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BUSINESS

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Listeria affliction still pains Sara Lee

Report alleges managers knew meat tainted

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Tribune staff reporters

Sara Lee Corp. could face another round of legal wrangling and further damage to its reputation over a year-old federal report that indicates its employees and managers knew more about meat contamination at a western Michigan plant than it disclosed.

Chicago-based Sara Lee pleaded guilty in June to a misdemeanor charge of selling tainted meat linked to a 1998 outbreak of listeriosis that killed 15 people. The plea agreement stressed that Sara Lee's Bil Mar Foods unit did not knowingly distribute bad meat.

But a report obtained by the Detroit Free Press reveals that one employee told U.S. Department of Agriculture investigators that he or she knew with "virtual certainty" that meats produced and sold by the Bil Mar plant were contaminated with a potentially deadly bacteria. Similar allegations were raised by another employee and a federal meat inspector, the report states.

Plant management had "a similar level of awareness,"

SARA LEE:

Criminal case unlikely to be reopened

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according to the report from the USDA's Office of Inspector General.

U.S. Atty. Phillip Green, who prosecuted Sara Lee, denied that the workers' allegations slipped through the cracks, insisting they were "thoroughly investigated."

"It was determined that the evidence did not substantiate that Sara Lee knowingly and/or willfully distributed adulterated meat," Green said.

Sara Lee also maintains that it did not cover up contamination at the plant, about 20 miles outside of Grand Rapids.

"We consider this situation resolved," said spokeswoman Julie Ketay.

But based on the new information, one Chicago attorney already is vowing to reopen the civil cases that arose from the meat contamination, which also caused six miscarriages and seriously sickened 100 people.

Kenneth Moll, who represents members in the class-action and personal injury lawsuits against Sara Lee, said his clients settled those cases based on assertions by Sara Lee attorneys that there was no evidence that the company knew about deadly bacteria present in hot dogs and deli meat.

"This new evidence flies in

the face of those assertions and clearly shows Sara Lee did know," said Moll, who received two settlement checks in the mail Wednesday. "Had we had this information, it would have been a different ball game."

Indeed, Joseph Mulcahy, who lost 25 pounds in three weeks after being infected with listeriosis, said he is outraged.

"Sara Lee has been deceitful all the way through, even more so now," said the 71-year-old attorney who lives in suburban Philadelphia. "I think we ought to go get them."

No punitive damages

At the time the civil settlements were reached last year, Moll estimated the cost at more than \$100 million. But Sara Lee disputed that, saying that the total cost would not exceed \$5 million. Whatever the amount, Moll said the settlements did not include punitive damages. If the civil cases are reopened, Sara Lee could be facing a much higher tab, Moll said.

In the criminal settlement, Sara Lee agreed to pay a \$200,000 fine and spend \$3 million on food safety research at Michigan State University. The company also agreed to pay \$1.2 million to settle a lawsuit linked to the sale of meat to the U.S. Department of Defense in 1998.

Despite the new revelations, it's unlikely the federal government will reopen a criminal case against Sara Lee, legal experts said.

That's because the plea agreement between Green, the U.S. attorney for the Western District of Michigan, and the company prohibits the government from bringing "additional federal criminal charges" based on

information "known to the United States at the time of the execution of this agreement."

Plea agreements binding

The plea agreement was signed 10 months after the investigators from the USDA's Office of Inspector General completed their report and turned it over to the U.S. attorney's office.

Judges view plea agreements as contracts that must be lived up to unless the defendant was committing fraud when it was drafted, attorneys say.

"If [prosecutors] had the information, they would be very hard-pressed to convince a court that the contract ought to be voided just because the sun has shone on the way they cut the deal," said a source in the U.S. attorney's office in Chicago.

Still, it can't be good news for Sara Lee that the case is back in the headlines nearly three years after the company recalled 35 million pounds of meat.

Between July and December 1998, Bil Mar shipped hot dogs and deli meats that contained the bacterium *listeria monocytogenes*. The bacteria can cause listeriosis, a disease that sickens the elderly and pregnant women but which also can attack younger people with weak immune systems.

According to the investigators' report, workers at the plant became aware of a listeria problem in December 1997, a year before Sara Lee recalled the meat.

If Sara Lee had known of any contamination allegations, the company would have investigated them, Ketay said. "Food safety is our top priority," she said.