



# Making Hay Out of Spinach

*The recent spinach recall was a nightmare for producers.  
But what happens when the lawyers move in?*

By now everybody's heard about the big recall of American spinach, and we've all seen the jokes with Popeye lying in his grave, still bravely clutching his can of spinach. There's nothing funny though about the fact that more than 200 people were sickened in over 26 states and Canada, with approximately 100 hospitalizations and at least three direct deaths. The economic costs of this single outbreak are also staggering. Quite apart from the costs of lost time and medical care for the poisoned, the case has dramatically affected the share price of the spinach producers and owners, the US\$2.5 billion bagged salad business, and the many distributors and retailers who were left holding the bag of \$50 million worth of spinach that was on grocery store shelves, in restaurant refrigerators or in distribution warehouses when, on Sept. 14, the U.S. Food and Drug Administration (FDA) issued the advisory not to eat fresh bagged spinach and to throw it away. There have already been hundreds of lay-offs and several bankruptcies. With all this economic loss, the legal fights are just beginning. The lawyers are coming! The lawyers are coming!

Leading the pack is Bill Marler. This Seattle lawyer is the Wayne Gretzky of plaintiff's lawyers for foodborne illness lawsuits. Marler made his name and considerable fortune successfully suing food manufacturers and retailers for hundreds of millions of dollars over the last 13 years, starting in 1993 by negotiating a US\$15.6-million settlement for Brianne Kiner with the Jack-in-the-Box restaurant chain arising from *E. coli* poisoning. After that he took on the organic juice maker Odwalla and settled for US\$12 million for five children who were severely injured from drinking apple juice. As he says: "It's my life. It's 13 years of representing primarily little kids who get poisoned by big corporations."

A review of his website, [www.marlerclark.com](http://www.marlerclark.com), cites other notable victories against the food industry: a US\$4.6-million jury award on behalf of 11 children who became ill from *E. coli* food poisoning after eating a school lunch, and a US\$6.25-million settlement on behalf of a man who was

forced to receive a liver transplant after he became ill with hepatitis A food poisoning during an outbreak traced to green onions served in a restaurant.

In the spinach case Marler, who has his own lab and science specialists, actually filed suit before the FDA issued its consumer alert because he already had three genetic matches and he knew that the common denominator was Dole bagged spinach. Within two weeks he had signed up 81 plaintiffs, and counting.



**The food industry used to think that a recall was its worst nightmare. Are you and your insurance company ready for your first foodborne illness lawsuit?**

Marler makes a lot of money out of these cases by setting up contingency fee arrangements at the outset. Plaintiffs have no upfront costs, and all legal fees are taken as a percentage of settlement. I have heard Marler speak and he is quite persuasive on the point that he helps change corporate behaviour because he hits companies where it hurts – in the pocketbook. He is probably even entitled to take some credit for many of the recent reforms in the American meat industry, the fresh juice industry and changes now being made in the fresh produce sector.

Canada hasn't yet seen the same kind of growth of these cases, but it's just a matter of time before we have our own Bill Marler. Health Canada estimates that one in three Canadians get sick from food poisoning every year. While our food has never been safer, and is among the safest in the world, we cannot deny that foodborne illness is a significant public health issue for Canada. In fact, it is now our largest class of emerging infectious diseases, with more than 250 different types of bacteria, parasites, viruses and toxins that are known to cause foodborne illness. That is more than five times the number of foodborne pathogens than were known just 60 years ago.

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