

## Taco Bell Lawsuits Highlight Liability Issues for Restaurants

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The family of an 11-year-old boy has filed the first lawsuit against Taco Bell Corp. over possible E. coli contamination. The suit filed late Wednesday in New York alleges negligence on the part of the 5,800-unit restaurant chain.

The contamination problems are reportedly tied to green onions served at Taco Bell locations in as many as eight northeastern states. The current controversy surrounding Irvine, Calif.-based Taco Bell can be expected to produce additional lawsuits, according to Dallas attorney Mary Goodrich, who represents restaurant operators in business and litigation matters.

"Anytime you serve a meal the chance exists that minor or serious illnesses can develop," says Ms. Goodrich of Dallas' Vernon Goodrich, LLP. "If you serve millions of meals each day, then the risks increase exponentially. Unfortunately, restaurant owners must accept that incidents like this may occur."

Most major restaurants chains have indemnity agreements with their food suppliers requiring those companies to accept liability in lawsuits resulting from food-borne contamination. Those agreements typically include a continuing responsibility by food suppliers to maintain insurance to protect them and the restaurant operator in case of a problem. But Ms. Goodrich says larger chains usually can better absorb the risk of a lawsuit than a small or independent operator.

"Small operators may not have as much leverage, so their agreements with food distributors covering insurance and indemnity might not be as favorable. A series of lawsuits, such as Taco Bell will surely face, would likely be 'bet the business' litigation for a small operator," she says.

Although they may share the brand and processes of the parent company, restaurant franchisees are independent operators who make most day-to-day decisions, including the source of the food they sell.

"However, due to a legal theory called vicarious liability, I'd expect that both the franchisee and Taco Bell can be held liable in these cases," says Ms. Goodrich. "Even if a franchisee has standalone agreements with food suppliers, there's ample case law to suggest that the parent corporation retains some level of liability because they specify the quality and requirements of the food."

Ms. Goodrich says Taco Bell has managed the situation well thus far.

"They immediately and voluntarily issued recalls, temporarily shut down restaurants, and seem to be working with health departments to control the potential for further outbreaks," she says. "They haven't accepted responsibility for the situation, but I haven't seen any public finger-pointing. I'm impressed by what appears to be the company's commitment to protecting its customers and believe that will serve them well in the inevitable lawsuits."

Vernon Goodrich LLP is an international law firm focused on hospitality and franchise law on behalf of hotels, restaurants, resorts and retailers. With offices in Dallas, Texas, and Park City, Utah, the firm supports its clients in all areas of regulatory, compliance, litigation and transactional law affecting franchise business operations.

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