

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

Hus Hari Buljic individually and as
Administrator of the Estate of Sedika
Buljic, Honario Garcia individually
and as Administrator of the Estate of
Reberiano Leno Garcia, and Arturo de
Jesus Hernandez and Miguel Angel
Hernandez as Co-Administrators of
the Estate of Jose Luis Ayala, Jr.,

Plaintiffs,

vs.

Tyson Foods, Inc., Tyson Fresh Meats,
Inc., John H. Tyson, Noel W. White,
Dean Banks, Stephen R. Stouffer, Tom
Brower, Mary A. Oleksiuk, Elizabeth
Croston, Tom Hart, Hamdija
Beganovic, James Cook, Ramiz
Muheljic, Gustavo Cabarea, Pum
Pisng, Alex Buff, Walter Cifuentes,
Muwi Hlawnceu, Cody Brustkern,
Mark Smith, and John/Jane Does 1-
10,

Defendants.

Case No. 6:20-cv-02055-KEM

**BRIEF IN SUPPORT OF
TYSON FOODS, INC. and TYSON FRESH MEATS, INC.'S
MOTION TO DISMISS**

(Oral Argument Requested)

TABLE OF CONTENTS

	Page
MOTION	1
INTRODUCTION AND STATEMENT OF ISSUES.....	1
BACKGROUND.....	4
ARGUMENT	5
I. Plaintiffs’ claims are barred in this Court under the Iowa Workers’ Compensation Act.	5
A. Plaintiffs’ attempts to avoid the IWCA are without merit.	6
1. Plaintiffs cannot circumvent the IWCA by recasting workplace injury claims as fraud.	7
2. Plaintiffs cannot use vicarious liability to create a “wanton gross negligence” exception for employers.	8
II. Plaintiffs’ claims are inadequately pleaded.....	9
A. The complaint fails to plead fraud with particularity.	10
B. The complaint fails to adequately plead causation.....	13
C. The complaint fails to comply with the Iowa COVID-19 Response and Back-to-Business Act.	18
III. Plaintiffs’ claims are preempted by federal law.	19
A. The complaint takes no account of the broad, express preemption of the Federal Meat Inspection Act (FMIA).....	19
B. The complaint takes no account of the federal designation of Tyson facilities as critical infrastructure.	20
CONCLUSION.....	21

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Amalgamated Ass’n of St., Elec. Ry. & Motor Coach Emps. v. Lockridge</i> , 403 U.S. 274 (1971)	21
<i>Ambassador Press, Inc. v. Durst Image Tech. U.S., LLC</i> , 949 F.3d 417 (8th Cir. 2020)	11, 19
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	passim
<i>Bailey v. Batchelder</i> , 576 N.W.2d 334 (Iowa 1998)	5
<i>Brown v. N. Cent. F.S., Inc.</i> , 987 F. Supp. 1150 (N.D. Iowa 1997)	13
<i>Cary v. Hickenlooper</i> , 673 F. App’x 870 (10th Cir. 2016)	17
<i>Cincinnati Ins. Cos. v. Kirk</i> , 801 N.W.2d 856 (Iowa Ct. App. 2011)	2, 7
<i>Crest Constr. II, Inc. v. Doe</i> , 660 F.3d 346 (8th Cir. 2011)	12, 13
<i>Crosby v. Nat’l Foreign Trade Council</i> , 530 U.S. 363 (2000)	21
<i>Drobnak v. Andersen Corp.</i> , 561 F.3d 778 (8th Cir. 2009)	3, 10, 11, 12
<i>Eclectic Props. E., LLC v. Marcus & Millichap Co.</i> , 751 F.3d 990 (9th Cir. 2014)	10
<i>Fish v. Princess Cruise Lines Ltd.</i> , No. CV 20-3894 DSF (C.D. Cal. Aug. 21, 2020), ECF No. 26	3, 14
<i>Ganka v. Clark</i> , 941 N.W.2d 356, 2019 WL 6358301 (Iowa Ct. App. 2019)	9
<i>Gibson v. ITT Hartford Ins. Co.</i> , 621 N.W.2d 388 (Iowa 2001)	12

TABLE OF AUTHORITIES

(continued)

Page(s)

CASES (CONT.)

<i>Gunderson v. ADM Inv'r Servs., Inc.</i> , 85 F. Supp. 2d 892 (N.D. Iowa 2000)	13
<i>Hager v. Arkansas Dep't of Health</i> , 735 F.3d 1009 (8th Cir. 2013)	16
<i>Hardin Cty. Sav. Bank v. City of Brainerd</i> , 602 F. Supp. 2d 1012 (N.D. Iowa 2008)	14
<i>Harned v. Farmland Foods, Inc.</i> , 331 N.W.2d 98 (Iowa 1983)	2, 7, 9
<i>In re Pre-Filled Propane Tank Antitrust Litig.</i> , 893 F.3d 1047 (8th Cir. 2018)	9
<i>In re RFC & ResCap Liquidating Tr. Action</i> , 444 F. Supp. 3d 967 (D. Minn. 2020)	15
<i>Jensen v. Vanderleest</i> , Nos. 9-369, 98-1950, 1999 WL 975879 (Iowa Ct. App. Oct. 27, 1999)	5
<i>Kelly v. City of Omaha, Neb.</i> , 813 F.3d 1070 (8th Cir. 2016)	10
<i>Kloster v. Hormel Foods Corp.</i> , 612 N.W.2d 772 (Iowa 2000)	6
<i>Mielke v. Ashland, Inc.</i> , Civ. No. 4:05-CV-88, 2005 WL 8157992 (S.D. Iowa July 29, 2005)	2, 8
<i>Missourians for Fiscal Accountability v. Klahr</i> , 830 F.3d 789 (8th Cir. 2016)	15
<i>Moua v. Jani-King of Minn., Inc.</i> , 613 F. Supp. 2d 1103 (D. Minn. 2009)	11
<i>Nat'l Meat Ass'n v. Harris</i> , 565 U.S. 452 (2012)	19
<i>Nelson v. Winnebago Indus., Inc.</i> , 619 N.W.2d 385 (Iowa 2000)	7

TABLE OF AUTHORITIES

(continued)

Page(s)

CASES (CONT.)

<i>Nuss v. Cent. Iowa Binding Corp.</i> , 284 F. Supp. 2d 1187 (S.D. Iowa 2003).....	12
<i>Owner-Operator Indep. Drivers Ass’n, Inc. v. U.S. Dep’t of Transp.</i> , 831 F.3d 961 (8th Cir. 2016)	14
<i>Peterson v. Silverado Senior Living, Inc.</i> , 790 F. App’x 614 (5th Cir. 2019)	17
<i>Phillips v. Covenant Clinic</i> , 625 N.W.2d 714 (Iowa 2001)	14
<i>Rancho Viejo, LLC v. Norton</i> , 323 F.3d 1062 (D.C. Cir. 2003)	20
<i>Remmes v. Int’l Flavors & Fragrances, Inc.</i> , 389 F. Supp. 2d 1080 (N.D. Iowa 2005).....	10
<i>Rincon v. Covidien</i> , No. 16-CV-10033 (JMF), 2017 WL 2242969 (S.D.N.Y. May 22, 2017).....	17
<i>Schaaf v. Residential Funding Corp.</i> , 517 F.3d 544 (8th Cir. 2008)	13, 18
<i>Suckow v. NEOWA FS, Inc.</i> , 445 N.W.2d 776 (Iowa 1989)	7, 9
<i>Swindol v. Aurora Flight Scis. Corp.</i> , 805 F.3d 516 (5th Cir. 2015)	14
<i>Tigges v. City of Ames</i> , 356 N.W.2d 503 (Iowa 1984)	6
<i>U.S. ex rel. Roop v. Hypoguard USA, Inc.</i> , 559 F.3d 818 (8th Cir. 2009)	12
<i>Valentine v. Collier</i> , 960 F.3d 707 (5th Cir. 2020)	15
<i>Walker v. Mlakar</i> , 489 N.W.2d 401 (Iowa 1992)	6

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.