

In the United States District Court  
Northern District of Texas  
Amarillo Division

Ka La Ya Lay, Aye Aya Lay, Tun Lah,  
Individually, and Tun Nee Individually and  
as next friend of minor child, K.M.N. and  
as Representatives of the Estate of  
Pwar Gay, Deceased

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Vs.

Action No. \_\_\_\_\_

Tyson Foods, Inc.

**PLAINTIFFS' ORIGINAL COMPLAINT**

Ka La Ya Lay, Aye Aya Lay, Tun Lah, Individually, and Tun Nee Individually and as next friend of minor child, K.M.N. and as Representatives of the Estate of Pwar Gay, Deceased, Plaintiffs, set forth their Complaint for damages against Tyson Foods, Inc., Defendant, and for cause of action would show as follows:

**1. Parties**

1.1 Plaintiff, Tun Nee, is a resident and citizen of the State of Texas.

1.2 Plaintiff, Ka La Ya Lay, is a resident and citizen of the State of Texas.

1.3 Aye Aya Lay, is a resident and citizen of the State of Iowa.

1.4 Plaintiff, Tun Lah, is a resident and citizen of the State of Texas.

1.5 Plaintiff, K.M.N. is a minor and is a resident and citizen of the State of Texas.

1.6 Defendant, Tyson Foods, Inc., ("Tyson") is a company doing business in the State of Texas and may be served by process by serving its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136. Citation is requested herein. Tyson is a company

incorporated under the laws of Delaware with a principal place of business in Arkansas.

## 2. Jurisdiction and Venue

2.1 Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1332. The Plaintiffs and Defendant are citizens of different states and Plaintiffs seek damages in an amount that exceeds the sum or value of \$75,000 exclusive of interest and costs.

2.2 Personal jurisdiction and venue are proper because the cause of action accrued and the negligent acts occurred within the Northern District of Texas, specifically within its Amarillo Division. Furthermore, Tyson has a significant presence within the Northern District of Texas as it has facilities located in the area.

2.3 Plaintiffs are entitled to bring a wrongful death action pursuant to Tex. Civ. Prac. & Rem. § 71.004. The family members' relationships to the decedent are as follows:

Tun Nee	Husband of Pwar Gay
Ka La Ya Lay	Child of Pwar Gay
Aye Aya Lay	Child of Pwar Gay
Tun Lah	Child of Pwar Gay
K.M.N.	Child of Pwar Gay

2.4 Additionally, a survival action is brought herein by Tun Nee, in his capacity as Representative of the Estate of Pwar Gay, Deceased.

## 3. Background

3.1 Ms. Gay worked as a meatcutter at the Tyson meatpacking plant located at 5000 FM 1912, Amarillo, Texas 79108. The city of Amarillo issued a stay-at-home order effective April 1,

2020.<sup>1</sup> Similarly, Governor Abbott issued a stay-at-home order which took effect on April 2, 2020.<sup>2</sup> In April 2020 Ms. Gay slipped and fell and injured her knees while on the job with Tyson. Following the injury, Tyson sent Ms. Gay to the Tyson Company Clinic, where she received first aid treatment and was sent back to work. Ms. Gay was suffering from pain and swelling, but was not allowed to go home and rest or seek medical attention due to Tyson's shortage in staff.

3.2 This injury occurred during the COVID-19 pandemic. COVID-19 infected numerous workers at the Tyson Beef Plant in Amarillo, where Ms. Gay worked. Ms. Gay was required to continue to work in pain and with her injured knees, and during the coronavirus pandemic. Ms. Gay was not provided appropriate personal protective equipment ("PPE") to protect her from coronavirus. After working on her injured leg Ms. Gay fell ill and was rushed to the hospital after she started having difficulty breathing and her knee was extremely swollen and painful. Ms. Gay was admitted for several weeks as a result of the combination of her knee injuries and COVID-19 symptoms, which later proved to be fatal. Ms. Gay died on May 8, 2020.

3.3 Plaintiffs would show that nothing that Pwar Gay did or failed to do on the occasion in question caused or contributed to cause the occurrence. To the contrary, the injuries and death of Ms. Gay were proximately caused by the negligence, both of commission and omission, of Tyson. Tyson's negligence caused Ms. Gay's knee injuries, and also caused Ms. Gay to contract COVID-19 and die.

3.4 Upon information and belief, at least 4,500 Tyson employees have contracted

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<sup>1</sup> Amarillo Globe News, <https://www.amarillo.com/news/20200330/city-of-amarillo-issues-stay-at-home-order> (last visited May 14, 2020).

<sup>2</sup> Texas Tribune, <https://www.texastribune.org/2020/03/31/greg-abbott-texas-executive-order-closures/> (last visited May 14, 2020).

COVID-19, and at least 18 have died.<sup>3</sup> A grossly disproportionate number of Tyson employees have contracted COVID-19, and have died, when compared to the population as a whole. Tyson does not provide workers compensation insurance to its employees, nor does it provide them with any sick paid leave. Rather, Tyson institutes a rigged “injury settlement” program under which the deck is stacked against its employees. The thousands of Tyson employees who have been injured on the job over the years know this rigged program as “WISP,” which stands for “Workplace Injury Settlement Program.”

3.5 Tyson was grossly negligent and acted with malice, as that term is understood under Texas law, and such conduct was a proximate cause of the injuries and death of Ms. Gay. Tyson’s malicious and grossly negligent conduct justifies the imposition of punitive and exemplary damages both as punishment of Tyson and its callous disregard for the safety of individuals such as Ms. Pwar Gay. Plaintiffs therefore ask for punitive and exemplary damages in addition to actual damages.

3.6 Plaintiff, Tun Nee has also suffered pecuniary loss from the death of his wife, Pwar Gay. Decedent provided her husband with care, attention, and counsel. In all reasonable probability, decedent would have continued to provide for her husband until death. Tun Nee seeks to recover a sum of money that would fairly and reasonably compensate him for the termination of the husband-wife relationship, including the loss of the love, companionship and society that he would have received from his wife, Pwar had she lived. Plaintiff, Tun Nee also seeks compensation for the mental anguish, emotional pain, torment and suffering that he has suffered, and in reasonable probability will continue to suffer in connection with the wrongful death of Pwar Gay.

3.7 Ka La Ya Lay, Aye Aya Lay, Tun Lah, and K.M.N. have suffered pecuniary loss

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<sup>3</sup>Business Insider, <https://www.businessinsider.com/tyson-4500-covid-19-cases-as-meat-industry-blames-workers-2020-5> (last visited May 14, 2020).

from the death of their mother, including losses of care, maintenance, support, services, advice, counsel, and contributions of a pecuniary value that they would, in reasonable probability, have received from their mother during her lifetime had he lived. They have suffered additional losses by virtue of the destruction of the parent-child relationship, including the right to love, affection, solace, comfort, companionship, society, emotional support, and happiness. They have suffered mental anguish, grief, and sorrow as a result of the death of their mother, and are likely to continue to suffer for a long time in the future.

3.8 Additionally, a survival action is brought herein by Tun Nee, in his capacity as Representative of the Estate of Pwar Gay, Deceased, including claims for medical bills and pain and suffering.

3.9 Tun Nee, Ka La Ya Lay, Aye Aya Lay, Tun Lah, K.M.N. were present when Ms. Gay suffered from her knee injury COVID-19 symptoms and death and they were in shock as a result of direct emotional impact from perceiving the death of Ms. Gay as it happened. Accordingly, Plaintiffs are entitled to recover mental-anguish damages as a bystander to the death of Ms. Pwar Gay.

3.10 Tyson was not a subscriber to a policy of workers compensation insurance, and thus Plaintiff brings this suit for damages under the provisions of Section 406.033 of the Texas Labor Code for personal injuries while in the course and scope of her employment with Defendant.

3.11 Tyson, as a non-subscriber under the Texas Workers' Compensation Act, and pursuant to Section 406.033 of the Texas Labor Code, has lost its common law defenses of:

- a. contributory negligence of Plaintiff;
- b. that the injury was caused by the negligence of a fellow employee; and/or
- c. that the Plaintiff assumed the risk of the injury incident to her employment.

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