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Safe for Consumption

By Sam Sneary, Tom Phillips and Peter J. Crosa

THE COVID-19 SHUT DOWN OF THE economy and sequestration of millions of Americans is about to subside. Some think the pent-up demand for entertainment, including restaurants, will result in a boom of so-called “food poisoning” claims. We thought it would be timely to discuss the possibilities of what actually transpires when consumers have a negative “reaction” to food.

First, let’s admit that not every negative reaction to food is necessarily “poisoning.” Further, the term poisoning is used rather loosely to malign food in which no “poisoning” has actually occurred. Thus, this article is for adjusters investigating the allegation of food “poisoning” experienced by about 48 million consumers each year.

When someone has an adverse reaction to food, there are several possibilities

as to the cause. First, that person may already have an illness, such as a stomach virus, which coincidentally presents itself upon eating a certain meal. Two tipoffs to this may be that no one else in their party (who ate the same meal) had a similar reaction. Further, an immediate negative reaction would suggest a pre-existing illness. You’ll see later in this article that actual bacterial contamination usually results in a reaction several hours later.

Next, violent symptoms can arise when someone is “allergic” to certain foods. Until 2004, when the Food Allergen Labeling Consumer Protection Act came to light, restaurants were not required to inform customers about the content of pre-packaged foods used in their meal prep. The act (which is only applicable to pre-packaged ingredients) requires that foods are labeled to identify the eight major food

allergens: milk, egg, fish, shellfish, tree nuts, wheat, peanuts and soybeans.

There is a trend among states to require restaurants to alert as to allergens in freshly prepared meals. Check your state’s requirements. Even though it is not required, many restaurants are labeling their in-house prepared meals for a competitive advantage. Absent a pre-existing condition and food allergy, you may be dealing with food contamination and a reaction to such.

The basics of food poisoning are simple. Food that is contaminated with bacteria, parasites and viruses is eaten, and this in turn causes a variety of issues. Understanding where this contamination originates from or eliminating the likelihood that it began at your insured’s premises is the key to establishing liability. To that end, consider an industrial hygienist

| Contaminant | Onset of symptoms | Foods affected and means of transmission |
|------------------------------------|-------------------|---|
| Campylobacter | 2 to 5 days | Meat and poultry. Contamination occurs during processing if animal feces contact meat surfaces. Other sources include unpasteurized milk and contaminated water. |
| Clostridium botulinum | 12 to 72 hours | Home-canned foods with low acidity, improperly canned commercial foods, smoked or salted fish, potatoes baked in aluminum foil, and other foods kept at warm temperatures for too long. |
| Clostridium perfringens | 8 to 16 hours | Meats, stews and gravies. Commonly spread when serving dishes don't keep food hot enough or food is chilled too slowly. |
| Escherichia coli (E. coli) | 1 to 8 days | Beef contaminated with feces during slaughter. Spread mainly by undercooked ground beef. Other sources include unpasteurized milk and apple cider, alfalfa sprouts, and contaminated water. |
| Giardia lamblia | 1 to 2 weeks | Raw, ready-to-eat produce and contaminated water. Can be spread by an infected food handler. |
| Hepatitis A | 28 days | Raw, ready-to-eat produce and shellfish from contaminated water. Can be spread by an infected food handler. |
| Listeria | 9 to 48 hours | Hot dogs, luncheon meats, unpasteurized milk and cheeses, and unwashed raw produce. Can be spread through contaminated soil and water. |
| Noroviruses (Norwalk-like viruses) | 12 to 48 hours | Raw, ready-to-eat produce and shellfish from contaminated water. Can be spread by an infected food handler. |
| Rotavirus | 1 to 3 days | Raw, ready-to-eat produce. Can be spread by an infected food handler. |
| Salmonella | 1 to 3 days | Raw or contaminated meat, poultry, milk, or egg yolks. Survives inadequate cooking. Can be spread by knives, cutting surfaces or an infected food handler. |
| Shigella | 24 to 48 hours | Seafood and raw, ready-to-eat produce. Can be spread by an infected food handler. |
| Staphylococcus aureus | 1 to 6 hours | Meats and prepared salads, cream sauces, and cream-filled pastries. Can be spread by hand contact, coughing and sneezing. |
| Vibrio vulnificus | 1 to 7 days | Raw oysters and raw or undercooked mussels, clams, and whole scallops. Can be spread through contaminated seawater. |

examination of the food prep area to determine to what extent an insured is free of contaminating practices.

According to the Centers for Disease Control and Prevention (CDC), there are 128,000 hospitalizations in America, along with 3,000 deaths related to food reactions.

The classic food poisoning symptoms are known to deal with the stomach and the bowels. But many other symptoms can help you identify the culprit.

Symptoms can include nausea, fever, abdominal pain or cramps, vomiting and excessive diarrhea.

These symptoms usually start within the first hour or two after eating, but they can start a day or even a week after you eat the food, depending on the severity. Symptoms can last a few hours but there are cases where they've lasted several days. The seriousness of a food-borne illness is evident when the victim can't stop

vomiting, has blood in vomit or stools, has signs of dehydration and a high fever, or neurological symptoms such as blurred vision. In the absence of medical records, these symptoms should be discussed in detail during an interview with the claimant.

The most common cause is cross-contamination, particularly with raw foods that are ready-to-eat such as produce. This is food that doesn't get cooked, resulting in the presence of harmful organisms that would normally be destroyed in the cooking process. This table provided by the CDC highlights the possible contaminants when symptoms start and common ways the organism is spread.

Older adults, pregnant women, young children and people with comorbidities are more susceptible to reactions from food contamination.

The three federal agencies that handle food safety (to varying degrees) and protection are the Food and Drug Administration (FDA), the Food Safety and Inspection Service (FSIS), and the Environmental Protection Agency (EPA). To secure records from federal agencies, an adjuster must make an FOIA request. There are generally parallel agencies within each state, city and county that mirror the roles of these federal agencies. Familiarize yourself with these agencies to determine, in advance of a claim, what information will be available as it relates to food processes, food sellers and restaurants.

There is a common misconception about adverse reactions to food. There are many potential causes and a thorough interview of a claimant along with other witnesses, examination of the food prep area, public records review, and expert testing is vital to establishing origin and liability.

Sam Sneary is a student at Florida State University and an intern with Peter J. Crosa & Co. Tom Phillips is a senior adjuster and Peter J. Crosa, AIC, RPA, is the CEO of Peter J. Crosa & Co., an IA firm based in Florida. For an investigative checklist for interviewing claimants and witnesses in food poisoning cases, contact Peter Crosa at peter@peterjcro.com.