

# RESTAURANT BUSINESS

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## For industry antagonist Bill Marler, food safety is personal

The attorney has taken restaurants and suppliers to court for 30 years as a prod for them to do a better job of protecting the public. He makes no apologies about being their conscience.

By **Peter Romeo** (/profile/peter-romeo) on Nov. 27, 2024



Illustration by Nico Heins/Midjourney

Bill Marler has likely filed hundreds of lawsuits against restaurants and food suppliers since serendipity steered him into a courtroom nearly 30 years ago to represent a 9-year-old victim of the Jack in the Box E.coli poisonings. Many of his clients have been the parents of children who were maimed for life because of someone's food-safety lapse. Not all of the families were fortunate enough to have their child or other loved one survive at all.

But there's one case in particular that's stuck with him. In 2011, 148 people were sickened after eating cantaloupe that had been contaminated with *Listeria*. Thirty-three of the victims would die, including a number of nursing home-aged World War II veterans.

"These veterans who'd survived the beaches of Iwo Jima were dying from eating melon," Marler says, his voice

dropping. “It haunts me every day.”

He estimates that his law practice has collected at least \$1 billion in fees verdicts and settlements from parties that were lax in following proven defenses against the likes of E. coli, Shigella and salmonella. He can recount many of the plaintiffs by name, along with the physical price they paid for nothing more than eating what they were served.

The 67-year-old Seattle resident points out he’s not hurting financially. But he’s not “a guy who drives around with a gold watch and a Porsche,” he said in a lengthy interview with Restaurant Business.



For him, the battle against food-borne illness is personal. Ditto for prodding restaurants to be part of the fight.

“Do you know what it’s like for a father to be in an ICU room and watch as parents have to pull the plug on their kid?” he says. “I’ve seen that. I’ve been to plenty of funerals.”

A client whose wife died after eating a wagyu burger last July emails him almost daily, clearly still in agony. Marler has spoken with the man’s kids about getting him counseling.

“Yeah, I get paid to help these people,” he continues. “But the defense attorneys are also getting paid,” and their mission is to prevent the victims from getting anything.

Plus, “If they don’t want me to sue them, they shouldn’t poison children.”

Marler says he’s accused less often today of being an ambulance-chaser, in part because there are fewer food safety cases to chase. “From about 1993 to 2000, almost everything I did was related to hamburgers and E.coli,” he recounts. “Most of that went away.”

He’s played a major role in making that happen. Even potential courtroom adversaries say he’s been an industry conscience, using lawsuits (or the threat thereof) to goad operators and suppliers into following effective safety protocols.

At a meeting years ago of chain food-safety executives, the focus was on a recent E.coli outbreak involving produce. Sure enough, mention was made of a possible Marler lawsuit. A wise-ass reporter covering the event—i.e., me—joked that it was only natural to see lawyers making money off people’s suffering.

Wrong thing to say. The crowd turned hostile, defending Marler as the antagonist who made attendees do their jobs better. They portrayed him as a crusader, not some opportunist.

They pointed out that regulators once thought cooking a burger to an internal temperature of 145 degrees would kill any E.coli lurking in the patty. In lawsuits arising from the Jack in the Box poisonings, Marler harped on the ineffectiveness of that temperature. He noted that Washington, the scene of the crisis, was at the time the only state in the nation that required burgers to be heated to 155 degrees, and that fewer if any children would have

been sickened had Jack in the Box followed the exceptional standard.

Today, the U.S. Department of Agriculture and virtually every state has set 160 degrees as the safety threshold to be met.



Marler has been the hammer waiting to strike if restaurant operators don't adhere to the standard. Similarly, the spotlight turned on the Jack in the Box situation eventually led to routine testing of ground beef for E.coli. More recently, the U.S.D.A. classified the Shigella Salmonella bacteria as a food adulterant, a designation that allows the department's Food Safety and Inspection Service to regulate it as a health threat. Marler spent \$500,000 of his own money to fund the research that led to the recategorization.

He was less successful in his quest to have salmonella bacteria reclassified as an adulterant, a move that would have allowed the U.S.D.A. to test for the pathogen in chicken.

## Chain reactions

Marler acknowledges that he's forced restaurant chains to be more vigilant, but laments that the brands haven't similarly used annoyance, antagonism and their purchasing power to push for a safer food supply.

"One of the things they fail at is using their market power to get the supply chain to really step up," he explains. "It's very rare that a restaurant or grocery store had an active role in a contamination. It's usually a problem with something that's come in from the outside."

He puts the blame on fellow lawyers. "They do all of the purchasing agreements, and all they're concerned about is price and being able to tell suppliers, 'The way this is written, it's all your fault if something goes bad, and you'll have to pay for it.'" Their determination to protect the brand doesn't extend to setting safety requirements the supplier has to meet.

All in all, "if you'd ask me in June, I'd have given the industry an A-," Marler says of the restaurant industry's food-safety efforts. "Today, I'd give them a B+."

He attributes the downgrade to the rash of food contaminations that came to light this summer. Outbreaks led to warnings that restaurateurs and consumers avoid cucumbers, eggs, onions and, on the day Marler granted an interview, 167,000 pounds of ground beef.

Marler says he's worried the food industry is easing its vigilance because of its success beforehand in averting outbreaks. "I wonder if people are taking their eyes off the ball," he says.

# Regulation in the Trump era

He's far more critical of current-day food-safety regulation.

The watchdog agencies of the USDA and the U.S. Department of Health and Human Services "sometimes do a very good job. They're very good at responding to crisis," he says.

But "they're very bad at being preventive. Their failure is they don't do things proactively. They wait and they wait for something bad to happen. They don't want to take pre-emptive measures because they're going to get yelled at by some congressman or senator who's hearing complaints from companies in their areas that might be affected.

"I'd give them a gentleman's C."

He's not even that merciful in gauging what a second Trump administration might bring.

"I think the likelihood of anything good happening is pretty low," Marler says. "I'd love to be proven wrong. But they don't believe in science. They don't even believe in what I would regard as standard morality."

As a scientist, he continues, you look at the facts. "During the [first] Trump administration, nothing horrible about food safety happened," says Marler. "But nothing moved forward during the Trump administration, either.

"The most worrisome thing is this is going to be a kleptocracy," he continues, referring to the political equivalent of a smash-and-grab. "These people who get into these positions, they're going to model Donald Trump's behavior. And he's all about making money."

What's needed, he stresses, is the constant reminder that food safety isn't about avoiding lawsuits, avoiding a traffic drop-off or allaying public concerns about the purity of what's on their plates. It's about protecting the lives and well-being of someone's children, parents or grandparents.

He recounts how another force in food safety, the late Dave Theno, would carry in his wallet a picture of Lauren Rudolph, the 6-year-old who was the first child to die in the Jack in the Box E.coli outbreak. Theno had been hired by Jack in the Box to shore up the brand's food-safety efforts and reassure the public that the chain was once again a safe place to eat. Rudolph was in some respects an indictment of the brand, a counterbalance to Theno's efforts.

Yet Theno would look at the girl's picture when making a decision. As he told many an audience 20-odd years ago, he'd ask himself, "What would Lauren want you to do?"

Initially, "he hated me—hated me!" recalls Marler. "I deposed him for six straight days, and I was really tough on him."

But the two came to realize they were working toward the same end and became tight friends. "He taught me how to love Manhattans," says Marler.

Theno was killed in 2017 when he pushed a grandson away from a rogue wave while they were swimming in

Hawaii. The boy survived, but 66-year-old Theno drowned. Marler donated \$100,000 to start a scholarship in his honor to promote food safety.

## Why food safety?

It's another illustration of Marler's legal career having a decidedly personal dynamic. Indeed, it was a personal connection that led him to focus on food-safety litigation.



Marler was in his mid-30s and working at a large law firm in the Pacific Northwest when he read a newspaper account of children getting direly sick from a bacteria called E.coli. "I didn't know what E.coli was," he recalls.

The bacteria had been found in burgers served by the Jack in the Box fast-food chain. Eventually, 732 people would be sickened in the outbreak, and four children would die.

Neither he nor his firm had any direct connection to the outbreak. But Marler received a call from someone he'd represented earlier in a slip-and-fall workmen's comp case involving a local Lincoln car dealership.

"She called me because a good friend of hers had a kid in the hospital who was very sick from E.coli, and the friend didn't know what to do," Marler recounts.

The child turned out to be 9-year-old Brianne Kiner, who was in a coma because her internal organs were failing.

Marler, who found he loved litigating, took on the case. He ended up winning Kiner a \$15.6 million settlement.

Other victims started contacting him, hoping he could similarly help them. Marler ended up representing about 100 of the other casualties. "I basically became the lead lawyer for all the Jack in the Box litigation," he says.

He was still handling other sorts of liability cases, but soon concentrated on food safety, eventually founding his own firm, Marler Clark, whose practice was virtually 100% focused on contaminations.

He hems and haws a bit when asked why he decided to specialize in that sort of legal work. The money was good, but "I have never taken a full fee on a case in 31 years," says Marler. He works on contingency, meaning he gets nothing if he doesn't prevail, and a big proportion of the cases end in a settlement, of which he gets a portion.

He's been known to waive his fee altogether when that settlement seems paltry for what his client suffered.

His work as a crusader for food safety has often met with cynicism, but he suggests he's aged out of caring. "I've

loved being a lawyer,” he says. “I wish I could ratchet everything back 31 years and start over, because I love what I’m doing.”

Besides, there’s still much to be done in ensuring the food industry does what it’s supposed to do to protect the public.

“I have never been involved in an outbreak where there wasn’t an opportunity to fix the problem before it blew up,” says Marler. “I always tell the industry, Get food-safety people in positions where they have access to decision-makers in your company, and that you’re paying attention to science, you’re paying attention to facts, and not trying to avoid a problem.

“Make sure you don’t have to carry around a picture of Lauren Rudolph and have to ask, ‘What would Lauren want me to do?’”

*Correction: The \$1 billion Marler Clark has collected has collected came from verdicts and settlements, not fees. The firm works on a contingency basis.*

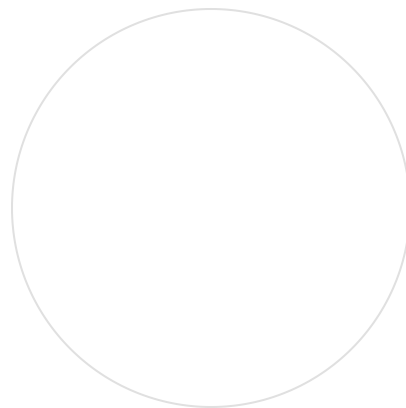
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(/profile/peter-romeo)

**Peter Romeo has covered the restaurant industry since 1984 for a variety of media. As Editor At Large for Restaurant Business, his current beats are government affairs, labor and family dining. He is also the publication’s unofficial historian.**

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## Noodles & Company stock hits a new, all-time low

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The Bottom Line: The fast-casual noodle chain was once dubbed the "Next Chipotle." But it has lost 80% of its value this year amid persistent sales weakness and compounding losses.

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## Shoppers apparently returned to stores on Black Friday

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The Bottom Line: Holiday shopping season isn't what it used to be as more than half of consumers get most of their gifts online. But they were more likely to shop inside stores last weekend.

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# How one small burger chain is staying ahead of the curve

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POS provider Toast pinpoints 15 burger trends impacting menus now and into 2025, and Nashville's Pharmacy Burger is nailing most of them.

## TRENDING

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