



PRESS RELEASE - Ron Simon & Associates Files First Stuffed Chicken Salmonella Lawsuit

Date | July 24, 2015

Ron Simon & Associates Files First Stuffed Chicken Salmonella Lawsuit

Today the national food safety law firm of Ron Simon & Associates, along with local counsel Meyers & Flowers, filed the first lawsuit stemming from salmonella-contaminated frozen stuffed chicken products manufactured by Aspen Foods, a division of Koch Meat Co. The products were sold at Kroger retail outlets across the nation.

A copy of the lawsuit is attached.

The lawsuit was filed against Koch Meat Co., Inc. and The Kroger Co. in Cook County, Illinois on behalf of Colleen Sappington.

Colleen consumed Aspen Foods' stuffed chicken *Oven Cravers* on June 25, 2015, and thereafter began to experience vomiting, abdominal cramps, diarrhea, headaches, fever, and chills. Colleen tried to ride out her illness for a few days before being forced to seek medical attention at an urgent care center on July 1st.

After lab tests performed at the urgent care center confirmed that Colleen had tested positive for *Salmonella*, health officials interviewed Colleen and confirmed that she had purchased and consumed a contaminated Aspen Foods stuffed chicken product.

Aspen Foods Recalls Nearly 2 Million Pounds of Stuffed Chicken Products

On June 23, 2015 the US Department of Agriculture's Food Safety and Inspection Service (FSIS) was notified of a cluster of *Salmonella* Enteritidis illnesses. Working in conjunction with the Minnesota State Departments of Health and Agriculture and the Centers for Disease Control and Prevention (CDC), the FSIS found a link between consumption of stuffed chicken products from Aspen Foods (a division of Koch Meat Co. headquartered in Chicago) and victims who had contracted *Salmonella* Enteritidis.

On July 15, 2015, weeks after Colleen Sappington and others had contracted *Salmonella* poisoning, Aspen Foods finally issued a nationwide recall of 1,978,680 pounds of stuffed chicken products.

Aspen Foods had produced the products between April 15, 2015 and July 10, 2015 with "best if used by" dates between July 14, 2016 and October 10, 2016. The recalled products also bear the establishment number "P-1358" inside the USDA mark of inspection.

Aspen Foods had shipped the products to retail stores and food service locations across the United States.

Attorney Ron Simon Issues Statement for Victims and Establishes Salmonella Claim Center

Lead attorney Ron Simon, who represents Colleen Sappington and other victims of the outbreak, issued the following statement today: "Americans have come to rely on quick frozen meals. Millions are consumed each and year. This outbreak shows the dan-

gers that exist when manufacturers fail to employ proper food safety procedures. Through this lawsuit and others, we will find out how these products became contaminated so that we can prevent this from happening again.”

Mr. Simon and his law firm have established a Salmonella Claim Center to assist victims in the outbreak. The Salmonella Claims Center can be reached toll-free at 1-888-335-4901.

About Ron Simon

Over the last 20 years, Ron Simon and his colleagues have prosecuted thousands of food poisoning cases for victims across the United States. His work has resulted in numerous upgrades to food safety procedures in Fortune 500 companies and in legislation designed to protect consumers from dangerous food-borne pathogens.

Mr. Simon and his clients have been featured on NBC, ABC, CBS, CNN, FOX and virtually all other major television networks and print media. Mr. Simon has collected over \$600,000,000 for his clients. He regularly publishes articles about food safety and litigation at www.foodpoisoningnews.com which are read by viewers in over 180 countries.

Through litigation, media commentary, and his food poisoning publications, Mr. Simon relentlessly challenges food manufacturers, distributors, and restaurants to do a better job in making our food safe.

For media inquiries or more information on the salmonella outbreak and ongoing litigation, please contact Ron Simon directly at (713) 819-8116 or ron@rsaalaw.com.

STATE OF ILLINOIS)
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COUNTY OF COOK)

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
COOK COUNTY, ILLINOIS**

COLLEEN SAPPINGTON, an Individual,

Plaintiff,

vs.

KOCH MEAT CO., INC. and THE
KROGER CO.

Defendants.

Case No.

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

NOW COMES, the Plaintiff COLLEEN SAPPINGTON, by and through her attorneys RON SIMON & ASSOCIATES and MEYERS & FLOWERS, LLC, and for her Complaint against Defendants, KOCH MEAT CO., INC and THE KROGER CO. states as follows:

PARTIES

1. Plaintiff COLLEEN SAPPINGTON is an adult and resident of Wartrace, Bedford County, Tennessee.
2. Defendant KOCH MEAT CO., INC. (“hereinafter “KOCH”) is an Illinois corporation headquartered in Chicago, Illinois. It may be served through its registered agent, Thomas R. Wechter, 190 South LaSalle Street, Suite 3700, Chicago, Illinois.
3. Defendant THE KROGER CO. (hereinafter “KROGER”) is an Ohio corporation headquartered in Cincinnati, Ohio. KROGER sold stuffed chicken products to consumers. KROGER may be served through its registered agent, CSC-Lawyers Incorporating Service (Corporation Service Company), at 50 W. Broad Street, Suite 1800, Columbus, Ohio 43215.

JURISDICTION AND VENUE

4. This Court has jurisdiction and venue over Defendants because Defendants sell and distribute products in Cook County, Illinois, and Defendant KOCH is a domestic corporation headquartered in Chicago, Cook County, Illinois.

GENERAL ALLEGATIONS

About Salmonella

5. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of human and other warm-blooded animals, including cattle. *Salmonella* bacteria are usually transmitted to humans who consume foods contaminated with animal feces. Such foods usually look and smell normal, meaning that a consumer has no warning of the fact of contamination.

6. After ingestion, *Salmonella* bacteria travel to the lumen of the small intestines, then penetrate the epithelium, multiply, and enter the blood. This infection process – also referred to as the incubation period – usually takes 6 to 72 hours (but can take as long as 7-10 days) for the onset of symptoms. As few as 15-20 cells of *Salmonella* bacteria can cause infection.

7. The acute symptoms of *Salmonella* gastroenteritis (or *Salmonellosis*) include nausea, vomiting, diarrhea, fever, abdominal cramping and/or stomach pain, dysuria, muscle pain, fatigue, and dehydration. The duration of acute symptoms is typically four to seven days.

8. Medical treatment provided to an infected person typically involves treatment of the symptoms, such as prescribing anti-nausea or anti-diarrhea medications. Some physicians prescribe antibiotics. More severe cases may require intravenous fluids for treatment of dehydration, usually in an emergency room or urgent-care setting. The elderly, infants, and those with impaired immune systems are more likely to experience a severe illness or death from ingesting *Salmonella* bacteria.

9. More serious cases of salmonellosis can occur when the particular strain of *Salmonella* bacteria is resistant to traditional antibiotics, leading to more prolonged illnesses and often other complications.

10. In cases of prolonged or acute gastroenteritis, long-term side-effects, such as irritable bowel syndrome (IBS) or irritable bowel disease (IBD) can develop, leading to the need for long-term medical treatment and care.

The Aspen Foods Stuffed Chicken Salmonella Outbreak

11. On June 23, 2015 the United States Department of Agriculture’s Food Safety and Inspection Service (FSIS) was notified of a cluster of *Salmonella* Enteritidis illnesses. Working in conjunction with the Minnesota State Departments of Health and Agriculture and the Centers for Disease Control and Prevention (CDC), FSIS found a link between consumption of raw, frozen, stuffed chicken products from Aspen Foods (a division of Koch) and the victims who had contracted *Salmonella* Enteritidis.

12. Based on epidemiological evidence and trace-back investigations, health officials identified three *Salmonella* Enteritidis case-patients in Minnesota with illness onset dates ranging from May 9, 2015 to June 8, 2015. The victims had each consumed Aspen Foods’ stuffed chicken products prior to illness onset.

13. Aspen Foods thereafter issued a recall of 1,978,680 pounds of raw, frozen, and stuffed chicken products due to their potential contamination with *Salmonella* Enteritidis. Aspen Foods produced the products between April 15, 2015 and July 10, 2015 with “best if used by” dates between July 14, 2016 and October 10, 2016, bearing the establishment number “P-1358” inside the USDA mark of inspection. Aspen Foods shipped the products to retail stores and food service locations nationwide.

14. According to the FSIS, Aspen Foods labeled the raw, frozen and stuffed chicken products with cooking instructions. The FSIS found that even though case-patients reported following the cooking instructions on the label, they still became ill.

Plaintiff Colleen Sappington's Salmonella Illness

15. On June 2, 2015, Colleen Sappington went grocery shopping at the Kroger in Shelbyville, Tennessee. Among the many items she purchased was Aspen Foods' *Oven Cravers*, a raw, frozen, and stuffed chicken product. She took the groceries home and put the *Oven Cravers* in the freezer.

16. On June 25, 2015, Colleen ate the *Oven Cravers* at home.

17. By July 1, 2015, Colleen was experiencing vomiting, nausea, diarrhea, body cramps, and fever. At first, Colleen took a few days off work and tried to ride-out the illness, hoping for a speedy recovery. But as time passed, her symptoms only intensified.

18. Finally, on July 5, 2015, Colleen presented to the Fast Pace Urgent Care in Manchester, Tennessee. After assessing her condition, the attending physician ordered a stool culture. He sent Colleen home after stabilizing her condition and instructed her to await the results of the stool culture.

19. The next day, Colleen learned her stool culture had tested positive for *Salmonella*. Colleen had no idea what she could have eaten to contract *Salmonella* poisoning.

20. Shortly thereafter, a health official from the Tennessee Department of Health Communicable and Environmental Disease Services ("TDH") contacted Colleen. The official noted that the TDH had received lab results on July 10th showing that Colleen had tested positive for *Salmonella*.

21. The health official asked Colleen many questions, and determined that Colleen had

consumed Aspen Foods' stuffed chicken products (*Oven Cravers*) prior to symptom onset and during the incubation period for *Salmonella*.

22. The TDH thereafter sent Colleen an in-depth FoodNet Case Report to complete. The TDH has since identified Colleen Sappington as a confirmed case in the Aspen Foods stuffed chicken *Salmonella* outbreak.

23. On July 15, 2015, long after Colleen Sappington had become ill, Aspen Foods issued a recall of 1,978,680 pounds of raw, frozen, and stuffed chicken products due to their potential contamination with *Salmonella* Enteritidis. The recall included the *Oven Cravers* consumed by Colleen.

24. Kroger later notified Colleen by telephone that she had purchased *Oven Cravers* that Aspen Foods had recalled for potential *Salmonella* contamination.

FIRST CAUSE OF ACTION

(Strict Products Liability - KOCH MEAT CO., INC.)

25. At all times, Defendant KOCH MEAT CO., INC. was in the business of importing, manufacturing, distributing, and marketing stuffed chicken products.

26. There was a manufacturing defect in the stuffed chicken products when they left Defendant's possession and control. The stuffed chicken products were defective because they contained *Salmonella*. The presence of *Salmonella* was a condition of the products that rendered them unreasonably dangerous.

27. There was a marketing defect in the stuffed chicken products when they left Defendant's possession and control. The stuffed chicken products were defective because they contained *Salmonella*, and Defendant failed to give adequate warnings of the products' dangers that were known or by the application of reasonably developed human skill and foresight should

have been known. Defendant also failed to give adequate warnings and instructions to avoid such dangers. Defendant's failure to provide such warnings and instructions rendered the stuffed chicken products unreasonably dangerous.

28. Colleen Sappington use the stuffed chicken products for their intended purpose, i.e. food consumption.

29. Colleen Sappington could not have discovered any defect in the stuffed chicken products through the exercise of due care.

30. Defendant KOCH MEAT CO., INC. as the producer, distributor and/or seller of food products, is held to the level of knowledge of an expert in its field.

31. As a direct and proximate result of one or more of the foregoing wrongful acts or omissions by KOCH MEAT CO., INC., Colleen Sappington was caused to suffer and sustain injuries; to endure pain and suffering in body and mind; to expend money for medical care in the past and in the future; furthermore, Colleen Sappington was unable to and will in the future be unable to attend to her normal affairs and duties for an undetermined period of time

32. Defendant KOCH MEAT CO., INC.'s conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

33. Defendants are therefore strictly liable for manufacturing, distributing, and marketing defective and unreasonably dangerous stuffed chicken products and introducing them into the stream of commerce

WHEREFORE, Colleen Sappington prays for judgment against Defendant KOCH MEAT CO., INC., in a sum in excess of jurisdictional limits of this Court, together with interests and costs of this action.

SECOND CAUSE OF ACTION

(Strict Products Liability - THE KROGER CO.)

34. At all times, Defendant THE KROGER CO. was in the business of importing, manufacturing, distributing, and marketing stuffed chicken products.

35. There was a manufacturing defect in the stuffed chicken products when they left Defendant's possession and control. The stuffed chicken products were defective because they contained *Salmonella*. The presence of *Salmonella* was a condition of the products that rendered them unreasonably dangerous.

36. There was a marketing defect in the stuffed chicken products when they left Defendant's possession and control. The stuffed chicken products were defective because they contained *Salmonella*, and Defendant failed to give adequate warnings of the products' dangers that were known or by the application of reasonably developed human skill and foresight should have been known. Defendant also failed to give adequate warnings and instructions to avoid such dangers. Defendant's failure to provide such warnings and instructions rendered the stuffed chicken products unreasonably dangerous.

37. Colleen Sappington use the stuffed chicken products for their intended purpose, i.e. food consumption.

38. Colleen Sappington could not have discovered any defect in the stuffed chicken products through the exercise of due care.

39. Defendant THE KROGER CO. as the producer, distributor and/or seller of food products, is held to the level of knowledge of an expert in its field.

40. As a direct and proximate result of one or more of the foregoing wrongful acts or omissions by THE KROGER CO., Colleen Sappington was caused to suffer and sustain injuries;

to endure pain and suffering in body and mind; mental anguish, physical impairment, physical disfigurement, loss of enjoyment of life, medical and pharmaceutical expenses, travel and travel-related expenses, emotional distress, lost wages, lost earning capacity, loss of consortium, attorneys' fees (to the extent recoverable) and other general, special, ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances. Furthermore, Colleen Sappington was unable to and will in the future be unable to attend to her normal affairs and duties for an undetermined period of time.

41. Defendant THE KROGER CO.'s conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

42. Defendants are therefore strictly liable for manufacturing, distributing, and marketing defective and unreasonably dangerous stuffed chicken products and introducing them into the stream of commerce

WHEREFORE, Colleen Sappington prays for judgment against Defendant THE KROGER CO., in a sum in excess of jurisdictional limits of this Court, together with interests and costs of this action.

THIRD CAUSE OF ACTION

(Negligence and Negligence Per Se - KOCH MEAT CO., INC.)

43. Defendant KOCH MEAT CO., INC. owed Plaintiff a duty of ordinary care in the manufacture, preparation, testing, packaging, marketing, storing, holding, distribution, and selling of the stuffed chicken products in question. Further, Defendants owed Plaintiff the duty of warning or instructing Plaintiff of potentially hazardous or life-threatening conditions with respect to the stuffed chicken products.

44. Defendant breached its duty in one or more of at least the following ways:

- a. Negligently manufacturing, preparing, distributing, and marketing stuffed chicken products;
- b. Failing to properly test the stuffed chicken products before placing them into the stream of commerce;
- c. Failing to prevent human, insect, and/or animal feces from coming into contact with the stuffed chicken products;
- d. Failing to store, package, hold, or prepare the stuffed chicken products or their ingredients in a manner to prevent them from becoming contaminated with filth which could render them injurious to health;
- e. Failing to adequately monitor the safety and sanitary conditions of their premises;
- f. Failing to apply their own policies and procedures to ensure the safety and sanitary conditions of their premises;
- g. Failing to adopt and/or follow recommended good manufacturing practices;
- h. Failing to take reasonable measures to prevent the transmission of *Salmonella* bacteria and related filth and adulteration from their premises;
- i. Failing to properly train and supervise their employees and agents to prevent the transmission of *Salmonella* bacteria and related filth and adulteration from their premises;
- j. Failing to warn Plaintiff and the general public of the dangerous propensities of the stuffed chicken products, particularly that they were contaminated with *Salmonella*, despite knowing or having reason to know of such dangers; and
- k. Failing to timely disclose post-sale information concerning the dangers associated with the stuffed chicken products.

45. Furthermore, Defendant had a duty to comply with all applicable health regulations, including the FDA's Good Manufacturing Practices Regulations, 21 C.F.R. part 110, subparts (A)-(G), and all statutory and regulatory provisions that applied to the manufacture, distribution, storage, and/or sale of the stuffed chicken products or their ingredients, 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, and the similar provision in the *Tennessee Food, Drug and Cosmetic Act* 53-1-103 et. Seq.

46. Plaintiff is a member of the classes sought to be protected by the regulations and statutes identified above.

47. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

48. All dangers associated with the products were reasonably foreseeable and/or scientifically discoverable by Defendants at the time Defendant placed the products into the stream of commerce.

49. All dangers associated with the contaminated stuffed chicken products were reasonably foreseeable and/or scientifically discoverable by Defendant at the time Defendant placed the stuffed chicken products into the stream of commerce.

WHEREFORE, Colleen Sappington prays for judgment against Defendants, KOCH MEAT CO., INC, in a sum in excess of jurisdictional limits of this Court, together with interests and costs of this action.

FOURTH CAUSE OF ACTION

(Negligence and Negligence Per Se - THE KROGER CO.)

50. Defendant THE KROGER CO. owed Plaintiff a duty of ordinary care in the manufacture, preparation, testing, packaging, marketing, storing, holding, distribution, and selling of the stuffed chicken products in question. Further, Defendants owed Plaintiff the duty of warning or instructing Plaintiff of potentially hazardous or life-threatening conditions with respect to the stuffed

51. Defendant breached its duty in one or more of at least the following ways:

- l. Negligently manufacturing, preparing, distributing, and marketing stuffed chicken products;
- m. Failing to properly test the stuffed chicken products before placing them into the

stream of commerce;

- n. Failing to prevent human, insect, and/or animal feces from coming into contact with the stuffed chicken products;
- o. Failing to store, package, hold, or prepare the stuffed chicken products or their ingredients in a manner to prevent them from becoming contaminated with filth which could render them injurious to health;
- p. Failing to adequately monitor the safety and sanitary conditions of their premises;
- q. Failing to apply their own policies and procedures to ensure the safety and sanitary conditions of their premises;
- r. Failing to adopt and/or follow recommended good manufacturing practices;
- s. Failing to take reasonable measures to prevent the transmission of *Salmonella* bacteria and related filth and adulteration from their premises;
- t. Failing to properly train and supervise their employees and agents to prevent the transmission of *Salmonella* bacteria and related filth and adulteration from their premises;
- u. Failing to warn Plaintiff and the general public of the dangerous propensities of the stuffed chicken products, particularly that they were contaminated with *Salmonella*, despite knowing or having reason to know of such dangers; and
- v. Failing to timely disclose post-sale information concerning the dangers associated with the stuffed chicken products.

52. Furthermore, Defendant had a duty to comply with all applicable health regulations, including the FDA's Good Manufacturing Practices Regulations, 21 C.F.R. part 110, subparts (A)-(G), and all statutory and regulatory provisions that applied to the manufacture, distribution, storage, and/or sale of the stuffed chicken products or their ingredients, 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, and the similar provision in the *Tennessee Food, Drug and Cosmetic Act* 53-1-103 et. Seq.

53. Plaintiff is a member of the classes sought to be protected by the regulations and statutes identified above.

54. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

55. All dangers associated with the products were reasonably foreseeable and/or scientifically discoverable by Defendants at the time Defendant placed the products into the stream of commerce.

56. All dangers associated with the contaminated stuffed chicken products were reasonably foreseeable and/or scientifically discoverable by Defendant at the time Defendant placed the stuffed chicken products into the stream of commerce.

WHEREFORE, Colleen Sappington prays for judgment against Defendants, THE KROGER CO., in a sum in excess of jurisdictional limits of this Court, together with interests and costs of this action.

FIFTH CAUSE OF ACTION

(Breach of Implied Warranties – KOCH MEAT CO., INC.)

57. Defendant KOCH MEAT CO., INC. is a merchant who produces, manufacture, distribute, and market stuffed chicken products to consumers. Plaintiff is a consumer.

58. Defendant breached the implied warranty of merchantability by impliedly warranting that their stuffed chicken products were of merchantable quality and fit for human consumption when they were not due to the conditions under which they were prepared, packaged, and held and due to the presence of *Salmonella*. Plaintiff reasonably relied upon Defendants' skill and judgment as to whether the stuffed chicken products were of merchantable quality and fit for human consumption.

59. Defendant breached the implied warranty of fitness for a particular purpose, by holding out unreasonably dangerous stuffed chicken products (i.e. products produced under

egregious conditions and containing *Salmonella*) to the public as being safe when they knew or had reason to know that the stuffed chicken products were not safe and that the public would consume the products.

60. Defendant did not disclaim these implied warranties.

61. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

WHEREFORE, Colleen Sappington prays for judgment against Defendant, KOCH MEAT CO., INC, in a sum in excess of jurisdictional limits of this Court, together with interests and costs of this action.

SIXTH CAUSE OF ACTION

(Breach of Implied Warranties – THE KROGER CO.)

62. Defendant THE KROGER CO. is a merchant who produces, manufacture, distribute, and market stuffed chicken products to consumers. Plaintiff is a consumer.

63. Defendant breached the implied warranty of merchantability by impliedly warranting that their stuffed chicken products were of merchantable quality and fit for human consumption when they were not due to the conditions under which they were prepared, packaged, and held and due to the presence of *Salmonella*. Plaintiff reasonably relied upon Defendants' skill and judgment as to whether the stuffed chicken products were of merchantable quality and fit for human consumption.

64. Defendant breached the implied warranty of fitness for a particular purpose, by holding out unreasonably dangerous stuffed chicken products (i.e. products produced under egregious conditions and containing *Salmonella*) to the public as being safe when they knew or had reason to know that the stuffed chicken products were not safe and that the public would

consume the products.

65. Defendant did not disclaim these implied warranties.

66. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

WHEREFORE, Colleen Sappington prays for judgment against Defendant, KOCH MEAT CO., INC, in a sum in excess of jurisdictional limits of this Court, together with interests and costs of this action.

DAMAGES

67. Defendants' conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages, including but not limited to damages in the past and future for the following: pain and suffering, mental anguish, physical impairment, physical disfigurement, loss of enjoyment of life, medical and pharmaceutical expenses, travel and travel-related expenses, emotional distress, lost wages, lost earning capacity, loss of consortium, attorneys' fees (to the extent recoverable) and other general, special, ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

68. Plaintiff has suffered damages in excess of the jurisdictional limits.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. Past and future economic and non-economic damages;
- b. Court costs;
- c. Pre- and post-judgment interest at the highest rate allowed by law; and
- d. For such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a jury trial for all triable claims.

Dated: July 24, 2015

Meyers & Flowers



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