

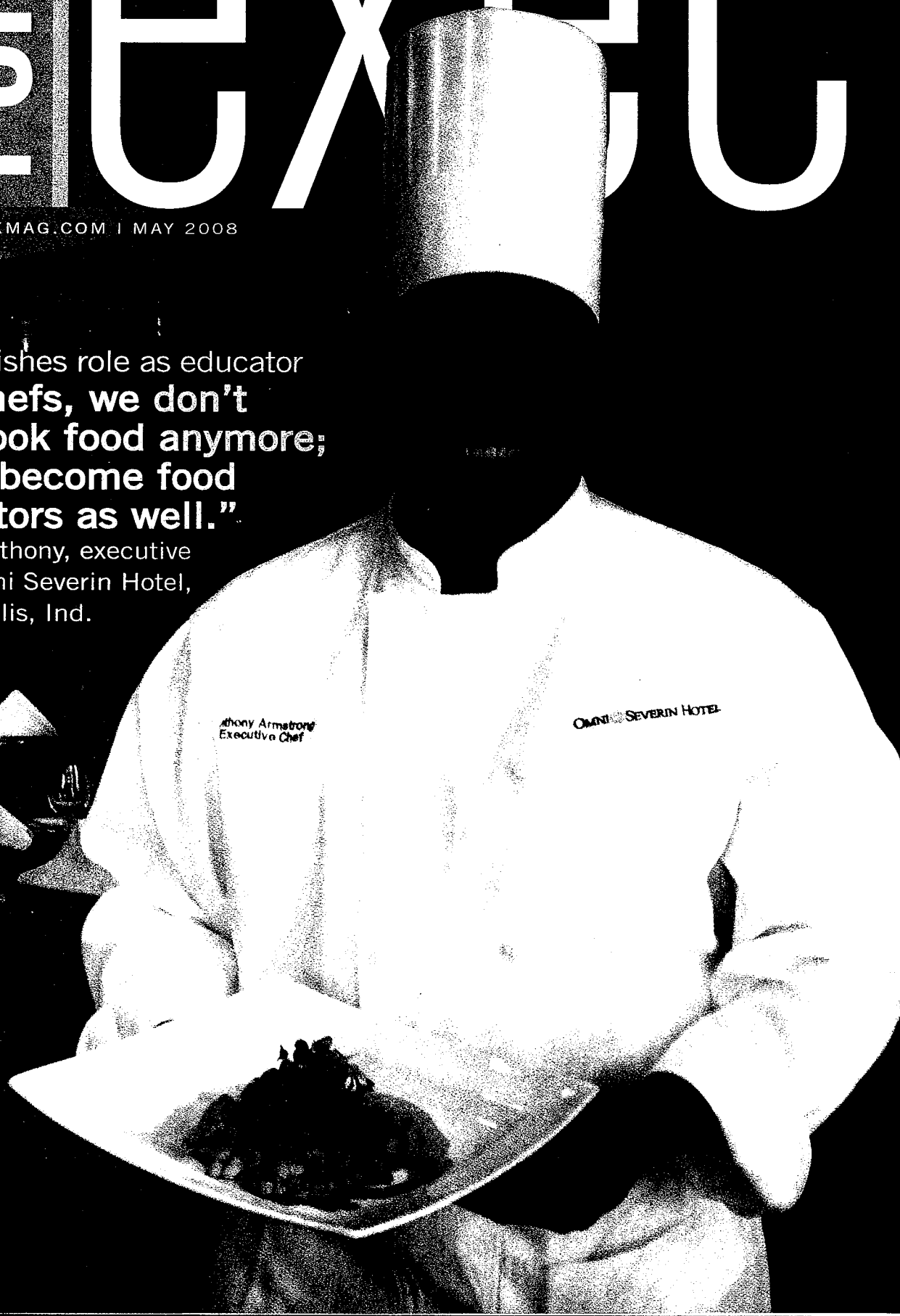
PORK

exec

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Chef relishes role as educator
**"As chefs, we don't
just cook food anymore;
we've become food
educators as well."**

– Chef Anthony, executive
chef, Omni Severin Hotel,
Indianapolis, Ind.





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Legal Risks, Defense Strategies and Contaminated Feed Imports

Product recalls of imported goods in 2007 were particularly memorable because of the magnitude and frequency. In the end, they included a range of products from toys to toothpaste to pet food and animal feed ingredients. Ninety-five percent of the recalls involved products manufactured in China and, in the end, the episode cost millions of dollars.

As product-liability attorneys know, recalls invariably inspire litigation. In the case of contaminated products from China, there have been class actions filed for consumer remedies and medical monitoring damages, multidistrict litigation, attorney general actions and shareholder lawsuits. A federal grand jury indicted two Chinese businesses and a U.S.-based firm for manipulating product codes on melamine-contaminated wheat gluten imports used in pet food.

The recalls have led Congress to consider several bills to expand the federal agencies' recall authority. While the U.S. Food and Drug Administration announced in 2007 that the meat from hogs exposed to tainted feed was safe to eat, USDA decided that additional oversight was needed and entered an agreement with its Chinese counterpart to impose registration, certification and verification requirements on feed imports.

Against this backdrop, pork producers may want to consider strategies that could mitigate damages or lead to a successful defense against any potential legal claims.

Crisis-management Team: By creating a crisis-management team focused on product safety that includes the heads of all divisions, a food producer can identify potential problems in the product line and master the rules and regulations that govern the industry. The company should consider adopting the Hazard Analysis and Critical Control Points principles developed by FDA's Center for Food Safety and Applied Nutrition. According to CFSAN, "HACCP is a management system in which food safety is addressed through the analysis and control of biological, chemical and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product."

The team should implement a written policy that management supports. The policy should outline steps to take in a crisis, the conduct of routine audits and a response plan when the audits reveal problems.

Perhaps most importantly, the team should integrate domestic and foreign suppliers in the crisis-management plan. Companies that import products must recognize that the foreign suppliers are meaningful players in the system, and

that auditing, quality control and assurance, and management principles must involve the suppliers.

Contractual Protections: Some contract basics to consider when dealing with foreign suppliers include writing the contract in both English and the supplier's language, using indemnification clauses and considering provisions about liability for recall costs. Also conduct a review of insurance coverage before a problem arises. Does the policy provide coverage for contaminated imports? Will the carrier pay for recall costs? How will pollution exclusion and single occurrence clauses be interpreted?

Supply Chain Issues: Getting more involved in the foreign supply chain from the perspective of quality assurance would also be a prudent step. Specifically, companies need to ensure that some testing or inspection is occurring in China before the product is shipped to the United States. Cold storage is not a common practice there and it can affect the quality of foods or drugs destined for export. The country passed its first standards on cold chain logistics in late 2007.

China also has problems with ground-water pollution that could result in heavy-metal contamination of food supplies and feeds. U.S. companies must get involved and do some independent testing. Until the Chinese infrastructure develops this area further, U.S. companies may have to assume more quality assurance responsibilities.

Regulations and Standards: Finally, it would be wise to stay abreast of changes to process and product regulations and standards. Also, consider getting involved by submitting public comments or participating in standard-setting organizations. While compliance is not a perfect shield to liability, it does demonstrate good faith and due diligence. Because food contamination and recalls have made headlines, legislators, regulators and standard-setting organizations are looking for ways to improve product safety, so you can expect to see more changes in the future.

Livestock is not covered by a recently proposed American National Standards Institute agribusiness standard that aspires to introduce sustainability, organic practices and collective bargaining from farm to fork. But concerns about animal treatment could inspire a parallel initiative.

Awareness of new statutory and regulatory developments is paramount. Participation in standard-setting activity is optional, but could result in voluntary standards that set realistic parameters for your business. PE

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