

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WINNIE JULIANNE LEMIEUX,

Plaintiff,

vs

2018-cv-

KELLOGG COMPANY;

Defendants.

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COMPLAINT

NOW COMES the Plaintiff, WINNIE LEMIEUX, by her attorneys, MICHAEL HEILMANN and MARLER CLARK LLP, to allege and state as follows:

I. PARTIES

1. At all times material hereto, the plaintiff Winnie Lemieux was a resident of, and therefore a citizen of, the state of Oklahoma.

2. The defendant Kellogg Company is incorporated in Delaware and has its headquarters and principal office address in Battle Creek, Calhoun County, Michigan. Kellogg Company is, among other things, a manufacturer of food products, including the food products that are the subject of this action. Kellogg Company is a citizen of the states of Michigan and Delaware.

II. JURISDICTION

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332 (a) because the matter in controversy exceeds \$75,000, exclusive of costs, and it is between citizens of different states.

4. Venue in the United States District Court for the Western District of Michigan is proper pursuant to 28 USC § 1391 (a)(1) because the defendant resides in, and is subject to personal jurisdiction in, this judicial district.

III. GENERAL ALLEGATIONS

The Kellogg's Honey Smacks Salmonella Mbandaka Outbreak

5. The plaintiff adopts by reference the allegations contained in paragraphs 1 and 2 of this Complaint with the same effect as if herein fully set forth.

6. On or about June 14, 2018, the Centers for Disease Control and Prevention (CDC) announced that it, along with the US Food and Drug Administration (FDA), was investigating a multistate outbreak of *Salmonella* Mbandaka infections.

7. As of June 14, 2018, 73 people had been infected with the outbreak strain of *Salmonella* Mbandaka in 31 states.

8. Illnesses started on dates from March 3, 2018, to May 28, 2018. Ill people range in age from less than one year to 87, with a median age of 58. Sixty-five percent are female. Out of 55 people with information available, 24 (44%) have been hospitalized. No deaths have been reported.

9. Epidemiologic evidence indicates that Kellogg's Honey Smacks cereal is a likely source of this multistate outbreak.

10. In interviews, ill people answered questions about the foods they ate and other exposures in the week before they became ill. Thirty (77%) of 39 people interviewed reported eating cold cereal. In interviews, 14 people specifically reported eating Kellogg's Honey Smacks

cereal. Ill people in this outbreak reported this cereal more often than any other cereals or food items.

11. On June 14, 2018, the Kellogg Company recalled packages of Kellogg's Honey Smacks cereal.

The Plaintiff's Salmonella Infection and Illness

12. In mid-May 2018, Winnie Julianne Lemieux purchased the defendant's "Honey Smacks" cereal at a Walmart store in Kansas. Over the course of the two weeks following this purchase, Ms. Lemieux ate a bowl of this cereal nearly every morning. This cereal product was contaminated by *Salmonella* Mbandaka.

13. On or about May 24, 2018, Ms. Lemieux began to feel fatigued and weak. By Monday, May 28, she had lost her appetite entirely, and was suffering from agonizing abdominal cramps. Soon she began to feel nauseated as well, and to suffer from repeated bouts of diarrhea.

14. On or about Sunday, June 3, Ms. Lemieux's fever spiked to over 104 degrees Fahrenheit. She was admitted to the Southwest Medical Center in Liberal, Kansas the same day, suffering from infectious colitis, hyponatremia, hypokalemia, and sepsis.

15. Ms. Lemieux would remain hospitalized and on intravenous antibiotics until the afternoon of June 7, 2018, when she was discharged. She has since continued to receive medical treatment for her illness, and continues to suffer from illness symptoms and injury related to her *Salmonella* Mbandaka infection, which was confirmed by stool test during her hospitalization.

IV. CAUSES OF ACTION

Strict Liability: Count I

16. The plaintiff adopts by reference the allegations contained in paragraphs 1 through 13 of this Complaint with the same effect as if herein fully set forth.

17. At all times relevant hereto, Kellogg's was the manufacturer and seller of the adulterated food product that is the subject of the action.

18. The adulterated food product that Kellogg's manufactured, distributed, and/or sold was, at the time it left Kelloggs' control, defective and unreasonably dangerous for its ordinary and expected use because it was contaminated by Salmonella, a potentially deadly pathogen.

19. The adulterated food product that Kellogg's manufactured, distributed, and/or sold was delivered to the plaintiff without any change in its defective condition. The adulterated food product that Kellogg's manufactured, distributed, and/or sold was used in the manner expected and intended, and was consumed by the plaintiff.

20. Kellogg's owed a duty of care to the plaintiff to design, manufacture, and/or sell food that was not adulterated, that was fit for human consumption, that was reasonably safe in construction, and that was free of pathogenic bacteria or other substances injurious to human health. Kellogg's breached this duty.

21. Kellogg's owed a duty of care to the plaintiff to design, prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer. Kellogg's breached this duty.

22. The plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that Kellogg's manufactured, distributed, and/or sold.

Breach of Warranty: Count II

23. Kellogg's is liable to the plaintiff for breaching express and implied warranties that it made regarding the adulterated product that the plaintiff purchased and consumed. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, Kellogg's expressly warranted, through its sale of food to the public and by the statements and conduct of its employees and agents, that the food it prepared and sold was fit for human consumption and not otherwise adulterated or injurious to health.

24. The plaintiff relied upon Kellogg's express and implied warranties at the time the product left its control.

25. The plaintiff alleges that the *Salmonella*-contaminated food that Kellogg's sold to the plaintiff would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

26. The plaintiff alleges that the *Salmonella*-contaminated food that Kellogg's sold to the plaintiff was not fit for the uses and purposes intended, i.e. human consumption, and that this product was therefore in breach of the implied warranty of fitness for its intended use.

27. As a direct and proximate cause of Kellogg's breach of warranties, as set forth above, the plaintiff sustained injuries and damages in an amount to be determined at trial.

Negligence: Count III

28. Kellogg's owed to the plaintiff a duty to use reasonable care in the manufacture, distribution, and sale of its food product, the observance of which duty would have prevented or eliminated the risk that its food products would become contaminated with *Salmonella*, or any other dangerous pathogen. Kellogg's breached this duty.

29. Kellogg's had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so, and was therefore negligent. The plaintiff is among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

30. Kellogg's had a duty to properly supervise, train, and monitor its employees, and to ensure its employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but Kellogg's failed to do so and was therefore negligent.

31. Kellogg's had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, 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, but failed to do so and was therefore negligent.

32. As a direct and proximate result of Kellogg's acts and omissions of negligence, the plaintiff sustained injuries and damages in an amount to be determined at trial.

Negligence Per Se: Count IV

33. Kellogg's had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 et seq.), and the Michigan adulterated food statutes (MCL 289.5101.)

34. Kellogg's failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent *per se* in its manufacture, distribution, and sale of food adulterated with *Salmonella*, a potentially deadly pathogen.

35. As a direct and proximate result of conduct by Kellogg's that was negligent *per se*, the plaintiff sustained injury and damages in an amount to be determined at trial.

Violation of Michigan Consumer Protection Act: Count VI

36. Kellogg's breached an implied warranty that resulted in a violation of the Michigan Consumer Protection Act, entitling the consumer to attorney fees under MCL 445.903(1).

37. Kellogg's expressly promised that the food sold was of high quality and violated that promise under the Michigan Consumer Protection Act, MCL 445.903(1).

38. As a direct and proximate result of conduct by Kellogg's that was in violation of the Michigan Consumer Protection Act, the plaintiff sustained injury and damages in an amount to be determined at trial.

V. DAMAGES

39. The plaintiff has suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of Kellogg's as stated herein, in an

amount that shall be fully proven at the time of trial. These damages include, but are not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress, past and future; pharmaceutical expenses, past and future; and all other ordinary, incidental, or consequential damages that would or could be reasonably anticipated to arise under the circumstances.

WHEREFORE, the plaintiff prays for judgment against Kellogg's as follows:

- A. Award damages in whatever amount over \$25,000.00 the plaintiff is found to be entitled;
- B. Ordering compensation for all general, special, incidental, and consequential damages suffered by the plaintiff as a result of the defendants' conduct;
- C. Awarding the plaintiff her reasonable attorneys fees and costs, to the fullest extent allowed by law; and
- D. Granting all such additional and/or further relief as this Court deems just and equitable.

/s/ Michael G. Heilmann
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ATTORNEYS FOR PLAINTIFF

Dated: June 20, 2018

DEMAND FOR JURY TRIAL

Plaintiff, WINNIE JULIANNE LEMIEUX, hereby demands a trial by jury on all issues so triable.

/s/ Michael G. Heilmann
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Dated: June 20, 2018