental sampling or product sampling, and often involves both. Emergency response sampling is routinely conducted in response to outbreaks of foodborne illness to help identify the source of the disease-causing pathogen. Emerging issues sampling helps the agency to gather information about potential food safety issues based on trends or intelligence the FDA might have. Under this sampling approach, the FDA is collecting a statistically determined number of samples of targeted foods over a shorter period of time (twelve to eighteen months) to ensure a statistically valid amount of data is available for decision making. This sampling approach will allow the FDA to determine if there are any common factors among positive findings (such as seasons and regions) and whether the product was produced domestically or imported. The FDA will conduct whole genomic sequence testing on any samples that test positive.
Rules and Regulatory Changes

New Technologies Lead to Faster Detection of Listeria

Listeria is the third leading cause of death among foodborne illnesses and has the ability to survive at freezing temperatures. It is extremely difficult to eliminate once it is discovered in a manufacturing facility. Listeria contamination has been responsible for some of the largest food recalls, such as Blue Bell Creameries and Jeni’s Splendid Ice Cream.

Traditionally, detection of Listeria took up to five days before obtaining the results from a laboratory. However, new methods are now available making it possible to detect Listeria in food samples in less than three minutes through the use of a biosensor chip. This technology developed by Dr. Carmen Gomes of Texas A&M’s Department of Biological and Agricultural Engineering may have the potential to detect other pathogens down the road.

Sample6 Detect/L is another newly developed technique designed to extinguish pathogens. Certified by the USDA and the Association of Official Agricultural Chemists, Sample6 is the first in-plant, in-shift pathogen detection for Listeria. This technology significantly cuts down the time required to do a test by providing in-house results so that an outside laboratory is not needed. Within minutes, it can detect as little as one cell of Listeria without enrichment. It then automatically reads and records results.

Although on-site testing will not remove the Listeria contamination, if its manifestation can be detected earlier, greater cost-effective measures can be taken to remove its presence from the food processing plant. This will result in increased efficiency and reduce the number of illnesses associated with the pathogen.
Managing the Supply Chain Risk

Product recall or product contamination risk management involves numerous elements working together to properly address the exposure. While risk transfer can be an important element in managing the risk of product contamination, its effectiveness can only be realized with appropriate pre and post loss mitigation strategies to minimize and mitigate the risk. These include quality control and assurance programs, plant security, product traceability and retrieval procedures, as well as recall, crisis management and crisis communication planning. These plans and procedures will form the core of proper risk management of product contamination and should be supplemented by an appropriate risk transfer program.

These risks can be either accidental or deliberate (malicious) and despite stringent quality control and assurance procedures, the risk cannot be entirely mitigated. Further intensifying the exposure is the third party risk of damage to a customer’s brand and reputation due to a contaminated ingredient.

The effective management of a company’s supply chain, particularly as it relates to the sourcing of ingredients or component parts is a significant factor in evaluating risk. We are increasingly seeing supply contracts request, that at a minimum, a supplier take financial responsibility for damage from a recall caused by ingredients and in many cases are also requiring suppliers to purchase insurance coverage specific to this risk.
Social Media Monitoring

Building a proactive social media plan is an essential part of any company’s overall food defense strategy. Most companies now recognize the power of social media and how it can be a useful tool in promoting a company’s brands. Social media sites are increasingly becoming the way we read and comment on the day’s events. It is also an outlet for disgruntled employees, customers and special interest groups looking to cause harm or damage to a brand. Facebook alone has over 1.3 billion unique visitors each month, and YouTube reaches more adults (ages 18–34) than any cable network and is available in sixty-one languages.

The ability to quickly spot and respond to trends involving your products is crucial in today’s world. Increasingly, companies are taking a proactive approach to social media to both mitigate risk and build trust with consumers. An assortment of social listening and monitoring software is now available to assist companies with their social media strategy. Monitoring for certain key words and brands can alert a company to both negative and positive trends involving their brand. Social media not only spreads the news of a dangerous product faster than ever before, it may also be used as a means for revenge, financial gain or other illegal activity. Integrating a company’s public relations, consumer affairs and food safety and quality teams can be an effective way to help mitigate risks and re-build trust with consumers.
Carriers and Market Update

2015 Carrier Update

From carrier mergers, to new insurers entering the market, 2015 saw a flurry of change both domestically and internationally. There was also considerable movement of underwriters filling opportunities with new carriers. The total capacity for food and beverage products now exceeds $500 million while automotive products exceeds $200 million; major increases for both.

The most significant change that created much of the movement in the market was the merger of XL Insurance and the Catlin Group. On January 9, 2015, XL Group plc and Catlin Group Limited announced an agreement to combine into a single company creating a leading presence in the global property & casualty insurance and reinsurance markets. Both XL and Catlin provided significant capacity to the product recall and contamination insurance market. XL was more diversified in terms of the distribution of its network, which included Bermuda and the U.S and London. Catlin operated primarily out of Lloyd’s of London.

Shortly after the merger was announced, several XL Catlin underwriters resigned. During the fall of 2015, those underwriters launched a new product recall facility at the Hiscox Syndicate. The team at Hiscox, has both significant experience and capacity with availability of up to US $50,000,000 in limits. The Hiscox syndicate will focus on the food, beverage, automotive and restaurant industries offering worldwide coverage.

The ACE/ Chubb merger was another significant development in 2015. While less dramatic to the recall market than that of XL Catlin, it does offer a significant opportunity for ACE to expand its portfolio into the middle market area where Chubb has made its reputation. Chubb did not previously offer product recall insurance. The newly combined operation will trade under the Chubb name in the U.S. and as ACE internationally.

Allianz Global Markets announced their intention to build a global crisis management team during late 2014 and expanded their product recall underwriting team through 2015. Allianz has placed experienced recall underwriting expertise in both London and Chicago. The carrier has quickly become a significant player in the recall marketplace with a capacity of Euros 50 Million. Allianz will consider both food and non-food products, including automotive component parts.

Berkley Specialty also jumped into the recall market during the summer of 2015, with a team of experienced underwriters and capacity of $15 Million. The team, comprised of several senior underwriters from Liberty International Underwriters (“LIU”), are focused on both food and non-food product categories with the exception of automotive component parts.

Despite the loss of several underwriters, LIU continues to be a significant carrier, both domestically and internationally. With a capacity of $15 Million, like Berkley, LIU will concentrate on both food and non-food products, excluding automotive parts. LIU has also brought in experienced underwriters to replace those now at Berkley. The Liberty Syndicate at Lloyd’s will entertain aftermarket automotive parts.

AWAC, historically only a minor player in the recall market through its’ Bermuda facility, opened a domestic recall facility based in New York. An experienced underwriter was brought in to lead the team with the intent to bring a more focused and structured approach to the business. AWAC has a capacity of $15 Million and will consider both primary and excess placements, but will not entertain automotive risks, aerospace, medical products or pharmaceuticals.

Great American also entered the domestic product recall market in 2015. With $10 million in capacity, Great American is prepared to insure food, non-food, automotive and aviation product risks. The program is written through their Specialty E&S facility.
Houston Casualty Company ("HCC") has increased its appetite and capacity in several areas this year. Specifically, on the food and beverage side, it has a primary capacity of $10 million, but it prefers companies with revenues of less than $500 million in revenues. HCC is also able to provide $15 million in excess capacity for food and beverage accounts of any size and will also provide excess over non-food and automotive products. For restaurant contamination or food borne illness risks, it has a capacity of $75 million per trade name.

SwissRe continues as a significant carrier to the recall marketplace for both food and automotive products, with a capacity of $25 million across all product categories. It prefers minimum attachment points of at least $1 million. SwissRe’s report on “Food Safety in a Globalized World” discusses food safety and how it relates to product recall and product liability risk management. The report released, in mid-2015, reviews the economic and business impact of food contamination. It includes updated statistical data on the frequency of recalls, reasons for recalls, products affected and the associated costs. Additional reports comparing the international dynamics of food safety and the impact on insurance have also recently been released by SwissRe.

Finally, unique capacity to Aon became available on January 1, 2016, with the announcement of the Aon Client Treaty. This facility is an automatic 20% line on orders placed through Aon’s Global Broking Centre in London. It follows the pricing, wording, terms and conditions of the lead underwriter for the London order. The capacity behind Aon Client Treaty is 100% Lloyd’s, with its A+ S&P Rating, backed by the Lloyd’s Chain of Security. Aon Client Treaty’s overall leader is XL Catlin with designated leaders for specific classes of business. Aon Client Treaty offers new strategic dedicated capacity from Lloyds exclusively to Aon’s clients. The Lloyd’s syndicates providing capacity for Aon Client Treaty are committed to Aon Client Treaty for the long term and have subscribed up to a three-year agreement. Aon Underwriting Managers acts as the MGA for Aon Client Treaty and supports the underwriting, reporting, modeling and invoicing for the panel of syndicates.

Australian Market

The Australian recall market remains very competitive and stable. Local underwriters have significant expertise in the area and have demonstrated an ‘open mind’ approach when writing new and diverse types of risks. Most Australian risks are placed locally since companies value the direct relationship and responsiveness of underwriters should an incident occur.

AIG, XL Catlin and LIU have been the traditional local markets, but at the beginning of 2014, HDI-Global and Allianz Global began offering local policies. This has provided a good alternative for clients and results in healthy competition. HDI-Global has been successful in writing smaller and medium recall policies and now participates in multinational programs. Allianz provides a good alternative for larger clients.

Talbot has become a significant factor in the Australia market having brought in an experienced underwriter, in 2015, to build out their portfolio. Talbot saw potential in writing recall policies locally, rather than through their London team for Australia and Asia.
Bermuda Carrier Review

The Bermuda market continues to be a viable market for recall capacity. More recently, we have seen a willingness of carriers to combine their capacity into a single significant meaningful placement. Terms and conditions are followed utilizing “Bermuda Shorts” follow form wording, with carriers agreeing to a single layered quota-share approach. Characterized by high attachment points and significant capacity, the market is dominated by XL Insurance, with several of the Island’s carriers including Markel, Aspen, and ArgoRe providing supporting capacity. Over the past decade, the Bermuda markets have been consistent in their approach to these risks as well as in their pricing philosophy.
### 2016 Global Recall and Contamination Market Capacity

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## 2016 Global Recall and Contamination Market Capacity

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Aon Crisis Management has developed a benchmarking process that enables clients to better understand their potential exposure to product recalls and contaminations. Utilizing a proprietary database of current Aon Crisis Management placements, our benchmarking analysis is able to provide detailed peer group studies on limits, retentions and rates on a global basis. This tool allows us to view data by revenue size, industry or product category providing a valuable tool in helping to determine appropriate limits and retentions. The data provided is in a summary format; however, client specific reviews based on exposures and product are available.

Data is critical to making intelligent business decisions. How effectively businesses develop, manage, and utilize data impacts the quality of those decisions. Recall and contamination events continue to receive a high profile in the media and press. Although large amounts of data are available through publicly announced recalls, actual damage or loss information is seldom publicized or available. The size or severity of a loss may very well be more dependent upon the handling of the media and public perception as opposed to the size of the recall itself. Projecting the exposure to a product recall or contamination can be a difficult task not only for the company at risk, but for underwriters as well.
In addition to traditional recall benchmarking data, Aon’s Actuarial and Analytics practice in conjunction with Aon Crisis Management has developed a Product Recall Analytics and Modeling Suite that provides guidance on the financial impact of decisions made about Product Recall risk and insurance. This additional service provides specific advice to consider when evaluating program limits and attachment points.

The model helps determine the impact of program structure on retained losses, insurance recoveries, losses in excess of insurance coverage and premium value. This analytic capability can enhance the decision making process for multiple objectives.
When a recall or contamination crisis occurs, events move quickly. How you respond to these challenges may well dictate how quickly and successfully you recover. Identifying the proper resources can be difficult, particularly for a risk that may have only have happened infrequently in your company’s history.

Recovering from a recall efficiently likely will require a company’s risk management team’s involvement from start to finish. Our experience has shown that the longer a company waits to quantify and document costs and make claims to suppliers and insurers, the more difficult it is to recover those costs. The preservation and collection of key data will begin upon notice of a potential claim.
The product recall and contamination insurance market grew significantly in 2015. A number of new carriers entered the market with significant capacity. Total market capacity increased by roughly 25% for both food and non-food risks. Tied with relatively low claim activity, we anticipate underwriters to be fairly aggressive in their pricing strategies, particularly those carriers new to the class.

Several wording changes have been introduced by carriers including the removal of the time element for the manifestation of bodily injury. We have also seen underwriters exhibiting more flexibility on certain exclusions and key definitions, including government recall wording. Many of these changes have been largely driven by recent case law and the interpretation of definitions.

Carriers will continue to attempt to identify and insure the “better risks.” Underwriters will look more favorably upon companies who have demonstrated due diligence in preparedness and use of outside resources to assist in the mitigation of their risk. Whether utilizing consulting services made available by underwriters or third party auditors reviewing their supply chain, it is clear that companies who manage their risk of recall in a holistic manner will be best prepared to survive a recall crisis.

Many underwriters will look to diversify their portfolios and spread their exposures beyond food and beverage risk. We anticipate that underwriters will look more favorably at non-food risks, including automotive products going forward as loss trends have shown this area to be a profitable subcategory.

Product recall or product contamination risk management involves numerous elements working together to properly address the exposure. While risk transfer can be an important element in managing the risk of product contamination, its effectiveness can only be achieved with appropriate pre and post loss mitigation strategies to minimize and mitigate the risk. These mitigation strategies include quality control and assurance programs, plant security, product traceability and retrieval procedures, as well as recall, crisis management and crisis communication planning. The plans and procedures should form the basis of proper risk management and should be supplemented by an appropriate risk transfer program.
Crisis Management

Crisis Management is part of Aon Risk Solutions, the risk management and insurance brokerage business of Aon Corporation.

Going beyond traditional risk transfer solutions, our global network of product contamination and recall specialists offers a full range of consultancy services, enabling clients to quantify their risk exposure and make informed decisions on the optimum balance between risk retention, risk management and risk transfer. Our team of specialist brokers, crisis consultants and in-house claims management combines threat assessment, impact analysis and crisis management, and response with individually structured insurance programs. Our unique, consultative approach enables our clients to implement the most appropriate measures to meet their duty of care and better protect their balance sheet, people, brand and reputation.
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Grocery Manufacturers Association
http://www.gmaonline.org/

About the Author

Bernie Steves is the Managing Director of Aon Risk Services Crisis Management Practice based in Chicago, IL. Bernie is recognized as one of the country’s leading product recall, contamination, and food borne illness insurance specialists. With more than twenty-five years’ experience in this specialty risk management class, he works with some of the largest companies in the United States and Canada to address product recall, contamination, and food borne illness exposures. Bernie’s background includes years of experience from both the underwriting and specialty brokering disciplines having specialized in this field since 1987.

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He is a frequent author and speaker on the topics of product contamination and recall insurance. Bernie is a graduate of the University of Arizona and holds a Masters in International Management from the American Graduate School of International Management (Thunderbird). He is a licensed insurance producer and a licensed surplus lines insurance producer and a 2016 Powerbroker Award recipient.
Contacts

Chicago
Bernhard Steves
(312) 381-4945
bernie.steves@aon.com

Mary Duhig
(312) 381-4503
mary.duhig@aon.com

Marty Detmer
(312) 381-5114
marty.detmer4@aon.com

Margo Scher
(312) 381-4655
margo.scher@aon.com

New York
Jean McDermott-Lucey
(212) 441-1314
jean.mcdERMott-lucey@aon.com

Caitlin McGrath
(212) 441-1538
caitlin.mcgrath@aon.com

Joseph Stottler
(212) 441-1795
joseph.stottler1@aon.com

London
Kary Yates
+44 (0) 20 7086 4411
kary.yates@aon.co.uk

Andrew Blackburn
+44 (0) 20 7086 3254
andrew.blackburn@aon.co.uk

Elton Leung
+44 (0) 20 7086 1347
elton.leung@aon.co.uk

Bermuda
Chris Heinicke
(441) 278-1240
chris.heinicke@aon.com

Seamus Durkin
(441) 278-1222
seamus.durkin@aon.com

Toronto
James Gregory
(416) 868-5792
james.gregory@aon.ca

Sydney
Karina Rodriguez Diaz
+61 2 92537996
karina.rodriguez.Diaz@aon.com

Hong Kong
Julian Taylor
+85228624151
julian.taylor@aon.com
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