

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEARNS

FOURTH JUDICIAL DISTRICT

WILLIAM C. DANELL
As Trustee for the
Next-of-Kin of ROBERT H. DANELL,
Decedent,

Court File No. 73-CV-13-258
Judge: Frank J. Kundrat

Plaintiff,

vs.

FIRST AMENDED COMPLAINT
JURY TRIAL DEMANDED

JBS USA, LLC, d/b/a JBS Swift & Company;
BEEF PRODUCTS, INC.;
TYSON FRESH MEATS, INC.;
UPPER LAKES FOODS, INC.;
J&B WHOLESALE DISTRIBUTING, INC.;
TYSON FRESH MEATS, INC., d/b/a IBP Plant #245J;
COBORN'S INC, d/b/a Cub Foods #3041;
UNIPRO FOODSERVICE, INC.;
ROCHESTER MEAT COMPANY;
BRANDING IRON HOLDINGS, INC.; and
JOHN DOE MANUFACTURERS AND DISTRIBUTORS 1-10,

Defendants.

The Plaintiff, William C. Danell, as the duly Court-Appointed Trustee for the Next-of-Kin of Robert H. Danell, Decedent, by and through his attorneys of record, asserts claims against defendants JBS USA, LLC, d/b/a JBS Swift & Company; Beef Products, Inc.; Tyson Fresh Meats, Inc.; Upper Lakes Foods, Inc.; J&B Wholesale Distributing, Inc.; Tyson Fresh Meats, Inc., d/b/a IBP Plant #245J; Coborn's Inc., d/b/a Cub Foods #3041U; UniPro Foodservice, Inc.; Rochester Meat Company; Branding Iron Holdings, Inc.; and John Doe Manufacturers and Suppliers 1-10, stating and alleging as follows:

I. PARTIES

1. The plaintiff, William Danell, is the natural sibling of the decedent, Robert Danell. Plaintiff William Danell has been duly appointed trustee for the next-of-kin of Robert Danell by Order of Stearns County District Court dated December 27, 2012.

2. The defendant JBS USA, LLC, d/b/a JBS Swift & Company (hereinafter “JBS”) is a foreign corporation organized and existing under the laws of the state of Delaware. This defendant is, therefore, a foreign corporation and not a resident of the State of Minnesota. Further, this defendant is authorized to do and does conduct business in the State of Minnesota. JBS was a manufacturer of food products, including a component of the ground beef that caused Robert Danell’s *E. coli* O157:H7 infection and resulting death.

3. The defendant Beef Products, Inc. (hereinafter “BPI”) is a foreign corporation organized and existing under the laws of the state of Nebraska. This defendant is, therefore, a foreign corporation and not a resident of the State of Minnesota. Further, this defendant is authorized to do and does conduct business in the State of Minnesota. BPI was a manufacturer of food products, including a component of the ground beef that caused Robert Danell’s *E. coli* O157:H7 infection and resulting death.

4. The defendant Tyson Fresh Meats, Inc., (hereinafter “Tyson”) is a foreign corporation organized and existing under the laws of the state of Delaware, and doing business in the state of Minnesota. This defendant is, therefore, a foreign corporation and not a resident of the State of Minnesota. Further, this defendant is authorized to do and does conduct business in the State of Minnesota. Defendant Tyson was a manufacturer of food products, including the ground beef that caused Robert Danell’s *E. coli* O157:H7 infection and resulting death.

5. The defendant Upper Lakes Foods, Inc., (hereinafter “Upper Lakes”) is a Minnesota corporation that, at all times relevant to this complaint, was a distributor of food products, including the ground beef that caused Robert Danell’s *E. coli* O157:H7 infection and resulting death.

6. The defendant J&B Wholesale Distributing, Inc., (hereinafter “J&B”) is a Minnesota corporation that, at all times relevant to this complaint, was a distributor of food products, including the ground beef that caused Robert Danell’s *E. coli* O157:H7 infection and resulting death.

7. The defendant Tyson Fresh Meats, Inc., d/b/a IBP Plant #245J (hereinafter “IBP”) is a foreign corporation organized and existing under the laws of the state of Delaware, and doing business in the state of Minnesota. This defendant is, therefore, a foreign corporation and not a resident of the State of Minnesota. Further, this defendant is authorized to do and does conduct business in the State of Minnesota. IBP was a manufacturer of food products, including a component part of the ground beef that may have caused Robert Danell’s *E. coli* O157:H7 infection and resulting death.

8. The defendant Coborn’s, Inc., d/b/a Cub Foods #3041 (hereinafter “Cub Foods”) is a Minnesota corporation that, at all times relevant to this complaint, was a manufacturer of food products, including the ground beef that may have caused Robert Danell’s *E. coli* O157:H7 infection and resulting death.

9. The defendant UniPro Foodservice, Inc., (hereinafter “UniPro”) is a foreign corporation organized and existing under the laws of the state of Delaware. This defendant is, therefore, a foreign corporation and not a resident of the State of Minnesota. Further, this defendant is authorized to do and does conduct business in the State of Minnesota. UniPro

was a distributor of food products, including the ground beef that may have caused Robert Danell's *E. coli* O157:H7 infection and resulting death.

10. The defendant Rochester Meat Company, (hereinafter "Rochester") is a foreign corporation organized and existing under the laws of the state of Illinois. This defendant is, therefore, a foreign corporation and not a resident of the State of Minnesota. Further, this defendant is authorized to do and does conduct business in the State of Minnesota. Rochester was a manufacturer of food products, including the ground beef that may have caused Robert Danell's *E. coli* O157:H7 infection and resulting death.

11. The defendant Branding Iron Holdings, Inc., (hereinafter "Branding Iron") is a foreign corporation organized and existing under the laws of the state of Illinois. This defendant is, therefore, a foreign corporation and not a resident of the State of Minnesota. Further, this defendant is authorized to do and does conduct business in the State of Minnesota. Branding Iron was a manufacturer of food products, including the ground beef that may have caused Robert Danell's *E. coli* O157:H7 infection and resulting death.

12. The defendants John Doe Manufacturers and Distributors (hereinafter "John Does") are Minnesota and foreign entities that, at all times relevant to this complaint, were manufacturers and distributors of food products, including ground beef or a component of the ground beef that may have caused Robert Danell's *E. coli* O157:H7 infection and resulting death.

II. JURISDICTION AND VENUE

13. This Court has jurisdiction over JBS, BPI, Tyson, IBP, UniPro, Rochester, Branding Iron, and John Does pursuant to Minn. Stat. § 543.19 in that these defendants transacted business within the State of Minnesota.

14. This Court has jurisdiction over Upper Lakes, J&B, Cub Foods, and John Does as resident domestic corporations that are registered to do business, and in fact do transact business, in the State of Minnesota.

15. As a result of complications associated with *E. coli* O157:H7 infection, on January 19, 2010, Robert Danell died at St. Cloud Hospital in Stearns County, Minnesota. Pursuant to Minn. Stat. § 542.09, venue is proper in Stearns County because it is the county where at least some part of plaintiff's cause of action occurred.

III. GENERAL ALLEGATIONS

16. On December 2, 2009, the Minnesota Department of Health (MDH) Public Health Laboratory (PHL) identified an *Escherichia coli* O157:H7 isolate with the two-enzyme pulsed-field gel electrophoresis (PFGE) pattern designation MN23ECB20.

17. MDH requested that the Centers for Disease Control and Prevention (CDC) PulseNet team check for isolates in other states that were indistinguishable by PFGE testing.

18. The following day, PulseNet identified 13 matching isolates in 11 states, including California, Colorado, Florida, Iowa, Michigan, Minnesota, Nevada, Oklahoma, South Dakota, Tennessee, and Utah.

19. On December 8, 2009, CDC initiated a multi-state investigation. By December 10, 2009, 7 of 8 cases interviewed reported eating ground beef. Information on the consumption of steak was available for 7 cases as well. Five cases in different states had reported eating steaks at family-style restaurants.

20. Ultimately, 25 people in 17 states tested positive for the same strain of *E. coli* O157:H7—Minnesota pattern designation MN23ECB20—including 5 cases in Minnesota. One of the 5 cases from Minnesota was a “secondary case,” meaning that the person was

infected after having contact, person-to-person, with a “primary case,” or somebody who had consumed, and become infected by, the contaminated beef. All 4 primary cases in Minnesota had a history of ground beef consumption in the 7 days before their date of illness onset.

21. Minnesota Department of Agriculture (MDA), working in conjunction with City of Saint Cloud environmental health staff, collected invoices for ground beef and steak consumed by the Minnesota cases, including plaintiff. MDA, working in conjunction with the United States Department of Agriculture Food Safety and Inspection Service (USDA FSIS), conducted traceback investigations to determine the source of the *E. coli* O157:H7-tainted ground beef and steak and to identify common sources of ground beef consumed by the Minnesota cases and cases in other states.

22. Traceback investigation of the steaks eaten by outbreak cases at a national family-style restaurant chain concluded that the steaks were mechanically-tenderized—a process by which blades or needles are inserted into cuts of meat to make them more tender. These mechanically-tenderized steaks were supplied by a single processor called National Steak and Poultry (NSP) in Oklahoma. NSP thereafter issued a voluntary recall of 248,000 pounds of beef products. The traceback concluded that NSP had received the beef products that it used in processing the mechanically-tenderized steaks implicated in the above-described outbreak from defendant JBS’s slaughterhouse in Greeley, Colorado.

23. Traceback investigation of ground beef consumed by the 4 primary Minnesota cases ultimately concluded that they had consumed ground beef made from cuts of beef produced by defendant JBS as well.

24. Defendant JBS sold and delivered beef trim to defendant BPI. Defendant BPI manufactures a product that it describes as lean, finely-textured beef (“LFTB”), which contains artificially increased levels of ammonium hydroxide—a manufacturing process that defendant BPI claims reduces the likelihood that any *E. coli* O157:H7, or other pathogen contamination, will remain viable after processing. Defendant BPI used the beef trim from defendant JBS in the production of LFTB that it sold to defendant Tyson, a portion of which was consumed by Robert Danell on December 30, 2009.

25. Defendant Tyson manufactured the ground beef that Robert Danell consumed on December 30, 2009, at its establishment in Holcomb, Kansas (Establishment # 278). Defendant Tyson manufactured the ground beef by combining LFTB that it had received from defendant BPI with other ground beef components.

26. Defendant J&B received ground beef from defendant Tyson on or about November 6, 2009, in a shipment that contained approximately 500 cases of ground beef.

27. Defendant Upper Lakes received the ground beef from defendant J&B on or about November 23, 2009, and delivered it to Catholic Charities of the Diocese of St. Cloud. Mr. Danell attended a day program called Wacosa, which is part of the Diocese of St. Cloud, where he took some of his meals. Mr. Danell consumed Swedish meatballs on December 30, 2009 made from the ground beef that defendant Upper Lakes had provided to the Diocese of St. Cloud.

28. Mr. Danell also consumed ground beef in a lasagna meal that he ate on December 31, 2009 at the Opportunity Manor Group Home, where he lived. The staff at Opportunity Manor had prepared the lasagna using ground beef purchased from defendant Cub Foods. Defendant IBP’s establishment in Geneseo, Illinois (Establishment # 245J) was

one of the manufacturers and suppliers of components of the ground beef manufactured by defendant Cub Foods. It is not yet known who supplied IBP with the beef that Cub used in the production of this ground beef, or whether the ground beef contained components from other manufacturers and suppliers, including the entities named as defendants in this case.

29. Mr. Danell also consumed a hamburger on December 28, 2009, while in attendance at Wacosa. This hamburger was made from preformed ground beef patties manufactured by defendants Rochester and Branding Iron, who then delivered the ground beef patties to defendant UniPro. UniPro, in turn, delivered the ground beef patties to defendant Upper Lakes, who sold them to Catholic Charities. It is not yet known who supplied defendants Rochester and Branding Iron with the beef that they used in the production of these ground beef patties.

30. In January 2010, Robert Danell was a 62-year-old man with Down Syndrome. He lived at Opportunity Manor Group Home in Sauk Rapids, Minnesota.

31. Mr. Danell is survived by a brother William Danell, the plaintiff, who lives in St. Cloud, Minnesota.

32. Following his consumption of contaminated ground beef, the onset of symptoms related to Mr. Danell's *E. coli* O157:H7 infection occurred on or about January 4, 2010.

33. Mr. Danell's gastrointestinal symptoms worsened. Soon he was so ill that staff from Opportunity Manor Group Home took him to a physician's office for treatment. Thereafter, the symptoms persisted, and Mr. Danell was ultimately hospitalized at St. Cloud Hospital.

34. At St. Cloud Hospital, Mr. Danell underwent a variety of treatment and diagnostic procedures. Ultimately, a stool sample tested positive for *E. coli* O157:H7. Further testing by the MDH PHL showed that the strain of *E. coli* O157:H7 that had infected Mr. Danell was an indistinguishable match to the strain of *E. coli* O157:H7 involved in the above-described outbreak.

35. Mr. Danell died on January 19, 2010. The immediate cause of death was ischemic injury to his colon caused by *E. coli* O157:H7 infection.

IV. CAUSES OF ACTION

Strict Liability – Count I

36. The defendants and each of them were at all times relevant hereto the manufacturer, distributor and/or seller of the adulterated food product that is the subject of the action.

37. The adulterated food product that the defendants manufactured, distributed, and/or sold was, at the time it left the defendants' control, defective and unreasonably dangerous for its ordinary and expected use because it contained *E. coli* O157:H7, a deadly pathogen.

38. The adulterated food product that the defendants manufactured, distributed, and/or sold was delivered to Robert Danell without any change in its defective condition. The adulterated food product that the defendants manufactured, distributed, and/or sold was used in the manner expected and intended, and was consumed by Robert Danell.

39. The defendants and each of them owed a duty of care to Robert Danell to design, manufacture, and/or sell food that was not adulterated, that was fit for human consumption, that was reasonably safe, and that was free from pathogenic bacteria or other

substances injurious to human health. Each defendant breached this duty.

40. The defendants and each of them owed a duty of care to the plaintiff to design, prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer. Each defendant breached this duty.

41. As a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the defendants manufactured, distributed, and/or sold, Robert Danell suffered injury and damages, and died on January 19, 2009. The plaintiff has also sustained injury and damages in an amount to be determined at trial, and the next-of-kin of Robert Danell have incurred expenses for his last illness and funeral expenses and have sustained pecuniary and non-pecuniary losses within the meaning of Minn. Stat. § 573.02 and were otherwise damaged.

Breach of Warranty—Count II

42. The defendants and each of them are liable to the plaintiff for breaching express and implied warranties that they made regarding the adulterated product that Robert Danell consumed. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, each defendant expressly warranted, through its sale of food to the public and by the statements and conduct of its employees and agents, that the food it prepared and sold was fit for human consumption and not otherwise adulterated or injurious to health.

43. Plaintiff alleges that the *E. coli*-contaminated food ultimately caused Robert Danell's *E. coli* O157:H7 infection and resulting death, would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

44. Plaintiff alleges that the *E. coli*-contaminated food ultimately caused Robert

Danell's *E. coli* O157:H7 infection and resulting death, was not fit for the uses and purposes intended, *i.e.* human consumption, and that this product was therefore in breach of the implied warranty of fitness for its intended use.

45. As a direct and proximate cause of each of the defendants' breach of warranties, as set forth above, Robert Danell suffered injury and damages, and died on January 19, 2009. The plaintiff has also sustained injury and damages in an amount to be determined at trial, and the next-of-kin of Robert Danell have incurred expenses for his last illness and funeral expenses and have sustained pecuniary and non-pecuniary losses within the meaning of Minn. Stat. § 573.02 and were otherwise damaged.

Negligence—Count III

46. The defendants and each of them owed to Robert Danell a duty to use reasonable care in the manufacture, distribution, and sale of their food product, the observance of which duty would have prevented or eliminated the risk that the defendants' food products would become contaminated with *E. coli* O157:H7 or any other dangerous pathogen. Each defendant breached this duty.

47. The defendants and each of them had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so, and was therefore negligent. Robert Danell was among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

48. The defendants and each of them had a duty to properly supervise, train, and monitor their respective employees, and to ensure their compliance with all applicable

statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but each defendant failed to do so, and each was, therefore, negligent.

49. The defendants and each of them had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable federal, state, and local laws, ordinances and regulations, and that were clean, free from adulteration, and safe for human consumption, but each defendants failed to do so, and each was, therefore, negligent.

50. As a direct and proximate result of the defendants' acts of negligence Robert Danell suffered injury and damages, and died on January 19, 2009. The plaintiff has also sustained injury and damages in an amount to be determined at trial, and the next-of-kin of Robert Danell have incurred expenses for his last illness and funeral expenses and have sustained pecuniary and non-pecuniary losses within the meaning of Minn. Stat. § 573.02 and were otherwise damaged.

Negligence Per Se—Count IV

51. The defendants and each of them had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*), and the Minnesota Food Law (Minn. Stat. § 31.01 *et seq.*)

52. The defendants and each of them failed to comply with the provisions of the health and safety acts identified above, and, as a result, each was negligent *per se* in its manufacture, distribution, and sale of food adulterated with *E. coli* O157:H7, a deadly

pathogen.

53. As a direct and proximate result of conduct by each of the defendants that was negligent *per se* Robert Danell suffered injury and damages, and died on January 19, 2009. The Plaintiff has also sustained injury and damages in an amount to be determined at trial, and the next-of-kin of Robert Danell have incurred expenses for his last illness and funeral expenses and have sustained pecuniary and non-pecuniary losses within the meaning of Minn. Stat. § 573.02 and were otherwise damaged.

V. DAMAGES

54. Plaintiff and the next-of-kin of Robert Danell have suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of each of the defendants, in an amount that shall be fully proven at the time of trial. These damages include, but are not limited to: the pecuniary and non-pecuniary losses suffered by the next-of-kin due to Robert Danell's death; medical and medical related expenses, travel and travel-related expenses, pharmaceutical expenses, the loss of advice, comfort, assistance, companionship, counsel, guidance and protection; and all other ordinary, incidental, or consequential damages that would or could be reasonably anticipated to arise under the circumstances.

PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL

WHEREFORE, the plaintiff prays for judgment against each defendant, jointly and severally, as follows:

A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the plaintiff as a result of the defendants' conduct;

B. Ordering statutory prejudgment interest;

C. Awarding Plaintiff his reasonable attorneys fees and costs, to the fullest extent allowed by law; and

D. Granting all such further relief as this Court deems just and equitable.

E. Plaintiff demands that the above Complaint and all issues herein be tried by jury.

DATED: January _____, 2013.

JARDINE, LOGAN & O'BRIEN, P.L.L.P.

By: _____
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ACKNOWLEDGMENT

The undersigned hereby acknowledges in accordance with Minn. Stat. §549.211 that costs, disbursements and reasonable attorney and witness fees may be awarded to an opposing party or parties pursuant to Minn. Stat. §549.211.

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