

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA**

WILLIAM R. SIEBEN, as guardian ad litem
for STEPHANIE SMITH, an incapacitated
person,

Case No.: _____

Plaintiffs,

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

—against—

CARGILL MEAT SOLUTIONS CORP.,
a foreign corporation,

Defendant.

COME NOW the above-named plaintiffs, William R. Sieben and Stephanie Smith, by and through their attorneys of record, hereby asserting claims against the defendant, Cargill Meat Solutions Corp., and to state and allege as follows:

I. PARTIES

1. The plaintiff William R. Sieben is the duly appointed legal guardian of plaintiff Stephanie Smith (hereinafter “Stephanie”), an incapacitated adult who resides in Cold Spring, Minnesota. Mr. Sieben, a resident of Hastings, Minnesota, has been appointed to prosecute an action for personal injuries sustained by Stephanie on or about September 22, 2007. The plaintiffs are citizens of the State of Minnesota.

2. The defendant Cargill Meat Solutions Corp. (hereinafter “Cargill”) is a foreign corporation organized and existing under the laws of the State of Delaware, and

registered as a corporation in the State of Kansas. Also, Cargill's corporate headquarters is located in Wichita, Kansas. Accordingly, the defendant is not a citizen of Minnesota.

3. At all times relevant to this lawsuit, Cargill was authorized to engage in, and did engage in, business in the State of Minnesota.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a) because: (a) the amount in controversy exceeds \$75,000, exclusive of costs; (b) the lawsuit is between citizens of different states; and (c) the defendant has certain minimum contacts with the State of Minnesota such that maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

5. Venue in the United States District Court for the District of Minnesota is proper pursuant to 28 USC § 1391(a)(3) because the defendant was subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

III. GENERAL ALLEGATIONS

The Cargill Outbreak, Recall, and USDA Traceback Efforts

6. On October 6, 2007, the United States Department of Agriculture Food Safety and Inspection Service (USDA-FSIS) announced the recall of approximately 845,000 pounds of ground beef manufactured by Cargill between August 9 and August 17, 2007, due to contamination by *E. coli* O157:H7.

7. The exhaustive multi-state public health investigation that occurred in response to the outbreak and recall identified outbreak cases—*i.e.*, people infected with *E. coli* O157:H7 from eating contaminated ground beef subject to the recall—from over fourteen states. Agencies participating in this investigation included the USDA-FSIS,

Centers for Disease Control (CDC), Minnesota Department of Agriculture, and Minnesota Department of Health.

8. On November 3, 2007, the USDA-FSIS announced an additional recall of approximately 1,084,384 pounds of Cargill ground beef products due to contamination by *E. coli* O157:H7. According to the USDA-FSIS Recall Release, "The ground beef products subject to recall were produced [by Cargill] between October 8 and 11, 2007, and were distributed to retail establishments nationwide."

9. As a result of its role in the outbreak investigation, the Minnesota Department of Health (MDH) issued a Final Report titled: "Outbreak of *E. coli* O157:H7 Infections Associated with Sam's Club American Chef's Selection Angus Beef Patties, August-October 2007." Among the numerous findings set forth in this report, MDH stated that:

All 11 O157 cases with isolates of the PFGE subtype MN744 reported to the MDH during the investigation had consumed American Chef's Selection Angus Beef Patties from Sam's Club in the 7 days prior to illness onset....The products were purchased from four different Sam's Clubs locations, three of which were in the Minneapolis-St. Paul metropolitan area.

The implicated ground beef patties were packaged in boxes containing 18, 1/3-lb frozen, premade patties, for a total weight of 6 pounds. Leftover product was collected from six case households. Of these, three had original packaging material available as well. Packaging material revealed that three products were produced on the same day; all three had a [best-if-used-by] date of 2/12/08. Two of these products were produced on the same line (L5) within 1 minute of each other (11:58 and 11:59). The third product was produced on a different line (L6), but had a similar time stamp (11:57).

10. A subsequent trace-back investigation by the USDA-FSIS, which was intended to determine the source of the *E. coli* O157:H7 in the Cargill-manufactured beef patties, if possible, did not succeed. Despite analyzing all available sources of

information, including the relevant grinding logs (or “batch sheets”), USDA-FSIS came to no conclusions with regard to the source-materials that Cargill used to manufacture the recalled ground beef products.

11. In manufacturing the beef patties linked to the outbreak, Cargill used ingredients from at least four different suppliers, including: Lone Star Beef Processors, which supplied the trimmings from old dairy cows and bulls; a slaughterhouse in Uruguay, which supplied boxes of frozen meat; and Beef Products, Inc., which supplied finely textured beef—leftover meat-scraps that are put through a centrifuge to remove fat and then treated with ammonia.

12. It was also discovered during the USDA-FSIS investigation that Cargill did not test the raw materials that it used to produce the recalled ground beef prior to grinding. Tests occurred only after the ingredients had been ground into the finished product, thereby reducing the chances of detecting the presence of *E. coli* O157:H7, and preventing accurate identification or traceback of the originally contaminated ingredient.

Stephanie Smith’s Illness

13. On or about September 22, 2007, plaintiff Stephanie Smith consumed ground beef that had been manufactured by Cargill, and was labeled “American Chef’s Angus Beef Patties.” The ground beef that Stephanie consumed on this date was contaminated with *E. coli* O157:H7, a deadly pathogen, and was later included in the USDA-FSIS announced recall, described above. Leftover ground beef from the same box of Cargill ground beef patties that infected Stephanie on September 22, 2007, later tested positive for the same strain of *E. coli* O157:H7 that was involved in the national Cargill outbreak, described above.

14. Stephanie fell ill on or about Thursday, September 27, 2007. Her initial symptoms included fever, chills, and diarrhea. Stephanie's symptoms quickly grew worse, requiring admission to St. Cloud Hospital on September 28, 2007.

15. At St. Cloud Hospital, Stephanie's condition worsened dramatically. She soon developed hemolytic uremic syndrome (HUS), a potentially fatal complication of *E. coli* O157:H7 infection.

16. Stephanie's condition continued to worsen during her stay at St. Cloud Hospital. Her kidneys failed, she was unable to breathe on her own, and she began to suffer from severe, persistent seizures—all as a result of the HUS illness. In fact, in an attempt to control the amount of damage being done to Stephanie's brain as a result of her persistent seizures, Stephanie's doctors at St. Cloud Hospital placed her in a drug-induced coma on or about October 7, 2007. Stephanie was thereafter transferred to the Mayo Clinic, St. Mary's Hospital, for further care.

17. At St. Mary's Hospital, Stephanie received dialysis throughout the month of October and most of November 2007. She remained in the drug-induced coma until December 10, 2007, as a prophylactic measure against the damaging effects of her persistent seizures.

18. When the drug-induced coma was finally withdrawn after more than two months, it was immediately apparent that Stephanie had suffered a severe brain injury. She had very little, if any, feeling in her legs; she was unable to walk; and she had lost control of her bowel and bladder function.

19. Stephanie remained hospitalized at St. Mary's through February 27, 2008, at which point she was discharged to continue her rehabilitation at St. Cloud Hospital.

She would remain hospitalized at St. Cloud Hospital for intensive inpatient rehabilitation through April 17, 2008.

20. After discharge from St. Cloud Hospital, Stephanie underwent additional inpatient rehabilitation at Bethesda Hospital's brain injury unit. She remained at Bethesda through June 18, 2008, before being discharged home to continue her intensive rehabilitation therapies. Stephanie has since continued her rehabilitative efforts in inpatient and outpatient settings.

21. As a result of her *E. coli* O157:H7-induced HUS illness, Stephanie has suffered severe and permanent injuries. These injuries include, but are not limited to, a neurological injury that has caused global cognitive impairment, an inability to control her bowels and bladder, and that will prevent Stephanie from functionally walking ever again. Stephanie also suffered a kidney injury so severe that she will require kidney transplantation during her lifetime for survival.

IV. CAUSES OF ACTION

Strict Liability—Count I

23. At all times relevant hereto, the defendant Cargill was a manufacturer and seller of the adulterated meat product that is the subject of this action, and the defendant was in the business of manufacturing and selling like products.

24. The adulterated meat product that the defendant manufactured and sold was, at the time it left Cargill's control, defective and unreasonably dangerous for its ordinary and expected use because it contained *E. coli* O157:H7, a harmful and potentially lethal foodborne pathogen.

25. The adulterated meat product that Cargill manufactured and sold was delivered to Stephanie without change in its defective condition. Stephanie thereafter used the product in a reasonably foreseeable manner by consuming it.

26. Stephanie's illness and associated legal injuries occurred as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated meat product that Cargill manufactured and sold.

Negligence—Count II

27. Cargill owed to Stephanie a duty to use reasonable care in the manufacture, distribution, handling, and sale of its meat products, the observance of which duty would have prevented or eliminated the risk that Cargill's products would be or become contaminated with *E. coli* O157:H7, and that Stephanie would become infected with *E. coli* O157:H7 as a proximate result of consuming Cargill's meat products. Cargill breached this duty and is negligent as a result.

28. Cargill owed to Stephanie a duty to comply with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, handling, and sale of its meat products. Cargill failed to observe this duty and was therefore negligent.

29. Stephanie was among the class of persons intended to be protected by the statutes, laws, regulations, and safety codes referenced above that pertain to the manufacture, distribution, handling, and sale of similar food products.

30. Cargill owed a duty to Stephanie to properly supervise, train, and monitor its employees, and to ensure that its employees complied with all applicable statutes, laws, regulations, or safety codes. Cargill failed to observe this duty and was therefore negligent.

31. Cargill owed a duty to Stephanie to use constituent materials, ingredients, and supplies, which were reasonably safe, wholesome, and free of defects and that otherwise complied with applicable federal, state, and local laws, ordinances, and regulations, and that were clean, free from adulteration, and safe for human consumption. Cargill failed to observe this duty and was therefore negligent.

32. Stephanie's *E. coli* O157:H7 illness and other related injuries occurred as a direct and proximate result of Cargill's breach of duties discussed above.

Negligence Per Se—Count III

33. Cargill had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food products, including the requirements of the Federal Meat Inspection Act (21 U.S.C. § 601, *et seq.*), and all codes, statutes, regulations, and policies promulgated pursuant to it, and the Minnesota Food Code, Minn. Stat. Sec. 31.01, *et seq.*

34. Cargill failed to comply with such provisions of law identified in the preceding paragraph and was, as a result, negligent *per se* with regard to manufacture, distribution, and sale of the subject meat products.

35. Stephanie's *E. coli* O157:H7 illness and associated legal injuries occurred as a direct and proximate result of conduct by the defendant that constituted negligence *per se*.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray for judgment against Cargill as follows:

A. Judgment against Cargill to compensate Stephanie for all general, special, incidental and consequential damages that she suffered as a result of Cargill's conduct, including but not limited to the following:

(1) general damages in the amount of \$100,000,000.00 to compensate Stephanie for, among other things, her past and future pain and suffering;

(2) special damages, including, but not limited to, past medical expenses to-date in the amount of \$1,886,434.92; future medical expenses estimated to be \$29,445,688.00; and lost earning capacity estimated to be \$1,229,085.00;

(3) the physical harm that Stephanie suffered by reason of Cargill's fault and several breaches of duty, including its negligent acts and omissions, past, present, and future;

(4) the emotional suffering and distress that Stephanie suffered by reason of Cargill's fault and several breaches of duty, including its negligent acts and omissions, past, present, and future; and


(5) the loss of enjoyment of life that Stephanie sustained, past present, and future; and all other ordinary, incidental or consequential damages that could be reasonably anticipated to arise under the circumstances, including, but not limited to, loss of earning capacity.

B. Judgment in a fair and reasonable amount for expenses and legal injuries incurred, in a fair and reasonable amount for the damages suffered; and

C. Such additional and/or further relief, including interest, costs, and reasonable attorney fees, as this Court deems just and equitable.

Dated: December 3, 2009.

JARDINE, LOGAN & O'BRIEN, P.L.L.P.



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