

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

OSCAR FERNANDEZ INDIVIDUALLY AND AS
ADMINISTRATOR OF THE ESTATE OF ISIDRO
FERNANDEZ,

PLAINTIFF,

v.

TYSON FOODS, INC., TYSON FRESH MEATS,
INC., JOHN H. TYSON, NOEL W. WHITE, DEAN
BANKS, STEPHEN R. STOUFFER, TOM
BROWER, TOM HART, CODY BRUSTKERN,
JOHN CASEY, AND BRET TAPKEN.

DEFENDANTS.

Case No. 6:20-cv-02079-LRR-KEM

FIRST AMENDED COMPLAINT

INTRODUCTION

1. This case arises from Tyson Foods' fraudulent misrepresentations, gross negligence, and incorrigible, willful and wanton disregard for worker safety at its pork processing facility in Waterloo, Iowa (the "Waterloo Facility"). Despite an uncontrolled Covid-19 outbreak, Tyson required its employees to work long hours in cramped conditions. Moreover, despite the danger of COVID-19, Tyson failed to provide appropriate personal protective equipment and failed to implement sufficient social distancing or safety measures to protect workers from the outbreak. As a result, Isidro Fernandez and more than 1,000 other Tyson employees were infected with COVID-19 at the Waterloo Facility.

PARTIES

2. Plaintiff Oscar Fernandez is the duly appointed Administrator of the Estate of his deceased father, Isidro Fernandez.

3. At all relevant times, Isidro Fernandez was a Tyson Foods employee working at the Waterloo Facility. He died on April 26, 2020 from complications of COVID-19.

4. Plaintiff's injuries arose out of and in the course of Isidro Fernandez's employment with Tyson Foods.

Defendant Tyson Foods

5. Defendant Tyson Foods, Inc. is the largest meat processor in the United States.

6. Tyson Foods, Inc. is a Delaware Corporation, with its principal place of business in Springdale, Arkansas.

7. As a corporation, Tyson Foods, Inc. can act only through its agents, including its employees, officers, and directors.

8. Tyson Foods, Inc. is vicariously liable for its agents' acts and omissions within the course and scope of their agency.

9. Defendant Tyson Fresh Meats, Inc. is a Delaware Corporation, with its principal place of business in Springdale, Arkansas.

10. As a corporation, Tyson Fresh Meats can act only through its agents, including its employees, officers, and directors.

11. Tyson Fresh Meats is vicariously liable for its agents' acts and omissions within the course and scope of their agency.

12. Tyson Fresh Meats is a wholly owned subsidiary of Tyson Foods, Inc. (collectively "Tyson Foods" or "Tyson").

Executive Defendants

13. Defendant John H. Tyson is the Chairman of Tyson Foods, Inc.

14. Defendant Noel W. White is the Chief Executive Officer of Tyson Foods, Inc.

15. Defendant Dean Banks is the President of Tyson Foods, Inc.

16. Defendant Stephen R. Stouffer is the President of Tyson Fresh Meats, Inc.

17. Defendant Tom Brower is Senior Vice President of Health and Safety for Tyson Foods, Inc.

18. Hereinafter John H. Tyson, Noel W. White, Dean Banks, Stephen R. Stouffer, and Tom Brower, will be collectively referred to as the “Executive Defendants.”

Supervisory Defendants

19. Defendant Tom Hart is the plant manager of the Tyson Waterloo Facility. He is required to be familiar with all aspects of the Waterloo Facility and to identify potential safety hazards.

20. Defendant Bret Tapken is the Safety Lead of the Tyson Waterloo Facility. He is required to be familiar with all aspects of the Waterloo Facility and to identify potential safety hazards.

21. Defendants Cody Brustkern and John Casey hold upper-level management positions at the Tyson Waterloo Facility.

22. Hereinafter Tom Hart, Bret Tapken, Cody Brustkern, and John Casey will be collectively referred to as the “Supervisory Defendants.”

23. The Supervisory Defendants are required to be familiar with all aspects of the Waterloo Facility and to identify potential safety hazards.

JURISDICTION AND VENUE

24. The District Court for Black Hawk County, Iowa has jurisdiction over the Defendants because the acts and omissions giving rise to the Plaintiff’s claims occurred in Black Hawk County, Iowa.¹

¹ Plaintiff filed this action in the District Court for Black Hawk County, Iowa and Defendants improperly removed

25. Plaintiff certifies, pursuant to IA Code § 619.18, that this action meets applicable jurisdictional requirements for amount in controversy.

26. Venue is proper under IA Code § 616.18 because Plaintiff sustained injuries and damages in Black Hawk County.

FACTS COMMON TO ALL CAUSES OF ACTION

The Pandemic

27. COVID-19 is an infectious respiratory disease caused by a novel coronavirus (hereinafter “COVID-19” or “the virus”).

28. COVID-19 is highly contagious.

29. COVID-19 can result in serious, long-term health complications and has resulted in more than 123,000 reported deaths in the United States to date.

30. Among these serious health complications, COVID-19 can cause inflammation in the lungs, clogging the air sacs in the lungs, limiting the body’s oxygen supply and blood clots, organ failure, liver damage, intestinal damage, heart inflammation, neurological malfunction, and acute kidney disease.

31. The virus primarily spreads from person to person through respiratory droplets produced when an infected person coughs or sneezes.

32. Spread is more likely when people are in close contact with one another (i.e., within 6 feet).

33. The virus can be spread by people who are asymptomatic, pre-symptomatic, or mildly symptomatic.

34. Distinctive factors that affect workers’ risk for exposure to COVID-19 in meat processing facilities include distance between workers, duration of contact and type of contact between workers.

35. The best way to prevent infection and illness is to avoid being exposed to the virus.

36. The first known COVID-19 outbreak occurred in Wuhan, Hubei province, People's Republic of China ("China").

37. Tyson Foods has extensive operations and business interests in China, and one of its subsidiaries operates a facility in Hubei province.

38. Tyson Foods has been focused on COVID-19 since January 2020 when it formed a "company coronavirus task force." Tyson formed this task force after observing the impact of COVID-19 on its China operations.

39. In January, nearly all of Tyson's operations in China were affected by the COVID-19 outbreak. By February, Tyson halted operations at some facilities in China and reduced operations at others.

40. On January 11, 2020, Chinese state media reported its first known death from COVID-19; Japan, South Korea, and Thailand reported confirmed cases by January 20, 2020; and the United States reported its first case on January 21, 2020.

41. On January 31, the United States Department of Health and Human Services declared a national public health emergency.

42. On March 8, three COVID-19 cases were reported in Iowa.

43. On March 9, Iowa Governor Kim Reynolds issued a Proclamation of Disaster Emergency in response to the COVID-19 outbreak.

44. On March 11, the World Health Organization declared the COVID-19 outbreak a global pandemic.

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