

12-Person Jury

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

FILED
6/22/2020 11:06 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020L006616

9542613

Michael Ellis

Plaintiff,

v.

Aldi Inc.

Defendant.

Case No.: 2020L006616

COMPLAINT

Plaintiff Michael Ellis by and through his undersigned counsel Bart Torvik and Ryan Osterholm of OFT Law PLLC, upon information and belief, states and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff currently resides in Vermillion County, Illinois.
2. Defendant Aldi Inc. is an Illinois Corporation headquartered in Batavia, Illinois.
3. Defendant operates a nationwide chain of grocery stores, including stores located in Cook County, under the ALDI brand name.
4. Upon information and belief, Defendant owns, operates and controls the ALDI supermarket located in Danville, Illinois that sold Plaintiff a bagged salad contaminated with the parasite *Cyclospora*.
5. Defendant produces a variety of private label produce products, including the one that sickened Plaintiff.
6. This Court has jurisdiction over Defendant because Defendant is a corporation organized under the laws of Illinois

FILED DATE: 6/22/2020 11:06 AM 2020L006616

7. Venue is proper because Defendant is a corporation doing business in Cook County and is therefore a resident of Cook County for venue purposes.

FACTUAL ALLEGATIONS

Cyclospora and the Outbreak

8. *Cyclospora* is a protozoan parasite that causes severe gastroenteritis in humans called cyclosporiasis.

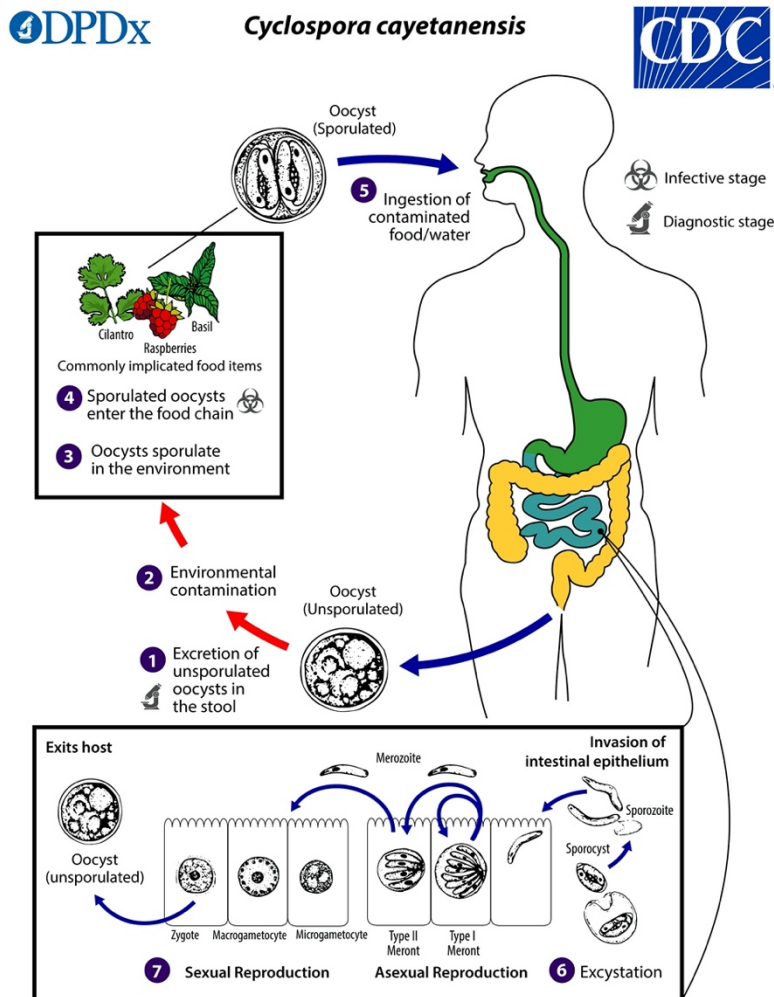
9. The parasite *Cyclospora* was first described by Dr. Ashford, a British parasitologist, in 1979 after being found in a stool samples from sickened people in Papua New Guinea in 1977 and 1978.

10. In the 1990s, *Cyclospora* garnered increasing interest from the scientific and public health communities after it was identified as the cause of outbreaks of diarrheal illness in the United States. Since then, scientific understanding of *Cyclospora*'s source and infectious process has grown substantially.

11. Humans contract *Cyclospora* infections from eating food or drinking water contaminated with *Cyclospora*. Contamination of food often occurs when produce is irrigated or washed in water contaminated with human feces.

12. Humans are the only known carriers of *Cyclospora*, and *Cyclospora* uses the human body to complete part of its reproductive life cycle.

13. The CDC outlines the life cycle of *Cyclospora* in the following diagram:



14. *Cyclospora* oocysts are excreted in the feces of infected people.
15. Fresh excreta containing unsporulated (immature) oocysts is noninfectious. Instead, the oocysts must sporulate in order to become infectious. Therefore, *Cyclospora* is not known to be transmitted directly from person-to-person.
16. Oocysts sporulate within 1-2 weeks, depending on environmental conditions. After sporulation, the sporont becomes two sporocysts, each containing two elongated sporozoites.
17. After sporulation, the *Cyclospora* organism is infectious, and when consumed by humans, causes illness.

18. Put simply, feces must contaminate food or water and then remain there long enough to sporulate in order to cause illness.

19. Within the human body, oocysts excyst, or emerge, in the gastrointestinal tract, freeing the sporozoites, which invade the epithelial cells of the small intestine.

20. Inside the cells of the small intestine, they undergo asexual multiplication and sexual development to mature into oocysts, which are shed in stools.

21. Symptoms of cyclosporiasis include watery diarrhea, loss of appetite, cramping, nausea, fatigue, fever, dehydration, and weight loss.

22. Untreated, these symptoms can last several weeks or longer, resulting in extreme dehydration and other more serious side effects. *Cyclospora* infections in the United States are typically diagnosed by a specific test for the parasite.

23. Treatments for *Cyclospora* typically include administration of an antibiotic, sulfamethoxazole – trimethoprim (Bactrim).

24. Unfortunately, antibiotic treatment is not always effective. Some cyclosporiasis patients require months-long antibiotic treatment before resolution of their illness.

25. Moreover, many people are allergic to sulfa- antibiotics. No alternative highly effective treatment exists, but some providers prescribe ciprofloxacin or nitazoxanide (Alinia).

26. *Cyclospora* is not endemic to the United States. The illness is most common in tropical and subtropical regions, and it is more common in summer months.

27. Numerous previous outbreaks of *Cyclospora* in the United States have been associated with consumption of fecally-contaminated fruits and vegetables, including raspberries, mesclun, basil, lettuce, and cilantro.

28. Responsible fresh produce producers and sellers take steps to ensure their fresh produce is free of fecal matter and dangerous organisms like *Cyclospora*. The duty owed by produce producers and sellers includes a duty to develop a food safety program; ensure good agricultural practices are followed; monitor and test its products and processing environments; and otherwise ensure that its ready-to-eat products are not exposed to fecal matter.

29. Responsible fresh produce producers and sellers conduct their operations in compliance with all applicable state and federal regulations intended to ensure the purity and safety of food products, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*).

The 2020 Garden Salad *Cyclospora* Outbreak

30. In mid-June of 2020, the Centers for Disease Control (CDC) in conjunction with state health departments detected an alarming increase in the number of *Cyclospora* cases in Iowa, Illinois, Kansas, Missouri, Minnesota, and Nebraska.

31. CDC and state health departments launched an epidemiological and microbiological investigation.

32. The Food and Drug Administration (FDA) aided with traceback efforts.

33. The investigating agencies soon identified bagged salads sold at Aldi, Hy-Vee and Jewel Osco as a likely source of the *Cyclospora*.

34. The bagged salads sold at each retailer were essentially the same “garden” salad mix containing iceberg lettuce, carrots, and red cabbage.

35. The FDA urged consumers not to eat ALDI Little Salad Bar Brand Garden Salad sold in Iowa, Illinois, Minnesota, and Missouri, all Hy-Vee Brand Garden Salad sold in Iowa,

Illinois, Kansas, Minnesota, Missouri, and Nebraska, and Jewel-Osco Signature Farms Brand Garden Salad sold in Illinois.

36. As of June 21, 2020, public agencies reported a total of 76 cases associated with the garden salad outbreak, with 16 of those individuals requiring hospitalization. Consumers affected resided in Illinois, Iowa, Minnesota, Missouri, Nebraska, and Kansas.

Plaintiff's *Cyclospora* Infection

37. In early June Plaintiff purchased Little Salad Bar Garden Salad from his local ALDI supermarket in Danville, Illinois.

38. Several days after consuming the salad, he began experiencing a loss of appetite with significant bloating. The symptoms developed into severe stomach cramping with profuse watery diarrhea.

39. Accordingly, Plaintiff went to the hospital several times before doctors were able to test for *Cyclospora*.

40. Plaintiff tested positive for *Cyclospora* and was subsequently prescribed antibiotics.

41. Plaintiff is gradually recovering, but continues to suffer from abdominal cramps and diarrhea.

42. The Illinois Department of Public Health contacted Plaintiff and linked his case to the multi-state bagged salad outbreak.

43. As a direct and proximate result of consuming contaminated food offered for sale and sold by Defendant, Plaintiff suffered a debilitating and painful gastrointestinal illness, incurred, and will incur, medical expenses, lost wages, and suffered other losses and damages to be proved at trial.

Count I
Strict Products Liability

44. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

45. Defendant manufactured, distributed, marketed, and sold the contaminated food that injured Plaintiff and caused him to become infected with *Cyclospora*.

46. Defendant is in the business of manufacturing and selling food and drink products to the public.

47. Food and drink that is contaminated with a parasite transmitted in human feces is unfit and unreasonably dangerous for its intended use of human consumption.

48. The food purchased by Plaintiff was contaminated with *Cyclospora* when it left Defendant's control.

49. Plaintiff's consumption of Defendant's contaminated food was a direct and proximate cause of his infection and subsequent injuries.

50. Defendant is strictly liable to Plaintiff for the harms caused by its manufacture and sale of an unreasonably dangerous and defective food product. Plaintiff has suffered and will continue to suffer significant physical and emotional injury, including medical expenses, lost wages, pain and suffering, and other damages to be proved at trial.

WHEREFORE, Plaintiff prays for judgment against Defendant in an amount in excess of the minimum amount necessary to comply with the circuit rules of assignment to place this case in the Law Division (\$30,000), plus interest and costs and any further relief the Court deems just and proper.

**Count II
Negligence**

51. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

52. Defendant manufactured, marketed, distributed, and sold food products to Plaintiff that were contaminated with the parasite *Cyclospora*, a dangerous pathogen. As a result, the food sold to Plaintiff was unreasonably dangerous and unfit for human consumption.

53. Defendant owed a duty to Plaintiff to exercise reasonable care in order to minimize the risk of injury to others when manufacturing and selling its food products.

54. Specifically, Defendant owed a duty to its customers, as well as to all persons foreseeably put at risk of secondary transmission of the disease, to manufacture and sell food that was safe to eat, was not adulterated with deadly pathogenic bacteria, and that was not in violation of applicable food safety regulations.

55. Defendant also owed a duty to all of its customers, as well as to all persons foreseeably put at risk of secondary transmission of the disease, to maintain its premises and production facilities in a sanitary and safe condition.

56. Defendant breached this duty through one or more of the following acts or omissions:

- a. Failing to prevent the transmission of *Cyclospora* from its food and drink to the ultimate consumers of its products;
- b. Failing to properly operate its supermarket business in a sanitary and safe manner;
- c. Failing to implement adequate food safety policies and procedures;

- d. Failing to adequately maintain and monitor the sanitary conditions of its food and food suppliers;
- e. Storing, offering, and delivering food in violation of 410 ILCS 620/3.1 and 410 ILCS 620/3.4;
- f. Failing to properly and carefully select and monitor the entities from which it purchased raw materials used in the production of its products; and
- g. Other acts and omissions to be proved at trial.

57. As a direct and proximate result of Defendant's conduct, Plaintiff sustained the injuries and damages set forth above.

WHEREFORE, Plaintiff prays for judgment against Defendant in an amount in excess of the minimum amount necessary to comply with the circuit rules of assignment to place this case in the Law Division (\$30,000), plus interest and costs and any further relief the Court deems just and proper.

Respectfully Submitted,

OFT Law PLLC

By 

Bart B. Torvik (Attorney Code: 48191)

701 Main Street, Suite 204

Evanston, Illinois 60202

T: (312) 212-8479

F: (888) 239-0559

bart@oftlaw.com

and

Ryan Osterholm (pending Rule 707 admission)

OFT Food Safety & Injury Lawyers

730 Second Avenue South, Suite 810

Minneapolis, MN 55402
T: (888) 828-7087
F: (888) 239-0559
ryan@oftlaw.com

RULE 222 CERTIFICATION REGARDING DAMAGES

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies pursuant to Supreme Court Rule 222(b) that the total money damages sought in this case **exceed \$50,000.**



Bart B. Torvik
Attorney for Plaintiff