

# **THE INSIDE STORY: How 11 Schoolkids Got \$4.75 Million in E. coli Lawsuit**

by Bryan Salvage  
March 7, 2001  
[www.meatingplace.com](http://www.meatingplace.com)

**Sound bite: “Once you [are hit with] a lawsuit, and it has been proven that your product was the source of the bacteria, there's not a whole lot you can do. Hopefully, your company has plenty of insurance because these cases are not cheap.”**

**--Attorney William Marler, of Marler Clark**

A Washington state jury awarded \$4.75 million in damages to 11 children who were infected with E. coli O157:H7 bacteria from a lunch prepared by the Finley School District in Kennewick, Wash., according to a news release. Early in February, the district was found to be 100 percent liable for the food poisoning outbreak that sickened the children more than two years ago.

## **Background on the case**

The following is background on the case supplied by the Seattle-based law firm of Marler Clark. In Alan Almquist, et al, vs. the Finley School District No. 53, the Finley School District was ordered by the Benton County Superior Court in Kennewick, Wash., to pay the victims and their families \$4.75 million in damages as compensation for past and future medical expenses and pain and suffering. Another defendant in the case, Northern States Beef, the supplier of the tainted meat, previously settled out of court for an undisclosed amount.

The judgment signifies the end to a case that began in October 1998, when 11 children, the youngest of which was just two years of age at that time, were infected with E. coli O157:H7 after coming in contact with ground beef served in a school lunch at Finley Elementary, according to a news release.

Ten of the 11 children were students at Finley Elementary at the time of the incident. Each of these children became ill after eating a school lunch of tacos containing ground beef, which jurors found to be undercooked and tainted with the E. coli bacteria, the news release added. The eleventh child, a toddler at the time, was contaminated with the same strain of E. coli bacteria as the other victims through fecal-to-oral transmission from her older sister, one of the students exposed to the contaminated school lunch.

Within days of coming in contact with the infected meat, the children experienced symptoms of E. coli infection that included excruciating stomach pains, cramping, vomiting, and bloody diarrhea. All of the victims required emergency medical care, and four of the children were transferred to Children's Hospital and Medical Center in Seattle for critical care for such conditions as Hemolytic Uremic Syndrome, a potentially deadly complication stemming from the initial E. coli infection.

Faith Maxwell, the toddler who was infected by her older sister, is considered to be the sickest of the children. Maxwell shows signs of permanent kidney damage and may require several transplants during her lifetime. Her medical costs have already exceeded \$100,000.

“The transmission of a serious bacterial infection from one child to another, as was the case with Faith Maxwell and her older sister, is extremely common in E. coli cases,” said William Marler of Marler Clark, the plaintiff's attorney. “All it takes is for one child to forget to wash his or her hands for an outbreak to occur.

“Parents trust that schools will act responsibly when it comes to the care of their children. It's hard for most to imagine that something as seemingly harmless as ground beef in a school lunch might seriously endanger their children, but outbreaks of food poisoning are on the rise,” he added. “It's time for people to wake up to the risks associated with undercooked meat.”

## **One-on-one with Marler**

In an exclusive interview with The Meatingplace.com, Marler said the majority of E. coli cases he has been involved in involved ingesting undercooked ground beef or cross-contamination between ground beef and a salad item generally in a restaurant.

When asked what steps processors should take if they find themselves in a food-borne illness-related lawsuit, Marler passed on this information and some advice.

“Generally speaking, in a situation where a restaurant fails to properly cook [meat] and the meat company supplied meat with O157:H7 in it, both of these entities are strictly liable under law,” he told The Meatingplace.com “Usually, a restaurant also has a claim back to the meat supplier for sending them a product that was contaminated with the bacteria.

“Once you get into the middle of a lawsuit, an insurance company usually takes over at that point and the [processor] has very little input in what's going on,” he added. “Once you get a lawsuit and it has been proven that your product was the source of the bacteria, there's not a whole lot you can do. Hopefully, your company has plenty of insurance because these cases are not cheap.”

Marler said any processor facing such litigation should tell their insurance company to resolve the case for a reasonable amount of money and not to fight it “tooth and nail forever.”

“Most of the time, especially in O157:H7 cases, you either have people who are not seriously sick and the case can be resolved quite quickly for modest amounts of money,” he told The

Meatingplace.com “But you also have cases where kids face long-term kidney problems or have suffered severe and debilitating injuries, and those cases are worth millions.”

Since 1993, Marler said his company has resolved more than \$100 million in E coli or other food-related illness claims against insurance companies “who insured every conceivable restaurant or meat supplier in the United States.”

“Once your product is contaminated and through genetic fingerprinting or epidemiological evidence you've been caught, there isn't a lot you can do,” Marler said.

Marler said it is helpful that the industry and government continue to inspect meat products. He added that he opposes people who feel there should be a bar against suing meat suppliers because the government inspects all meat.

“I think that's trying to shift the blame away from yourself and to some entity called the U.S. government,” he told “That doesn't really do anything to prevent this problem.”

When asked to comment on the unfortunate trend of seemingly increasing meat contamination lawsuits, Marler said: “I don't think there is an unfortunate trend in contamination lawsuits. The reality is there are 47 million food-borne illness cases in the United States every year, according to Centers for Disease Control & Prevention statistics,” he added. “There aren't that many lawsuits.”

Marler said he had some involvement in almost every E. coli and food-borne illness lawsuit in the United States in recent years.

“I can tell you we're talking hundreds [of cases], not thousands,” he said. “We're not talking billions of dollars, we're talking millions. And so [lawsuits] are not something that happen every day. The chances of industry being able to contaminate something and actually getting away with it are quite high. There are tens of thousands of E. coli cases every year where people are unable to trace the source of bacteria that occurs. Those are rare cases where the industry actually gets caught.”

There are both moral and business reasons “not to poison your consumers,” he added.

“Children's lives are devastated or they can die,” Marler said of kids who eat meat contaminated with food-borne pathogens. “And who wants to lose market share or business? No one does. I think all companies agree [with these points], and they are all trying [to improve meat safety]. But like anything else in life, you have to keep trying harder.”

## **Marler had one parting comment:**

“Everybody likes to beat up on lawyers, and they say there are too many lawsuits,” he said. “But if you look at the statistics, that's not true. What people should be doing is spending their time, effort and money trying to figure out ways to prevent the illnesses, not preventing the lawsuits. That's my view.”

Marler Clark has extensive experience representing victims of food-borne illness. William Marler represented Brianne Kiner in her \$15.6 million settlement with Jack in the Box. Marler Clark is currently lead counsel in actions stemming from E. coli, salmonella, shigella, and hepatitis outbreaks in Washington, California, Ohio, Missouri, Arizona, and Wisconsin. Marler Clark has also litigated on behalf of children against KFC, McDonald's, Hardees, Subway, Carl's Jr. and Costco.