



**Crisis  
Management/Recall  
Wisconsin Association  
for Food Protection**

**Law Offices of Harry S. Field  
77 West Washington, Suite 2111  
Chicago, Illinois 60602  
(312) 782-9377**

# Disclaimer



- This course and its materials are to provide accurate and authoritative information in regards to the subject matter covered. **It is understood that the author is not rendering legal advice or services. If legal advice is required, please see your attorney.**
- **This course is just a guide, and the information contained therein is made to be as complete and accurate as possible. However, mistakes do happen.**





*“A crisis can be an opportunity if you can take away the taste of catastrophe.”*

Max Frisch



# Crisis...



- • **noun** (pl. **crises**) **1** a time of intense difficulty or danger.

» Oxford English Dictionary



# What is a Crisis?



- *A Crisis is any event or activity with the potential to negatively affect the reputation or credibility of a business.*
- *It is typically a situation that is...or soon could be out of control.*
- *A crisis is an unexpected event that can threaten the health and safety of consumers and employees, as well as the image and value of your brands and Company.*



# Examples of Crises

- Employee layoffs/downsizing
  - Poor employee morale
- Financial results below expectations
- Violent threats or activities by disgruntled current or former employees.
- Corporate lawsuits
  - Discrimination
  - Harassment Claims
- Damaging Rumors
- Negative Media Coverage



# Examples of Crises

- Technology Mishaps
- On the Job Accidents
- Loss of a Major Customer Account
- Government Probes or Fines
- Boycotts, Strikes, etc.
- Acts of God
  - Tornados
  - Hurricanes
- Product Defects/Quality Problems



# War Stories

- Ammonia Leak
- Government Intervention
- Acts of God
  - Insurance Implications





# How do you Handle these types of Issues?



- 1) Identify your company's vulnerabilities, and do something about them.
- 2) Consider ways to improve the bond with your customers
  - When there is a crisis, they hopefully will be more understanding
- 3) Solve the problem before it turns into a larger one.





*“An issue ignored is a crisis invited.”*

Henry Kissinger



# Why Should you Plan for a Crisis



- Impact on your company
  - Damaged Reputation
  - Damage to your credibility, trust, and confidence in the business/enterprise.
  - Lower Sales
  - Reduced Profits
  - Loss of Employee Loyalty
  - Decreased Level of Employee Productivity
  - Customer requirements
  - Manage Risk
  - ISO 22000:2005 requirement



# Costs to Handle Crises

- Fines/Penalties
- Litigation/Attorneys
- Loss of Customer Accounts
- Public Relations People
- Media Information Materials
- Airfare/Lodging
- Experts
- Targeted Advertisements



# What is Crisis Management?

- Crisis Management is the function that works to minimize the potential damage of a crisis to a business and helps gain control of the situation.
- Within our context, Crisis Management works to minimize the damage to a company's reputation, and the public health, and to take advantage of any benefits that can be obtained from a crisis.



# Crisis Manages ≠ Disaster Control or Crisis Communicator



- Disaster Control/Crisis Communication is done after the crisis has already occurred.
- Crisis Management is designed to help prevent, manage and even thrive on business crises.



# Basic Elements of Crisis Planning



- 1) Appoint a Crisis Manager
  - Crisis Manager should have authority to appoint a Crisis Team based on the current crisis
  - Crisis Manager should establish a strategy
  - Identify specific objectives that can be achieved
  - Recommend ways to prevent the most likely crises from occurring
  - Develop Information & Materials
  - Help Ensure proper communications activities before, during and after a crisis



# Basic Elements of Crisis Management



- 2) Appoint a Crisis Management Team
  - Should be Multi-Disciplinary
    - Plant Personnel
    - Experts
    - Food Scientists/Microbiological
    - Engineers
    - Retained PR personnel
    - Retained Consultants
    - Attorneys





# Basics Elements of Crisis Management



- 3) Prepare for a Crisis Assessment
  - Likelihood of Occurrence
    - Determine Worst Case Scenarios for five highest priority crises
  - -Preparatory Materials
    - Develop materials in advance that will be needed in a crisis
      - Background Information on key personnel and on the company
      - Memoranda
      - Core Messages that can be revised quickly in the event of a crisis



# Basic Elements of Crisis Planning

- 4) Prepare a Crisis Management Plan
- A crisis management plan describes the steps an organization will take to effectively manage a crisis situation, the specific personnel/experts responsible for each area.
- The plan also documents the most important publics, and describes the manner in which each will be contacted, monitored or consulted, and by whom.



# Crisis

- How do you know a crisis has occurred?
  - The government may inform you
  - The media
  - Lawsuits
- A crisis is something unusual or out of the norm, and it will require key management personnel to make difficult decisions.
- It may be an event that the media determines is newsworthy
- It pulls a company off its regular course of business.



# How Do You Know It Is A Crisis?



- Have people been injured? Could they potentially be?
- Is the consumers' health threatened? – Could it potentially be?
- Are there more than two consumer complaints on the same product batch alleging illness, claiming the presence of foreign bodies, etc.?
- Have regulatory limits or laws not been respected?- Could it potentially be?



## How Do you Know It Is A Crisis (cont.)



- Has the environment or community been affected? – Could it potentially be?
- Do the media know about it? – Is there a risk that they will be informed?
- Have the authorities been informed?
- Is production or supply affected? – Could it potentially be?
- Must a product be withdrawn or recalled?
- Is the credibility or the image of the brand affected? – Could it potentially be?



# Communication during a Crisis

- Crucial during any type of crisis, especially if it involves any food related issues.
- Identify all the publics who may be affected by the crisis, and inform them of the situation
- Prove that you have identified the problems and are doing something about them.



# Communication during a Crisis



- Communicate a core message to the appropriate publics.
- Communicate only what can be confirmed with absolute certainty
  - Never speculate or guess
  - Never postulate, it can destroy your credibility.



# Communication during a Crisis

- Don't Lie About Anything
- Don't comment on hypothetical questions
- Don't Say NO COMMENT to the news media or anyone else. WHY????
- Communicate all the bad news at one time
- Include ways to obtain feedback and input from your publics
- Document and monitor all communications
- **NEVER STOP COMMUNICATING**





# Legal Stuff



- Fifth Amendment Rights
  - Miranda v. Arizona
  - Inspector = Police
- Who Makes Law vs. Regulations
  - Enforcement by Executive



# Legal Ramifications

- If not handled properly, this could trigger a recall
- Criminal repercussions
- Civil Repercussion
- This could shut the plant and organization down.
- If the plant is shut down, reopening is much more difficult than keeping the plant open.





# RECALL

# Classifications



- Recall Classifications:

**Class I:** Health hazard situation where the probability that the product will cause serious harm, or adverse health consequences or death. The most serious classification.

**Class II:** Health hazard where there is a remote probability of adverse health consequences from the use of the product.

**Class III:** Use of product will not cause adverse health consequences



# Depth of Recall



- Consumer: household consumers, and all levels of distribution.
- Retail level: includes all retail sales of the product.
- User level: hotels, restaurants, food service and institutional consignees.
- Wholesale level: distribution level between manufacturer and the retail. (This level may not be encountered in every recall situation)



# Reportable Food Registry

- Any FDA product that may be adulterated, must be reported to the FDA as soon as practicable but no later than 24 hours after it is determined that the article of food is reportable, through the FDA's Reportable Food Registry portal.
  - Adulterated or reportable means that there is a reasonable probability that the use of or exposure to such article of food will cause serious adverse health consequences or death to humans or animals.
  - Dietary supplements and infant formula does not need to comply with this requirement.



# Hypothetical Analysis



- What Level Recall would this be?
- Product is being caused by misbranding issue
- Issue is an undeclared allergen
- Allergen is peanut paste/nuts/peanut oil, etc.
- Make sure you know all your ingredients, including those used by your suppliers, and if there are any undeclared ingredients.
- Is this a reportable incident, and if so, at what stage?



# Recall vs. Withdrawal

- What is the difference between these two areas
- It all hinges on scope and control of the product at issue.
- No product that is injurious to health or otherwise adulterated as a result of the deviation enters commerce





# FDA Guidance Checkpoints

- What does the FDA want to know?
  - Product information
    - Product labeling
    - Manufacturer Information
    - Codes, Lot Numbers, etc.
    - Contact Info for Manufacturer
  - Reason for Recall
    - Explain how product is defective/ violative of regulation
      - Foreign objects, contaminant, failure to meet product specifications, labeling or ingredient issue
    - Explain how the problem occurred.



# FDA Guidance Checkpoints



- Provide detailed info on complaints associated with products
- Health Hazard Assessment
  - Provide the health risk associated with the product.
  - Test Results, SOP criteria not followed, etc.
- Volume of Product Recalled.
  - Total Quantity produced
  - Dates Produced
  - Dates Distributed
  - Quantity on HOLD by firm
    - Indicate how product is being quarantined



# FDA Guidance Checkpoints



- Estimate amount of product remaining in marketplace.
  - At Distributor level
  - Retail level
- Provide status/disposition on marketed products, if known.
- Distribution Patterns
  - Number of DIRECT accounts, by type
    - Wholesale/distributors
    - Repackers
    - Retail
    - Consumers directly (internet, own store, catalog, etc.)
  - Geographic distribution of product.



# FDA Guidance Checkpoints



- Recall Strategy
  - Indicate level in the distribution chain you are extending recall
    - Wholesale
    - Retail
  - Explain rationale for level of recall
  - Indicate method of notification
  - Provide instructions that you relayed to customers/consumers for recalled product.
  - If Product is going to be returned, explain mechanics of return process.



# FDA Guidance Checkpoints



- Press Releases
  - If product poses health hazard to public at large, a press release is recommended.
  - It should be your highest priority
- Written Recall Notification Letters
  - Product Identification
  - Description of Problem
    - Identify any potential health hazard
  - Depth of Recall
    - Wholesale/Retail
    - Should include instructions as to how further distributed product should be handled.
    - Provide for a sub-recall



# FDA Guidance Checkpoints

- Instructions to Customers
  - Remove product from sale
  - Cease Distribution
  - Sub Recall
  - Return Product
  - Explain procedure for returns
- How Long Do You think You Have to Provide this Information??



# SCOPE

- It Defines the amount, kind of product in question
- This could be the most important thing performed in regards to a recall.
- The scope must be supportable by data, outside sources, etc.



# Disposition of Product



- The company must tell the authorities what it intends to do with the recalled product.
- It must correct the problem identified with the product, which lead to the recall.
- Destruction, relabeling, re-cooking, reworking, etc.





# Food Safety Modernization Act (FSMA)



- Prior to FSMA, all recalls were voluntary
- FDA is authorized to mandate a recall of unsafe food if the food company fails to do it voluntarily.
- FDA has a more flexible standard for administrative detention and allows the FDA to suspend the registration of a food facility associated with unsafe food, thereby preventing it from distributing food.
- FDA must improve its ability to track both domestic and imported foods.



# FSMA cont.

- All Food Facilities must have a Food Defense Program.
  - Bio-Terrorism
  - Crisis Management
  - Recall
  - Vulnerability Assessment
  - Emergency Evacuations
  - Integrated Security Systems
  - Handling Intentional Contamination-Recall, Investigation and Decontamination



# RECALL



- Lets say you have a recall:
  - It's a Level 1 recall
  - Product that your company has produced:
    - Both under your trade name; and
    - Private label product for your customers, with their trade names and their identity
- What's the first thing that you do?
- What is your legal liability (the aftermath)



# Legal Liability

- Insurance



<b>General Liability</b>		
Recall Provisions: Probably: \$100,000.00 cap on damages under policy		
What does it cover?	Costs of recall: Bringing the product back?	<b>YES</b>
	Costs to pay the retailer to pull product off shelf and either dispose of product or return it to you.	<b>YES</b>
	Storage of recalled product	<b>YES</b>



# Legal Liability



General Liability (cont.)		
	Expert Costs: Legal Fees	YES/NO
	PR Costs: Press Releases PR consultant	YES
	Disposal of Recalled Product	YES

- **BUT REMEMBER ONLY UP TO \$100,000.00. THAT IS USUALLY THE MAX YOUR CAN PURCHASE**



# Legal Liability



## General Liability (cont.)

	Cost of Product	<b>NO</b>
	Lost Income (Profit)	<b>NO</b>
	Lost Income (Profit) to your customer	<b>NO</b>
	Lost Income (Profit) to the retailer who had the product and the entire distribution chain	<b>NO</b>
	Damage to reputation of your customer	<b>NO</b>
	Incidental Damages to your customer	<b>NO</b>
	Recall team to assist you through the recall (spokesperson, attorneys, experts, etc.)	<b>NO</b>



# Legal Liability



So What do you think happens next????

LAWSUITS

So What can you do about it?

Limit Liability through agreements

Do activities and actions to protect your business



# Protecting Your Company



- So How Do You Protect Your Business:
  - Mock Recalls (Really??)
  - Obtain the correct insurance for the situation
- Recall Insurance
- Warehouse/Storage Insurance for your product stored offsite
- General Liability that covers all the risks associated with your business





# Insurance....

- Automobile
- Homeowners/Renters
- Umbrella
- Property (wedding ring, heirlooms, etc.)
  - Your silos if you have an collapse/implosion (probably not...human error)
  - If mechanical, probably will be covered with Hartford Steam Boiler, but they will sue the company that made the equipment that failed to recoup their monies.
- These contracts are not negotiable, they are what is known as adhesion contracts....
- Commercial Insurance is negotiable to certain degrees.



# Types of Insurance for Business

- General Liability/ Inland Marine
- Umbrella
- Recall
- Workman's Compensation



# General Liability/Inland Marine



- Typically covers:
  - Real Property
  - Company Equipment (replacement and repair-if purchase)
  - Company vehicles (if purchased)
  - Product in third party warehouses (if purchased)
  - Product in your facility from loss due to accidental damage
  - Transportation losses (if purchased)
  - Civil Liability to a third party for injury that resulted from your product
  - RECALL????



# General Casualty (cont.)



- Exclusions
  - Acts of God
  - Pests
  - Government Intervention
  - Fungi/Bacteria/Mold (in your facility) linked to your personal property (your inventory)
    - Cannot insure a building with fungi/bacteria/mold
    - If you develop it in your building later on, you still may not have coverage
    - Your inventory is your property



# General Casualty (cont.)



- Exclusions
  - If you process or have property of others, care custody and control of property of others.
  - If you have listeria, you may have no coverage for all this property...insurance company will link this to the personal property section of the policy.
- Injury attributable to microbiological, chemical or physical hazards
- Numerous other exclusions that vary by policy



# Recall Insurance

- Typically covers
  - Public Relations issues
  - Attorneys
  - Experts
  - Provides a Recall Team



# Recall Insurance

- Costs of the actual recall
  - Return of the product
  - Destruction, rehabilitation, remediation of the product and will pay the differential of the product.
  - Ads in relevant media outlets to warn the public regarding the subject matter product
  - Third Party costs associated with the recall (retailers charges)
  - Your cost of product
  - Loss of Profit of others
  - Loss of Product of others
- Employee Costs



# Recall Insurance

- If the product cannot be remediated or rehabilitated, then the cost of the actual product
- Costs to clean and rehabilitate the facility to overcome the issues presented
- It may cover occurrences that happen as a result of intentional actions (terrorism)





# Recall Insurance

- What it will NOT cover, is liability to a third party for an injury. That is covered by your General Liability policy.





ANY  
QUESTIONS





# Thank You

**Harry S. Field**

Law Offices of Harry S. Field  
77 West Washington, Suite 2111

Chicago, Illinois 60602

(312) 782-9377

**Email: [hfield@hfieldlaw.com](mailto:hfield@hfieldlaw.com)**

