

Hospitality Brief

A Quarterly Newsletter on the Hospitality Industry

Jan's Journal

Foodborne Illness & Food Safety

According to the Center for Disease Control (CDC), an estimated 76 million cases of foodborne disease occur each year in the United States, making it the number one reason for emergency room visits nationwide. And while the great majority of these cases are mild and cause symptoms for only a day or two, some cases are much more serious. In fact, the CDC estimates that there are 325,000 hospitalizations and 5,000 deaths related to foodborne diseases in the U.S. each year. The most severe cases tend to occur in the very old, the very young, those who have an illness already that reduces their immune system function, and in healthy people exposed to a very high dose of an organism.



Due to the many risks associated with foodborne illness, it remains one of the most important risks our hospitality clients manage.

When talking about food safety, an ounce of prevention is worth at least a pound of cure. Be proactive and diligent in your food handling and training efforts.

First and foremost, it is critical to impose and enforce proper hand washing procedures for all food-handling employees.

Second, avoid any potential for cross-contamination. Clean and disinfect countertops, prep tables, cutting boards

and utensils between each use particularly if using the surface for different types of food.

Finally, it is critical to maintain proper temperatures. USDA's internal food-temperature guidelines call for heating beef, veal, lamb steaks, roasts, and chops to 145 degrees, all pork cuts, ground beef, veal and lamb to 160 degrees; and poultry to 165 degrees. Once cooked, keep food safe for serving by maintaining hot dish temperatures at or above 140 degrees. Cold dishes must stay at 40 degrees or below, something most easily accomplished by nesting the dish or serving tray on ice.

But despite best efforts, we know it is sometimes impossible to be sure you are completely protected from a foodborne illness occurrence. That is where Trade Name Restoration,

Loss of Business Income, and Incident Response Insurance comes in. These insurance products are designed to cover an occurrence of a foodborne illness, accidental contamination, malicious contamination or extortion threat resulting from the operations at a covered location, at a location of any trade name, or at a supplier's location.

For further information on Trade Name Restoration, Loss of Business Income, and Incident Response Insurance, please contact Marsh's Hospitality & Gaming Placement Specialist, Julie Heisler, at (715) 446-1469.

Jan Schnabel, global leader for Marsh's Hospitality & Gaming Practice

In This Issue:

- Foodborne Illness & Food Safety
- FACTA Liability Exposures
- Upcoming Conferences
- Emergency Response Planning

Hospitality Quiz

See if you know the answers to these hospitality quiz questions. (Answers are provided on the last page.)

1. Since 2003, how many restaurant employees and guests in the U.S. have been murdered on restaurant properties?
2. What percentage of employees are seeking a new career opportunity in 2008?
3. As of January 1, 2008, the number of slot machines and video poker games in use across the United States is up what percentage year over year?
4. What percentage of hotel and casinos required treatment for bed bugs over a three-and-a-half year period?
5. How many people does the U.S. restaurant industry employ? ❖

Hospitality Brief

Hospitality Brief

Volume 5, No. 1
First Quarter 2008

Quarterly Newsletter published for Marsh's hospitality and gaming clients, covering the hotel, resort, restaurant, and gaming industries.

Marsh's Hospitality & Gaming Practice

United States

Janice L. Schnabel

Practice Leader
Portland, Oregon
503 248 6490
Janice.L.Schnabel@marsh.com

Craig F. Bowlus

Gaming Practice Leader
San Francisco, California
415 743 7740
Craig.Bowlus@marsh.com

Tanya L. Penner

Growth Knowledge Manager
Portland, Oregon
503 248 1233
Tanya.L.Penner@marsh.com

Julie A. Heisler

Hospitality Placement Specialist
Wausau, Wisconsin
715 446 1469
Julie.Heisler@marsh.com

The information contained in this publication is based on sources we believe reliable, but we do not guarantee its accuracy. This publication provides only a general overview of subjects covered, should be understood to be general observations based solely on our experience as insurance brokers and risk consultants, is not intended to be taken as advice regarding any individual situation, and should not be relied upon as such. Statements concerning medical and/or legal matters should be understood to be general observations based solely on our experience as insurance brokers and risk consultants and should not be relied upon as medical and/or legal advice, which we are not authorized to provide. Insureds should consult their own qualified insurance, medical and/or legal advisors regarding specific coverage and other issues. All insurance coverage is subject to the terms, conditions, and exclusions of the applicable individual policies. Marsh cannot provide any assurance that insurance can be obtained for any particular client or for any particular risk.

© 2008 Marsh Inc. All rights reserved
MA8-10111

FACTA Presents Significant Liability Exposures in the Hospitality Industry

FACTA, passed by Congress in 2003 and took full effect on December 4, 2006, requires that "no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction."

The Fair and Accurate Credit Transactions Act of 2003 ("FACTA") added new sections to the federal Fair Credit Reporting Act (FCRA, 15 U.S.C. 1681 et seq.), intended primarily to help consumers fight the growing crime of identity theft. Accuracy, privacy, limits on information sharing, and new consumer rights to disclosure were included in FACTA. (Pub. L. 108-159, 111 Stat. 1952). Most of FACTA's provisions relate to the credit reporting industry; requiring that credit reporting companies: (1) provide a consumer with one free copy per year of their credit report upon request; and, (2) allow victims of identity theft to place fraud alerts in their credit file. However, FACTA regulations also require that the printed receipts from commercial transactions may not include the expiration date, or more than the last five digits

of the card number. It is this requirement that has apparently whetted the appetite for the plaintiffs' bar. In addition, the courts have validated the existence of a private right of action under FACTA.

"The clarity of the FACTA language has been called into question and has created an enormous amount of confusion among business owners," said John Gay, senior vice president of Government Affairs and Public Policy for the National Restaurant Association. Specifically, legal issues have arisen in litigation filed under FACTA on whether the measure requires businesses to both cut the number of digits and remove the expiration date. This confusion over the interpretation of the law has resulted in a wave of class-action lawsuits against both hospitality companies and commercial retailers. Since December, 2006, businesses large and small have been named in over 200 suits seeking class action certification relating to FACTA. The majority of these suits arose from the alleged failure of businesses to properly adhere to the credit card truncation rules.



Upcoming Conferences

As members of the American Hotel & Lodging Association and the National Restaurant Association, the Hospitality & Gaming Practice wants you to know about upcoming conferences and meetings:

- European Hotel Managers Assembly
St. Mortiz, Switzerland
March 30 - April 2, 2008
- Restaurant Leadership Conference
Scottsdale, AZ
March 31 - April 2, 2008
- Argyle Executive Forum
New York, NY
April 17, 2008
- NIGA Indian Gaming
Trade Show and Convention
San Diego, CA
April 21-23, 2008
- RIMS
San Diego, CA
April 27 - May 1, 2008
- Meet the Money
Henderson, NV
May 6-8, 2008
- National Restaurant
Association Show
Chicago, IL
May 17-20, 2008
- NYU Hospitality Investment Conference
New York, NY
June 1 - June 3, 2008

Hospitality Brief

Interestingly, a majority of the filed cases do not allege actual damages, relying upon the FACTA provision that allows a plaintiff to seek statutory damages of between \$100 and \$1,000 per violation under Section 1681n (15 U.S.C. §1681n), if the plaintiff proves the defendant willfully violated FACTA. The good news is that, so far, these suits have not been favorably received by many courts. So far, the vast majority of suits considered by courts have been denied class action status. In June 2007, the United States Supreme Court issued a ruling on the “willfulness” requirement for statutory damages, adopting a “reckless disregard” standard to determine a “willful violation.” This decision is considered



favorable to the majority of defendants that made a reasonable effort to comply with FACTA requirements and appear to have simply misconstrued the regulations. This is not to say that all of court decisions relating the FACTA litigation have been defendant friendly. Some jurisdictions have granted class certification in response to FACTA related suits. Even when the suits are being successfully defended, significant defense costs are being incurred. Most importantly, plaintiffs continue to file additional suits in relation to FACTA.

Finally, businesses should be aware of other requirements incorporated

into the FACTA legislation that may impact them as well. FACTA also requires most businesses to take reasonable actions to properly dispose of credit reports and other sensitive consumer data to prevent the unauthorized access to or use of such information. The Disposal Rule applies to any information obtained from customers, employees or others that can reasonably be expected to be used to establish a consumer's eligibility for credit, employment, or insurance, among other purposes. Reasonable actions are generally considered to be the actual destruction of the information by the company, or contracting with a destruction contractor after conducting due diligence of the contractors practices and qualifications.

Robert A. Parisi, Senior Vice President, Marsh - FINPRO

Emergency Response Planning - What's at Risk

In 1980, a horrendous fire at a large Las Vegas casino led to the deaths of 87 guests and employees, and injuries to many others. Among the many hard lessons learned from this tragedy was the importance of developing and maintaining emergency evacuation notification, routes, safety systems, and procedures. Investigators found that, at the point of fire's origin, a fire alarm never sounded. A supposedly smoke-free stairwell—a crucial escape route—filled with smoke. The laundry chutes failed to seal and defects existed in the heating, ventilation, and air-conditioning systems—all contributing to the spread of smoke. While many individual heroic acts

took place, the overall emergency response program was lacking. For example, the hotel and casino had no means of communicating with guests via

a PA system. As a result, some \$270 million was paid to settle subsequent lawsuits.



More recently, fires at two large casinos, one in Las Vegas, Nevada and the other in Mashantucket, Connecticut, are vivid reminders of the importance of safety procedures.

The hospitality industry has a special duty and higher-than-average burden of care when it comes to life safety and evacuation procedures. Failure to provide for safe and timely evacuation of guests and workers in the event of an emergency can lead to claims where, in many cases, “strict liability” may apply. The unprepared hotel and/or casino may find it difficult to defend itself against negligence allegations. True emergencies in hotels and casinos are rare. However, this can lead to a false sense of security and lack of preparation that can be disastrous when emergencies arise. Besides fire and natural disasters, hotels and casinos today face unprecedented risks, including the specter of terrorist attacks. Far too much is at risk to neglect proper planning for emergencies.

Mass evacuations are not always the most prudent course of action and emergency response plans should reflect that fact. Hotel and/or casino operators should be able to monitor

building fire and life safety systems and respond promptly and appropriately. It is important for knowledgeable staff to be able to communicate with guests to inform them of evacuation or shelter-in-place procedures specific to the nature and location of any threat. They also need to be able to manipulate building ventilation and other systems (manually if required) to control the spread of smoke or airborne hazards.

Additionally, the hotel and casino operator's emergency response team should coordinate with local law enforcement, fire, and emergency medical services, so they can develop tactical plans specific to the property. Federal, state, and/or local codes and regulations require periodic training and drills. Failure to exercise plans is the most common cause of inadequate response.

Lastly, it is imperative that hotel and casino managers understand their



Hospitality Brief

emergency plans and the appropriate situational response. While hotel and casino managers can ensure they have plans in place, hotel and casino employees need to take ownership in understanding where key emergency exits are located and what to do before, during, and after an emergency.

In assessing emergency response readiness, hotel and casino owners and managers should ask themselves:

- Do I know all of the credible threats that face my hotel and/or casino?
- Do I have an emergency response plan that adequately addresses all major risks? Is my staff organized and properly trained to carry out the plans?
- Is my plan coordinated with local fire, law enforcement, and emergency medical service organizations? Have these agencies developed pre-incident plans for my hotel and/or casino?
- Do I have the in-house expertise needed to properly conduct training exercises?
- How should I communicate with employees and guests during the many different scenarios including acts of terrorism?
- If I have a fire or other disaster, how do I determine, measure, and document my economic losses to maximize my insurance recovery?
- How can I adequately recover damages incurred outside of the insurance contract?

There are a variety of resources that

hotel and/or casino operators can leverage to help them prepare for, mitigate, and quickly recover from a disaster. These include:

- **Property risk consulting** — Through assessment and evaluation, provides property risk control services covering a wide range of risk issues, including security, fires, natural hazards, and explosions.
- **Emergency response planning** — Helps companies assess and design an effective capability



to respond to potential threats including fires and explosions, terrorism, natural hazards, hazardous material spills, and utility outages.

- **Business continuity planning** — A process that systematically identifies critical business and IT processes and strategies that can help a company stay in business in the event of a severe disruption to operations.
- **Reputational risk and crisis management** — Provides timely and appropriate communications

strategies and information to reassure different audiences—including employees, shareholders, clients, analysts, the media, vendors, and the public—that you are effectively managing a related challenge.

- **Forensic accounting and claims services** — Assists in measuring and documenting property damage, business interruption, and extra expense damages. Also helps establish processes and accounting protocols to track loss-related costs and expenditures, and in the determination of initial damage estimates, and assists throughout the entire loss measurement process.
- **Claims consulting** — Provides pre-loss valuation, property damage, contents and time element calculation, claim preparation, business interruption and extra expense, fidelity and stock loss claim calculations, and appraisals.
- **Property claims** — Helps companies navigate through a property loss, from reporting the claim, collecting loss data, quantifying damages, and policy/coverage interpretation through settlement.

For more information about how Marsh can help your business prepare for, manage, and recover from unexpected business disruptions, please contact your local Marsh representative, call us at 1.866.9At-Risk (866.928.7475), or send an e-mail to At.Risk@marsh.com.

Quiz Answers

1. Since 2003, 341 restaurant employees and an unknown number of guests have been murdered on restaurant properties, according to the U.S. Bureau of Labor Statistics. (Source: Nation's Restaurant News, December 3, 2007.)
2. According to an annual job satisfaction survey by Yahoo! Hot Jobs, 72% of employees are open to a new career opportunity in 2008 and more than four out of 10 employees (43%) blame either dislike of their boss' management style or lack of mentorship at their company as the reason they would be willing to leave their current job. (Source: Manage Smarter January 1, 31 2008.)
3. Slot machines popularity reached an all-time high in the United States with the number of machines and games in use hitting a record of 767,418, up 6.4%. Slots are now permitted in 37 states, compared to 31 states in 2000.
4. Almost 25% of 700 hotels and casino's that were monitored for three-and-a-half years required treatment for bed bugs, although, fewer than 1% of the 76,000 rooms in the study actually had an infestation. (Source: Business Week November, 8, 2007)
5. The restaurant industry employs an estimated 13.1 million people, making it the nation's largest employer outside of government. (Source: 2008 Restaurant Industry Forecast.)