

## Summary

Food firms, such as manufacturers, retailers, and restaurants, have economic incentives to produce safer food in order to avoid foodborne illness lawsuits and the potential compensation that they may have to pay to ill people and their families. Lawsuits would seem to provide important feedback to these firms about how much they should invest in food safety. However, high transaction and information costs, combined with the structure of the legal system, limit the effectiveness of litigation for compensating ill consumers and providing firms with signals to produce safer food.

This report reviews earlier work on the economic and legal aspects of foodborne illness and examines how product liability law treats personal injuries attributed to contaminated food products. Data on jury trials involving personal injuries allegedly due to foodborne pathogens during 1988-97 were analyzed using multivariate methods to identify the factors related to trial outcomes and the size of damage awards.

Among other findings:

Plaintiffs are unlikely to receive awards in foodborne illness jury trials. Relatively few foodborne illnesses are compensated either through jury awards or out-of-court settlements. Of our sample of 175 foodborne illness lawsuits resolved in court during 1988-97, 31.4 percent resulted in some compensation paid by firms.

Plaintiffs were more likely to win jury trials if they could link their illness to a specific pathogen, and more severe illnesses tended to result in higher awards. Multivariate analyses highlight the importance of plaintiffs' being able to link their illness to a specific foodborne pathogen in order to prevail in court.

Expected monetary compensation from a foodborne illness lawsuit provides a limited incentive to pursue litigation. The median award by juries for injuries due to pathogen-contaminated food products was \$25,560 (1998 dollars). Plaintiffs seldom receive all of an award because part of the award (typically one-third or more) pays legal fees and court costs.

Foodborne illness costs are shared by many sectors of the economy, which limits incentives to firms to produce safer food. Much of the costs of illness borne by people who become ill (and/or their families) are not reimbursed by food firms responsible for an illness. Rather, an ill consumer, his or her relatives, other parties (such as employers, private health insurers, and taxpayers), or some combination of these bear the costs.

Legal incentives probably work better in outbreaks and less well for sporadic cases. Mass outbreaks have greater potential to damage firms, both in terms of financial damages and of damaging a firm's or a product's reputation.

Whether foodborne illness litigation will become more common in the future is unclear. However, class action lawsuits may become more common for outbreaks, which result in many mild and similar illnesses, particularly as identification and documentation of outbreaks improve, as legal expertise in this area grows, and as media coverage of successful class action suits involving consumer products accumulates.

In short, the legal system provides limited incentives for firms to produce safer food. Firms responsible for microbial contamination compensate relatively few people who experience foodborne illnesses. The product liability system provides firms with incentives to control hazards in food primarily when the hazards are easily identifiable, a foodborne illness can be traced to firms, and ill people or their families are compensated by the firms responsible for the contamination.