

FOODBORNE ILLNESS LIGATION: CRITICAL QUESTIONS

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The Centers for Disease Control and Prevention (CDC) estimates that 76 million people suffer from food poisoning each year in the United States. Of that number, 325,000 are hospitalized and more than 5,000 die. Sadly, foodborne illness is becoming an increasingly common occurrence—despite the fact that it's preventable. Foodborne illnesses are typically caused by eating food or drinking beverages that have been contaminated with bacteria, parasites or viruses. Even clean food can become cross-contaminated when handled with contaminated food or by food handlers with poor personal hygiene. Symptoms of food poisoning range from transitory gastrointestinal illness to death.

As the news of outbreaks and the associated recalls of contaminated products increase, attorneys from throughout the country will, undoubtedly, field more calls from victims of foodborne illness. Based on our experience representing many hundreds of victims of foodborne illnesses throughout the country, we have identified some of the critical initial inquiries. Of course, after gathering this preliminary information, a more thorough investigation must be conducted, usually with the help of an expert epidemiologist. Here are some illustrative opening questions and corresponding observations:

1. What symptoms do you have?

Symptoms of foodborne illness run a wide gamut. Symptoms can be those similar to common gastrointestinal illnesses and the flu, like an upset stomach, diarrhea, fever, vomiting, abdominal cramps and dehydration. Some foodborne illness has distinctive characteristics. For example, bloody diarrhea is a common symptom of infection with *E. coli* 0157:H7. Serious complications can occur from food poisoning, including organ damage or failure, and even temporary paralysis. It is important to ensure that the plaintiff's symptoms are consistent with the complained-of pathogen.

2. When did your symptoms begin and how long did they last?

The incubation period for foodborne illness can be as short as six hours to as long as seven to ten days. Depending on the type of illness, symptoms can last a few days or develop into something more serious. By documenting when the symptoms begin, and determining the length and severity of the symptoms, you can start to narrow in on the culprit.

3. Did anyone else in your family or circle of friends experience similar symptoms? Do you have any idea what may have caused the symptoms? Has this ever happened before?

Most cases of foodborne illnesses can be prevented. Proper cooking and processing of food kills bacteria and prevents the transmission of bacteria. However, if the staff at a restaurant or other food service facility fails to observe food safety guidelines for cooking, infections can occur. Food workers can also cause contamination through

failure to wash hands after using the bathroom. Other preventable instances occur when produce and other raw food items are grown or handled near contaminants, such as tainted water or soil. Determining whether family members or friends suffered from similar symptoms, and whether this has ever occurred before, can help identify the source and cause of the illness.

4. What medical treatment did you obtain, when, and where? Were any tests conducted?

Foodborne infections often go undiagnosed and unreported. When they are properly diagnosed, recently eaten food items are examined and laboratory tests may be conducted, including review of stool samples. Treatment for mild cases of food poisoning includes antibiotics and increasing fluid intake. However, antibiotics do not work on all types of food poisoning, and when complications, such as severe dehydration arise, hospitalization may be required.

Determining that contaminated food is the cause of a particular illness oftentimes depends on laboratory tests, including stool samples taken from an infected person. If the client believes she has become seriously ill from food poisoning, and have not done so already, she should seek immediate medical attention. If the client still has the food that made her ill, she should seal it and store it for review by medical officials.

5. With what foodborne illness were you diagnosed?

There are a number of foodborne illnesses. The most common are Salmonella and E. coli.

Salmonella, or salmonellosis, is the most common foodborne illness in the United States. The Centers for Disease Control and Prevention (CDC) receive reports of approximately 40,000 cases of salmonellosis in the United States each year. The CDC estimates that hundreds of thousands more go unreported each year.

Salmonella is actually a group of bacteria, or microscopic living creatures, that pass from the feces of people or animals, including birds, onto or into food which then becomes contaminated. The contaminated food usually looks and smells normal.

The onset of symptoms of salmonella poisoning usually begin 12 to 72 hours after consumption of the contaminated food.

Symptoms range from unpleasant discomfort, such as abdominal cramping, diarrhea and fever. And while most people recover within a week, those with compromised health can suffer more serious consequences. In particular, the elderly, young children, AIDS patients, and anyone else whose immune systems are underdeveloped or compromised may become extremely ill. If salmonella gets into the bloodstream, it can be life-threatening.

A small number of people poisoned with Salmonella subsequently develop Reiter's Syndrome. Reiter's Syndrome is a pain in the joints, irritation of the eyes and painful urination. Reiter's Syndrome can lead to chronic arthritis which is difficult to treat.

E. coli compose a large group of bacteria. Some are harmless and some can make you very sick. Illnesses caused by E. coli exposure range from respiratory ailments to gastrointestinal infections – the latter being the most commonly associated with E. coli poisoning. The Centers for Disease Control estimate that 73,000 cases of E. coli infection occur in this country every year, causing more than 60 deaths.

Symptoms of E. coli infection include nausea, abdominal cramps, watery or bloody diarrhea, fever and fatigue. People typically become ill 2-5 days after exposure. Symptoms may last up to 8 days.

The most commonly found source of E. coli contamination is cattle, although the bacteria can be found in other domestic and wild animals as well. The bacteria is spread through contact with contaminated feces, tainting a variety of food and plant products.

One of the most virulent strain of E. coli is E. coli 0157:H7. E. coli 0157:H7 is sometimes referred to as the "hamburger disease." E. coli 0157:H7, found naturally in the intestines and feces of cattle, is sometimes mixed with ground meat during the slaughtering process. Once ingested, E. coli 0157:H7 will produce a toxic substance known as Shiga toxin inside the digestive system of the human body. Shiga toxin producing E. coli (STEC) binds to the cells lining the large intestine, and these poisonous substances thus gain access to circulating blood. The toxins spread to various organs where they can inflict much damage. They deform and destroy red blood cells, which then clog the tiny blood vessels of the kidneys, hindering the normal filtering function of the kidneys and possibly eventually leading to renal failure. These defective red blood cells - and anemia, which is the lack of healthy red blood cells - can harm the heart, brain, liver, and other organs as well. Thrombocytes, the blood's clotting cells, are also destroyed, which can lead to bruises and uninhibited bleeding.

While most people completely recover from E. coli poisoning disease, serious complications can develop, such as Hemolytic Uremic Syndrome (HUS). HUS is oftentimes the result of an infection with E. coli 0157:H7. HUS may lead to extremely severe health complications, including renal failure. It most commonly occurs in young children, although the elderly and immune compromised are also particularly susceptible. Symptoms of HUS usually occur 5 to 10 days after the start of diarrhea, and include paleness, fatigue, and irritability, small, unexplained bruises or bleeding from the nose or mouth, swelling of the face, hands, feet, or entire body, high blood pressure, and decreased urine output or bloody urine.

6. Was the Salmonella/E. coli "serotyped" or classified in any way? What type of Salmonella or E. coli did your healthcare provider advise you had?

There are various types of Salmonella and E. coli and other foodborne illnesses. Salmonella Typhimurium and Salmonella Enteritidis are the most common types of Salmonella. E. coli O157:H7 is an example of the most serious strain of E. coli. The types of the contaminants are "serotyped" or defined through cultures, typically of stool. It is possible that the client may have a particular strain of Salmonella or E. coli that is not consistent with an outbreak. If it is thus important to know early on if the particular bacteria was classified in any way.

7. Do you know if a "PFGE" was done?

Pulsed-field gel electrophoresis (PFGE) technology allows scientists to perform DNA "finger printing" of a particular strain of disease causing bacteria isolated from patients and from suspected food. When common PFGE patterns are detected, health authorities are able to begin narrowing in on common foods consumed to detect an outbreak. Sometimes the same PFGE is found at the plant, warehouse, manufacturing, slaughterhouse or facility.

8. Has anyone told you that your E. coli or Salmonella was a match to any known outbreak?

If PFGE patterns are identical to an outbreak cluster, subsequent investigation will typically be conducted by health officials.

9. Do you know if your governmental entity (City/County/Parish/State Health Department) was notified of your illness? If so, have you provided any information to the local health department? Have they provided any information to you?

Eating food contaminated with Salmonella, E. coli or another pathogen can cause the illnesses discussed above. But drinking contaminated water or swimming in an infested lake or pond can also cause an E. coli infection. When illnesses are reported, local health agencies typically perform investigations to determine if the public is threatened by an outbreak or if the illness was an isolated event. The investigations conducted by local health agencies are a great source to begin your in depth investigation of your client's illness.

Conclusion

Ideally, our food supply should be free of all contamination before it ever gets into our kitchens or onto our plates. Improving our food safety system with high industry standards, attentive regulation, and effective legislation can help protect us from the misery and serious risk associated with foodborne illness. But in the absence of those high industry standards, attentive regulation or effective legislation, the tort system must fill in the gap. Attorneys representing victims of foodborne illness need to ask these critical initial questions to ensure the investigation gets off on the right foot. Our blog, www.nbafoodadvocate.com has other resources to consider in this challenging area of practice.