

DISTRICT COURT, COUNTY OF LARIMER , STATE OF COLORADO Court Address: Larimer County Justice Center 201 La Porte Ave., Suite 100 Fort Collins, CO 80521	DATE FILED: September 18, 2018 12:21 PM FILING ID: 58D4091AB746A CASE NUMBER: 2018CV30883
Plaintiff: WILLIAM GLASIER, an individual; Defendants: DILLON COMPANIES LLC, a limited-liability company, d/b/a KING SOOPERS.	▲COURT USE ONLY▲
Attorneys for Plaintiff: M. Kate Strauss, #38743 Overturf McGath and Hull, P.C. 625 East 16th Ave Denver, CO 80203 Phone Number: (303) 860-2848 Fax Number: (303) 860-2869 Email: ks@omhlaw.com William D. Marler (<i>pro hac vice</i> to be filed) Marler Clark LLP PS 1012 First Ave, Fifth Floor Seattle, WA 98104 Phone number: (206) 346-1888 Fax Number: (206) 346-1898 Email: bmarler@marlerclark.com	Case No.: Division:
COMPLAINT AND JURY DEMAND	

COMES NOW the Plaintiff, by and through his attorneys of record, M. Kate Strauss of Overturf McGath & Hull, P.C., and William D. Marler of Marler Clark, LLP, PS, (pending *pro hac vice* admission) and files this Complaint and alleges as follows:

PARTIES

1. The Plaintiff William Glasier resides in Fort Collins, Larimer County, Colorado.
2. The Defendant Dillon Companies, LLC (“Dillon”) is a limited-liability company organized and existing under the laws of the State of Kansas. Dillon Companies, LLC owns and

operates King Soopers retail grocery locations in the State of Colorado and in other states. Dillon Companies, LLC owned and operated the King Soopers retail grocery location that manufactured and sold the romaine lettuce that caused the Plaintiff's injuries, as alleged in this complaint.

JURISDICTION AND VENUE

3. This Court is vested with jurisdiction over the Defendant because the Defendant conducts business within the State of Colorado.

4. Pursuant to C.R.C.P. 98, venue of this action is proper in Larimer County because the cause of action arose in this county and the Defendant transacted business here.

GENERAL ALLEGATIONS

The Outbreak

5. As of June 28, 2018, at least 210 people in 36 states were sickened in an outbreak of *E. coli* O157:H7 linked to romaine lettuce grown in the Yuma, Arizona region. Illnesses also occurred in Canada, and are not included in this count.

6. Illnesses started on dates ranging from March 13, 2018 to June 6, 2018. Ill people ranged in age from 1 to 88 years, with a median age of 28. Sixty-seven percent of ill people were female. Of 201 people with information available, 96 (48%) were hospitalized, including 27 people who developed hemolytic uremic syndrome, a type of kidney failure. At least five victims died from their *E. coli* O157:H7 infections.

7. Epidemiologic, laboratory, and traceback evidence—generated during a large multi-agency investigation that included Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and officials from state and local public health agencies—indicated that romaine lettuce from the Yuma growing region was the likely source of this outbreak.

8. In interviews, ill people answered questions about the foods they ate and other exposures they had before they became ill. Of the 166 people interviewed, 145 (87%) reported eating romaine lettuce in the week before their illness started. This percentage was significantly higher than results from a survey of healthy people in which 46% reported eating romaine lettuce in the week before they were interviewed. Some people who became sick in this outbreak did not report eating romaine lettuce, but had close contact with someone else who got sick from eating romaine lettuce.

9. The FDA and state and local regulatory officials traced the romaine lettuce to many farms in the Yuma growing region. The FDA, along with CDC and state partners, started an environmental assessment in the Yuma growing region and collected samples of water, soil, and manure. CDC laboratory testing identified the outbreak strain of *E. coli* O157:H7 in water samples taken from a canal in the Yuma growing region. Whole genome sequencing analysis

showed that the *E. coli* O157:H7 found in the canal water is closely related genetically to the *E. coli* O157:H7 from ill people. Laboratory testing for other environmental samples is continuing. The FDA is continuing to investigate to learn more about how the *E. coli* bacteria could have entered the water and ways this water could have contaminated romaine lettuce in the region.

***E. coli* O157:H7 and Hemolytic Uremic Syndrome**

10. *Escherichia coli* is the name of a common family of bacteria, most members of which do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can cause bloody diarrhea (hemorrhagic colitis) in humans. In the years since *E. coli* O157:H7 was first identified as a cause of diarrhea, this bacterium has established a reputation as a significant public health hazard.

11. *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the number of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that even a microscopic amount of exposure can trigger a devastating infection.

12. The most severe cases of the *E. coli* O157:H7 infection occur in young children and in the elderly, presumably because the immune systems in those age populations are the most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. What ultimately results is the painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

13. The mean incubation period (time from ingestion to the onset of symptoms) of *E. coli* O157:H7 is estimated to be two to four days (range, 1-21 days). Typically, a patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting. The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than that of adults.

14. *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-threatening complications. In most infected individuals, the intestinal illness lasts about a week and resolves without any long-term effects. Antibiotics do not appear to aid in combating these infections, and recent medical studies suggest that antibiotics are contraindicated for their risk of provoking more serious complications. Apart from good supportive care, which should include close attention to hydration and nutrition, there is no specific therapy.

15. About 10% of individuals with *E. coli* O157:H7 infections (mostly young children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-threatening complication. The essence of the syndrome is described by its three central features: destruction of red blood cells, destruction of platelets (those blood cells responsible for clotting),

and acute renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up the filtering units within the kidneys.

16. There is no known therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is a frightening illness that even in the best American medical facilities has a mortality rate of about 5%. The majority of HUS patients require transfusion of blood products and develop complications common to the critically ill.

William Glasier's *E. Coli* O157:H7 Infection

17. Mr. Glasier and/or his wife, Kristin Stuntz, purchased whole-head romaine lettuce from King Soopers, located at 1842 N. College Ave, Fort Collins, CO 80524, during the week before April 9, 2018. Mr. Glasier consumed this romaine lettuce on several occasions in the days leading up to April 9, 2018. The lettuce was contaminated by *E. coli* O157:H7, leading to Mr. Glasier's infection and resulting illness.

18. On or about April 10, 2018, Mr. Glasier began to suffer from diarrhea. Over the next couple of days, he developed other gastrointestinal symptoms, and spent most of his time in bed, unable to eat much.

19. Due to Mr. Glasier's deteriorating condition, his wife Kristin called an ambulance on or about April 14. Mr. Glasier had become so weak that he was unable to get off of the toilet. When medical personnel arrived, Mr. Glasier was confused to the point of being uncooperative with personnel trying to help.

20. Mr. Glasier was taken to Poudre Valley Hospital in Fort Collins. Blood tests led to a diagnosis of sepsis, severe dehydration, and kidney failure. He was admitted to the hospital for further care and treatment, and was ultimately diagnosed with hemolytic uremic syndrome (HUS).

21. That first night in the hospital, the Plaintiff had a seizure and coded, meaning his heart stopped, but doctors were able to resuscitate him. He was sedated and placed on mechanical ventilation, and was taken to the Intensive Care Unit (ICU). He was put on dialysis treatment and received multiple dialysis treatments during his hospitalization. He remained sedated because his confusion while he was awake caused him to be uncooperative.

22. Mr. Glasier's stool sample, collected on April 18, 2018, tested positive for *E. coli* O157:H7.

23. On or about April 23, doctors performed a tracheostomy and inserted a throat tube, and removed the breathing tube placed the day of his admission. The next day, he had another seizure.

24. Mr. Glasier's bloodwork began to improve, but he remained critically ill. On May 3, he underwent surgery to place a feeding tube in his stomach through the abdominal wall (percutaneous endoscopic gastrostomy). He was moved out of the ICU on May 4.

25. Mr. Glasier eventually began rehabilitative treatments to enable him to eat solid food, sit upright, and eventually stand and walk. On May 10, he was moved to Kindred Health at Porter Hospital in Denver, where he continued dialysis treatment and rehabilitation. He remained in the hospital until May 24—he had been in the hospital for 41 days.

26. Mr. Glasier has slowly made progress in his recovery, but has suffered permanent kidney damage in addition to other medical problems related to his critical illness.

FIRST CLAIM FOR RELIEF AGAINST DILLON COMPANIES, LLC
(Strict Product Liability)

27. The Plaintiff hereby incorporates paragraphs 1 through 26 by this reference as if each paragraph was set forth herein in its entirety.

28. The Defendant Dillon Companies, LLC (hereinafter Dillon) is a product manufacturer within the meaning of the Colorado Product Liability Act, C.R.S. §13-21-401 *et seq.* The Defendant Dillon manufactured and sold the food product—romaine lettuce—that was the source of the Plaintiff's *E. coli* O157:H7 infection and related illness. The *E. coli* O157:H7-contaminated romaine lettuce that was the source of the Plaintiff's injuries was a product within the meaning of the Act.

29. Defendant Dillon's contaminated romaine lettuce that was the source of Plaintiff's *E. coli* O157:H7 infection and related illness was defective and was unreasonably dangerous to the consumer because it was contaminated and adulterated with *E. coli* O157:H7, a potentially deadly pathogen.

30. The contaminated romaine lettuce manufactured and distributed by Defendant Dillon reached the Plaintiff without substantial change in the condition in which it was sold.

31. Defendant Dillon's defective, *E. coli*-contaminated romaine lettuce caused the Plaintiff's *E. coli* O157:H7 infection and related illness.

32. Defendant Dillon was the seller of the defective *E. coli*-contaminated romaine lettuce that caused the Plaintiff's *E. coli* O157:H7 infection and related illness.

33. Defendant Dillon was engaged in the business of selling romaine lettuce for human consumption.

34. Because Defendant Dillon manufactured and sold the contaminated romaine lettuce that was the source of the Plaintiff's injuries, which was defective and not reasonably safe due to *E. coli* O157:H7 contamination, Defendant Dillon is strictly liable to the Plaintiff for the harm proximately caused by its sale of a defective food product.

SECOND CLAIM FOR RELIEF AGAINST DILLON
(Breach of Warranties)

35. The Plaintiff hereby incorporates paragraphs 1 through 34 by this reference as if each paragraph was set forth herein in its entirety.

36. Defendant Dillon owed a duty to the Plaintiff to manufacture and sell a food product—i.e. romaine lettuce—that conformed to its express and implied warranties, including, but not limited to, the implied warranty of merchantability and the implied warranty of fitness for a particular use or purpose.

37. The romaine lettuce manufactured and sold by Defendant Dillon that caused the Plaintiff's *E. coli* O157:H7 infection was contaminated with the *E. coli* O157:H7 bacteria. Such contaminated food products would not pass without exception in the trade, and the sale of such food products was thus in breach of the implied warranty of merchantability.

38. The romaine lettuce manufactured and sold by Defendant Dillon that caused the Plaintiff's *E. coli* O157:H7 infection was contaminated with the *E. coli* O157:H7 bacteria, and was not fit for the uses and purposes intended by either the Plaintiff or the Defendant, i.e., human consumption. The sale was thus a breach of the implied warranty of fitness for its intended use.

39. Because Defendant Dillon manufactured and sold romaine lettuce, the condition of which breached its express and implied warranties, Defendant Dillon is liable to the Plaintiff for the harm proximately caused by its sale of contaminated food.

THIRD CLAIM FOR RELIEF AGAINST DILLON
(Negligence and Negligence *per se*)

40. The Plaintiff hereby incorporates paragraphs 1 through 39 by this reference as if each paragraph was set forth herein in its entirety.

41. Defendant Dillon negligently manufactured, distributed and sold a food product—i.e. romaine lettuce—that was not reasonably safe.

42. Defendant Dillon was negligent in manufacturing, distributing and selling romaine lettuce that was not reasonably safe because adequate warnings or instructions were not provided, including, but not limited to, the warning that its product may contain *E. coli* O157:H7, and thus should not be given to, or eaten by, people.

43. Defendant Dillon had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of its food products, including, but not limited to, the Federal Food, Drug, and Cosmetics Act, § 402(a), as codified at 21 U.S.C. § 342(a), which bans the manufacture, sale and distribution of any “adulterated” food, but failed to do so.

44. In the manufacture and production of the product, Defendant Dillon owed to the Plaintiff a duty to use supplies and raw materials that were in compliance with applicable federal, state, and local laws, ordinances and regulations; that were from safe and reliable sources; and that were clean, wholesome, free from spoilage and adulteration, and safe for human consumption, but failed to do so.

45. The Plaintiff was among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to Defendant Dillon's manufacture, distribution, storage, labeling, and sale of food.

46. As a result of Defendant Dillon's negligence, and as a result of Defendant Dillon's violation of statutes designed to protect the Plaintiff from contaminated foods, Defendant Dillon is liable to the Plaintiff for the Plaintiff's injuries.

DAMAGES

45. The Plaintiff hereby incorporates paragraphs 1 through 46 by this reference as if each paragraph was set forth herein in its entirety.

46. The Plaintiff has suffered damages as the direct result of the tortious and unlawful acts and omissions of Defendant Dillon, including, without limitation, past and future damages for the loss of enjoyment of life, pain and suffering, mental anxiety and distress, past and future economic loss, past and future damages for medical-related expenses, travel-related expenses, permanent physical injury, and any other damages for which the law provides relief.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays:

A. That the Court award the Plaintiff judgment against the Defendant in such sums as shall be determined to fully and fairly compensate the Plaintiff for all general, special, incidental, and consequential damages incurred, or to be incurred, by the Plaintiff as the direct and proximate result of the acts and omissions of the Defendant;

B. That the Court award the Plaintiff his costs, including experts fees, and reasonable attorneys' fees incurred;

C. That the Court award such other and further relief as it deems necessary and proper in the circumstances.

DATED: September 18, 2018

OVERTURF MCGATH AND HULL, P.C.

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