

# Alumni at the forefront of food poisoning litigation at Marler Clark

By Richard Farr

**Attorney Bill Marler has a reputation. Take a scene from an elevator in Washington, D.C.:**

**Senator Barack Obama:**  
*Have we met before?*

**Marler:** *We were supposed to have dinner about a year ago but I wasn't able to make it. I'm a lawyer from Seattle.*

**Obama:** *What kind of law?*

**Marler:** *I represent food poisoning victims..*

**Obama** (with a cry of recognition): *You're the E. coli guy!*

Being known as the E. coli guy doesn't bother Marler '87, who has dedicated his practice to representing victims of food borne illness and has been involved in just about every major case food poisoning case in the past 15 years. Marler Clark, the firm he built in Seattle with partner Bruce Clark '84, is arguably the national epicenter for food borne illness litigation. He and the other lawyers in his firm all have connections to the School of Law or Seattle University.

Back in 1993, while working at the firm Keller Rohrbach, Marler fielded "the case that really changed the direction of my career." An outbreak of E. coli at a Jack-in-the-Box restaurant sickened 600 people. Four died. Seattle resident Brianne Kiner, who was 9 at the time, spent 42 days in a coma as a result of hemolytic uremic syndrome, a life-threatening complication of E. coli infections. Marler won her a \$15.6 million settlement.

When E. coli showed up in Odwalla apple juice just three years later, Marler had one of those light-bulb moments. What about setting up a law firm defined by the business of representing victims of food borne illness? The first people he called were Clark '84 and Denis Stearns. Clark had been across the table from Marler in numerous cases related to the Jack-in-the-Box outbreak. A defense attorney for 14 years, he was at that time lead attorney for Foodmaker, Inc., which owns Jack-in-the-Box, and decided to switch sides.

The move paid off for Marler Clark, both in financial terms and in the difference this firm has made in making food safer for everyone.

"It's a business, but it's become a passion," Marler said.

The importance of protecting the health and safety of the public makes good sense for the food industry. Juries tend to agree.

"People feel very violated that a company allowed fecal bacteria or a virus to get into the food they served you," Marler said. "They feel it's wrong and they get indignant." The resulting jury verdicts have been tough to swallow for some companies in the food service industry. But those verdicts have served as a warning that the industry must change its ways. Among them:

- \$6.25 million for a man who lost his liver to hepatitis contracted from unwashed vegetables at Chi Chi's Restaurant in Pittsburg;
- \$4.6 million for 11 children sickened by E.coli at Washington's Finley Elementary School.



**Bill Marler '87 has made a career out of making the food industry pay for its mistakes.** Photos by Matt Hagen.

- Undisclosed settlements to the families of three people who died from the recent E. coli infection associated with Dole baby spinach.

The firm has also represented, to name a few:

- Victims of salmonella at Chili's Bar & Grill in Chicago;
- Diners sickened by norovirus at Las Vegas' Flamingo Hotel;
- 17 individuals sickened with E. coli at several Milwaukee restaurants that shared the same meat supplier;
- Children who were sickened after eating Jell-O at an Ohio buffet that had been stored in a refrigerator beneath raw meat

that was laced with E. coli. Tainted blood dripped from the meat on the Jell-O the kids ate.

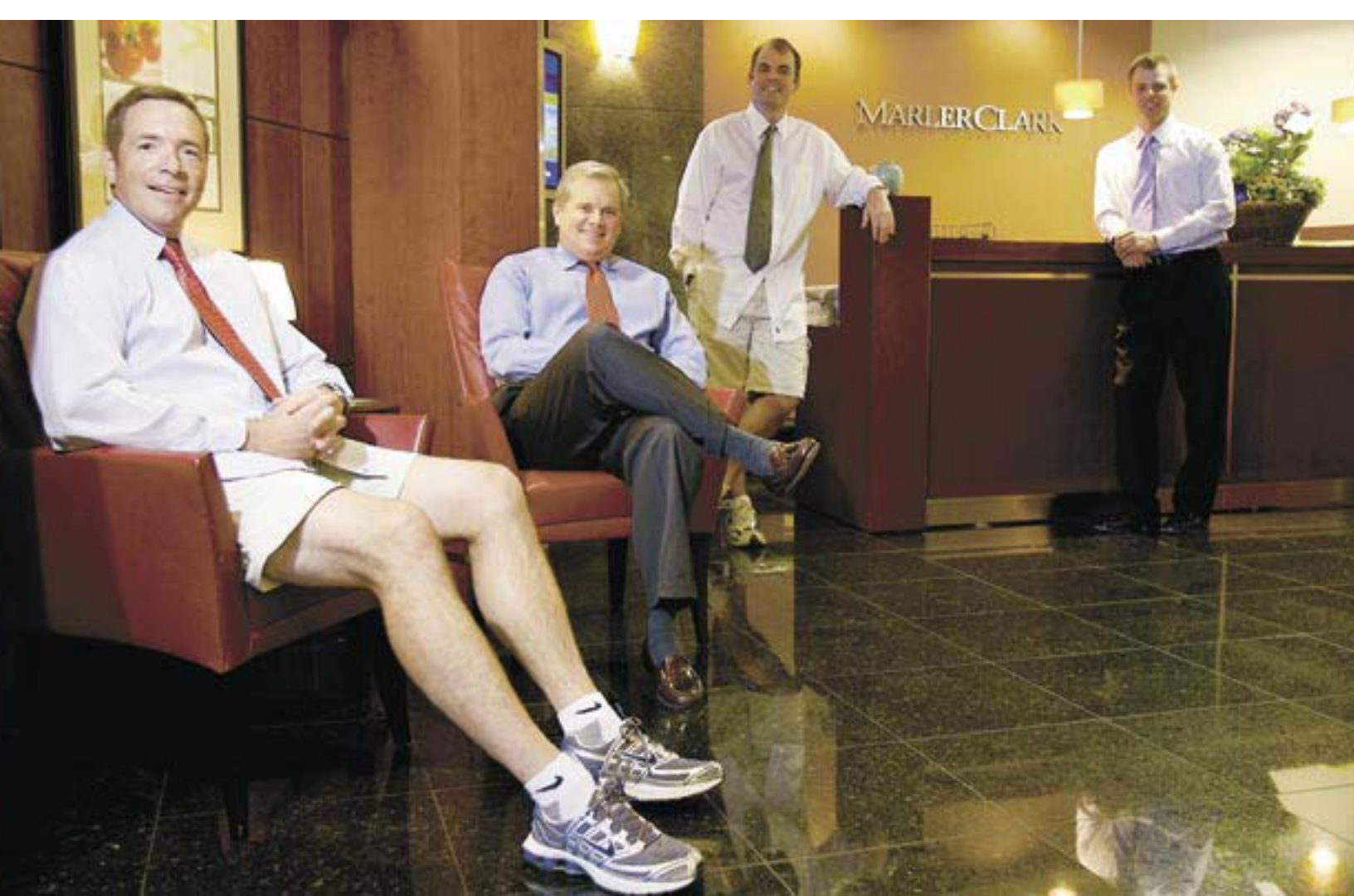
An attack of E. coli. is probably about what a Marler Clark lawsuit feels like to some people in the food and insurance industries, but the firm has forged excellent relations with many of its natural enemies. Through the nonprofit organization Outbreak, Inc., on which Marler now spends as much as a third of his time, Marler Clark attorneys speak to everyone from corporations to cattlemen, offering advice on how to avoid precisely the mistakes out of which outbreaks like Jack-in-the-Box and Odwalla arose.

The Marler Clark offices, which enjoy breathtaking views of Elliott Bay from the 66<sup>th</sup> floor of the Bank of America Tower,

define elegant-casual. Attorneys seem to favor crisply pressed shirts, silk ties – and khaki shorts. There's a boar's head on a wall, a bottle of cognac on a shelf, a sense in the air that you can afford to act relaxed so long as you are very good at what you do.

Marler has shared his experience with SU Law students. In 1998, he was named Lawyer in Residence and spent the year giving guest lectures. That's how Drew Falkenstein '02 first heard of the firm and decided he wanted to work for Marler. In addition to alumni Falkenstein, Bruce Clark and Marler, there are other SU connections at the firm. Stearns is an SU philosophy graduate who also guest lectures at the law school. The firm's fourth partner, Andy Weisbecker, spent three undergraduate years at SU, and associate David Babcock is married to SU Law professor Catherine O'Neil.

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Though the attorneys at Marler Clark sometimes deal with deadly serious cases, they have a lighthearted office that sometimes means wearing shorts and tennis shoes with their shirts and ties. From left, Bruce Clark '84, Bill Marler '87, David Babcock and Drew Falkenstein '02.

“Where the law school came from and where it’s going, I’m very proud of it,” Marler said.

Falkenstein has become a sort of high tech detective. He lives for those “high-stakes” calls, “where you’ve got someone in hospital with their kidneys shutting down and you don’t know why. Because, in terms of disease surveillance, we are on the cutting edge. Sometimes we crack the case, find the source, before any of the federal agencies do.” Of course, he’s working with a somewhat unusual advantage: Marler Clark has an on-staff epidemiologist.

While the meat industry has made significant improvements, and E. coli cases have dropped, Marler Clark is once again suing over tainted beef. Three cases have been filed in recent weeks. In June, the firm sued over the recall of more than 5 million pounds of beef, on behalf of a 4-year-old California girl

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—Bill Marler

who developed life-threatening complications after eating tainted meat.

The firm also sued a Fresno meat market where an 80-year-old man bought beef that sickened him.

“The number of E. coli outbreaks traced to beef products in the last few months is disconcerting,” Marler said. “We haven’t seen millions of pounds of meat being recalled since 2002. I thought the beef industry had cleaned up, but there is obviously still a ways to go.”

Despite the recent outbreaks, overall beef-related food poisoning cases are down, while more cases involving fresh fruits and vegetables have turned up.

And even though millions of Americans are still sickened by their food every year, the United States regulates doesn’t do as much to regulate disease-causing agents like salmonella as it could, Marler said. The message seems to be that food borne illnesses – and legal responsibility for them – are not going anywhere soon.

A new federal “food safety czar” has just been appointed, but mentioning that fact around the Marler Clark offices sets off polite chuckling from all directions.

“Don’t hold your breath,” Clark draws. “It’s all appearance, no substance. Ultimately what drives change is economic self-interest.”