

## **WHY HEPATITIS-A VACCINATIONS ARE BAD FOR (MY) BUSINESS.<sup>1</sup>**

Let's be honest: as an attorney who makes a substantial portion of his living by filing lawsuits against restaurants, it's not in my financial interest to have the National Restaurant Association (NRA) change its position on mandatory hepatitis-A vaccinations for food-handlers. That being said, I think the NRA's position is largely indefensible, especially for the vast majority of independent restaurant operations who are in most cases unable to absorb outbreak-related losses from a single outlet.

The NRA's position is for the most part based on the fact that, in 1998, the CDC waffled on its recommendations on the prevention of hepatitis-A through immunization. On the one hand, the CDC did not include food handlers among the groups of people it deemed at increased risk for hepatitis A and thus in need of prophylactic vaccinations. On the other hand, it conceded that that "persons who work as food handlers have a critical role in common-source outbreak" and that consideration should be given to whether such vaccinations are "cost-effective". In short, the CDC left it to state and local health departments to decide what to do. Not surprisingly, most such departments have done nothing.

By recent estimates, there are over 130,000 reported hepatitis infections every year, and 5% of these are directly related to the consumption of contaminated food and drink. One study of a hepatitis A outbreak involving 43 persons infected by a food handler working for a catering company in Colorado found that the costs associated with the outbreak were in excess of \$800,000. This total did not, however, include compensation to the persons made ill at the catered event, costs that were expected to be several hundred thousand dollars. That is a conservative estimate.

Two years ago, an employee at a Subway sandwich store in Seattle caused a hepatitis outbreak that injured 32 people, including 8-year old boy who had to have a liver transplant. My law firm filed a lawsuit on behalf of all but one of the victims, and the settlements eventually paid were in excess of \$11,000,000. The franchise owner also went out of business.

We have also represented 1,400 people who were exposed at a Carl Jr's restaurant in Spokane, Washington and had to get IG treatment at the local health department to prevent them from becoming infected. The class action lawsuit that resulted was settled with the restaurant agreeing to pay the cost of the treatments and an additional amount for each person's pain and suffering. And even though none of these people actually became ill, the cost to settle the lawsuit was still substantial.

In our office now are lawsuits and claims arising from hepatitis outbreaks at D'Angelo's Deli in Massachusetts, Whittaker Woods Country Club in Michigan, and two restaurants that are thought to be at fault for the huge and still ongoing outbreak in Polk County, Florida. These claims include three cases in which the victim died as a result of his or her infection.

Given past experience, I would not expect that all of these businesses will survive. Not only will the ensuing litigation distract and depress, but the bad publicity will likely drive away even the most loyal of customer. It is also likely that the health departments will seek reimbursement for the cost of fighting the outbreak – something I see more and more in these days of tight budgets. Thus, I ask you this: is it cost-effective to vaccinate food handlers? I bet these business owners now think so.

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<sup>1</sup> By Denis W. Stearns, a principal in the Marler Clark law firm and the litigation consulting firm, Outbreak Inc. This article was published in *Food Quality* magazine, July-August, 2002.