

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

DEBRA THOMPSON
Plaintiff(s)

CASE NO.:

HON:

v.

CAMPBELL SOUP COMPANY, a New Jersey
Corporation, and THE KROGER COMPANY,
an Ohio Corporation,
Defendant(s)

CRAIG S. ROMANZI, PC
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PLAINTIFF'S COMPLAINT

Plaintiff DEBRA THOMPSON, through her attorneys, Craig S. Romanzi, PC,
hereby states the following for her Complaint against Defendants:

The Parties, Jurisdiction and Venue

1. Plaintiff Debra Thompson is a resident of Oakland County, Michigan.
2. Upon information and belief, Defendant Campbell Soup Company [hereinafter "CSC"] is a New Jersey corporation having its principal offices located at 1

Campbell Place, Camden, New Jersey 08103-1799. CSC may be served with process via its registered agent, The Corporation Trust Company, located at 820 Bear Tavern Road, West Trenton, NJ 08628.

3. Upon information and belief, Defendant The Kroger Co. [hereinafter “Kroger”], is an Ohio corporation having its principal offices located at 1014 Vine Street Cincinnati, OH 45202. Kroger may be serviced with process via its registered agent, Corporation Service Company, 50 West Broad Street, Suite 1330, Columbus, OH 43215.
4. This case arises out of the manufacture, processing, packaging, distribution and sale of a can of Campbell’s Chunky Creamy Chicken & Dumplings soup which was contaminated with the clostridium botulinum bacteria. After Debra Thompson purchased the botulism contaminated soup, the can and its contents, exploded in her face and eyes with great force and violence, causing the severe injuries and permanent physical impairments described below.
5. Debra Thompson bought the contaminated can of soup from the Kroger store located at 2905 Union Lake Rd, Commerce Twp., MI on or about March 23, 2017.
6. Debra Thompson was injured in her home when the can exploded in her face as she tried to open it on March 26, 2017.

7. This Court has subject matter jurisdiction over this dispute pursuant to 28 USC 1332(a)(1) because the amount in controversy exceeds \$75,000.00 and the Plaintiff and both Defendants are from different states.
8. Venue is proper before this Court pursuant to 28 USC 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred within this judicial district.

Factual Background

9. On January 13, 2013, well before the events giving rise to this Complaint, Plaintiff Debra Thompson was involved in a car accident wherein she suffered injury to her neck, back, shoulders, wrists and legs.
10. As a result of the car accident, she suffered various injuries which left her in a state more susceptible to injury, including the following:
 - a. Cervical disc herniation requiring surgical fusion of the bones in her neck;
 - b. Failed surgical fusion due to problems with the placement of the cage required to stabilize her neck and resulting a second surgery on her neck;
 - c. Significant post-surgical spasm on the left, involving both the left hand and foot;
 - d. Torn right rotator cuff requiring surgery;
 - e. Permanent contracture of the left wrist, hand and fingers;
 - f. Significant limitation of motion in right shoulder;
 - g. Left drop foot;
 - h. Neurogenic bladder; and

- i. Impaired gait.
11. Leading up to March 23, 2017, now four (4) years after the car accident, Plaintiff Debra Thomson was in various stages of recovery and recuperation from her accident related injuries. She had regained the use of her left hand and her drop foot had resolved. Her pain was under control and her life was steadily improving.
12. On March 23, 2017, Plaintiff Debra Thompson was a customer and business invitee of Defendant Kroger at its store located at 2905 Union Lake Rd, Commerce Twp., MI.
13. Defendant Kroger is in the business of selling food items and canned goods to customers and is believed to be the largest grocery store chain in the United States.
14. Prior to leaving Defendant Kroger's store, Plaintiff Thompson purchased a can of Campbell's Chunky Creamy Chicken & Dumplings soup. [Exhibit A – Copy of Receipt].
15. When Plaintiff returned home, she began to open the can of soup she had just purchased in order to consume its tasty contents.
16. As she began to open the can in her usual manner, the can violently exploded in her face, propelling its contents into her face, mouth and eyes, and causing her to suddenly and violently jerk her head and neck backwards in a combination of shock and fear.

17. As a result of this explosion, and the violent jerking motions it caused Plaintiff to make, Plaintiff Debra Thompson has suffered both new and different injuries from those suffered in the January 13, 2013 car accident, and also has suffered severe aggravation of pre-existing injuries described above.

CAUSES OF ACTION

COUNT I NEGLIGENCE / PRODUCT LIABILITY AGAINST DEFENDANT CAMPBELL SOUP COMPANY

18. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.
19. At all relevant times, Defendant CSC owed a duty to Plaintiff and the public in general to exercise reasonable care in the manufacture and production of its low-acid canned foods, including Campbell's Chunky Creamy Chicken & Dumplings soup.
20. This duty required Defendant CSC to:
- a. Properly manufacture its soups;
 - b. Properly heat its soups prior to canning;
 - c. Properly can its soups;
 - d. Properly inspect its cans of soup for swelling, bulging or other signs which may indicate the presence of *Clostridium botulinum* bacteria and/or botulism in its products before releasing its product into the stream of commerce for consumption by the members of the public;

- e. Maintain compliance with all mandatory safety requirements for thermally processed low-acid canned food (LACF) products under the Federal Food, Drug, and Cosmetic Act;
 - f. Adhere to mandatory safety requirements can result in under-processed foods, which can allow the survival and growth of *Clostridium botulinum* (*C. botulinum*), a bacterium that causes botulism;
 - g. Maintain required documentation of processes and equipment necessary to insure that Defendant's manufacturing, inspection and quality control processes are sufficient to kill any *Clostridium botulinum* bacterium which may be present in the soups prior to releasing its product into the stream of commerce for consumption by the members of the public.
21. Defendant CSC breached these duties by failing to:
- a. Properly manufacture its soups;
 - b. Properly heat its soups prior to canning;
 - c. Properly can its soups;
 - d. Properly inspect its cans of soup for swelling, bulging or other signs which may indicate the presence of *Clostridium botulinum* bacteria and/or botulism in its products before releasing its product into the stream of commerce for consumption by the members of the public;

- e. Maintain compliance with all mandatory safety requirements for thermally processed low-acid canned food (LACF) products under the Federal Food, Drug, and Cosmetic Act;
 - f. Adhere to mandatory safety requirements can result in under-processed foods, which can allow the survival and growth of *Clostridium botulinum* (*C. botulinum*), a bacterium that causes botulism;
 - g. Maintain required documentation of processes and equipment necessary to insure that Defendant's manufacturing, inspection and quality control processes are sufficient to kill any *Clostridium botulinum* bacterium which may be present in the soups prior to releasing its product into the stream of commerce for consumption by the members of the public.
 - h. Other acts of negligence and/or gross negligence which may become known during the course of discovery.
22. The Campbell's Chunky Creamy Chicken & Dumplings soup purchased and consumed by Plaintiff on March 23, 2017 was contaminated with the *Clostridium botulinum* bacterium and/or botulism and was causing a build-up of pressure in the can as the bacteria multiplied.
23. The Campbell's Chunky Creamy Chicken & Dumplings soup purchased and consumed by Plaintiff on March 23, 2017 was not reasonably safe for human consumption at the time that it left Defendant CSC's control.

24. The breach of these duties proximately caused Plaintiff to suffer severe and permanent new injuries, as well as a substantial aggravation of prior conditions, including but not limited to:
- a. Injury to her cervical spine which has caused pain and burning into her hands;
 - b. Injury to the nerves exiting her spinal column which has caused severe pain and weakness in her leg requiring the use of a leg brace;
 - c. Instability in her cervical spine;
 - d. Aggravation of drop foot and upper extremity limitations;
 - e. Other such injures, harms and losses which are related to this incident by her treating physicians.
25. As a direct result of Defendant CSC's negligence and/or gross negligence, Plaintiff will continue to suffer from these injuries into the future.
26. As a direct result of Defendant CSC's negligence and/or gross negligence, Plaintiff has incurred and continues to incur medical expenses and/or incur medical expenses were are paid, in whole or in part, by Medicare.

WHEREFORE, Plaintiff requests entry of a Judgment against Defendant CSC in a fair and just amount given the nature of her harms and losses which will fairly and adequately compensate her, together with costs, interest and attorney fees.

COUNT II
BREACH OF IMPLIED WARRANTY AGAINST
DEFENDANT CAMPBELL SOUP COMPANY

27. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.
28. By releasing its processed, canned food into the stream of commerce, Defendant CSC warranted to the general public, and to Plaintiff in particular, that its soups were reasonable fit for human consumption and packaged so members of the public, and Plaintiff, could remove the canned food from Campbell's Chunky Creamy Chicken & Dumplings soup from its container without the unreasonable risk of it exploding in her face.
29. The Campbell's Chunky Creamy Chicken & Dumplings soup purchased by Plaintiff was not fit for human consumption at the time it left Defendant CSC's control and was in a dangerous, over pressurized condition making the can dangerous to unsuspecting consumers like Plaintiff.
30. As a proximate result of Defendant CSC's breach of implied warranty, Plaintiff Debra Thompson was seriously and permanently injured as described above.

WHEREFORE, Plaintiff requests entry of a Judgment against Defendant CSC in a fair and just amount given the nature of her harms and losses which will fairly and adequately compensate her, together with costs, interest and attorney fees.

COUNT III
NEGLIGENCE / PRODUCT LIABILITY AGAINST
DEFENDANT KROGER COMPANY

31. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.
32. At all relevant times, Defendant Kroger owed a duty to the general public, and Plaintiff in particular, to exercise reasonable care in the sale of its products, which included, but is not limited to:
 - a. Inspecting products for damage, alteration, adulteration or other signs which would provide notice to a reasonable seller that the product represented an unreasonable risk of harm; and
 - b. Inspecting its products while on display and at the point of sale for damage, alteration, adulteration or other signs which would provide notice to a reasonable seller that the product represented an unreasonable risk of harm.
33. At the time Plaintiff purchased the produce from Defendant Kroger, the product was unfit for human consumption and posed an unreasonable risk of harm to members of the general public, including Plaintiff.
34. At the time the product came into Defendant Kroger's possession up to and including the point of sale, the product exhibited conditions which reasonable should have alerted Defendant Kroger that the product was unfit for human consumption and posed an unreasonable risk of harm to members of the general public, including Plaintiff.
35. As a proximate result of Defendant Kroger's negligence, Plaintiff Debra Thompson was seriously and permanently injured as described above.

WHEREFORE, Plaintiff requests entry of a Judgment against Defendant Kroger in a fair and just amount given the nature of her harms and losses which will fairly and adequately compensate her, together with costs, interest and attorney fees.

**COUNT IV
BREACH OF IMPLIED WARRANTY AGAINST
DEFENDANT KROGER COMPANY**

36. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.
37. By releasing its processed, canned food into the stream of commerce, Defendant Kroger warranted to the general public, and to Plaintiff in particular, that its soups were reasonable fit for human consumption and packaged so members of the public, and Plaintiff, could remove the canned food from Campbell's Chunky Creamy Chicken & Dumplings soup from its container without the unreasonable risk of it exploding in her face.
38. The Campbell's Chunky Creamy Chicken & Dumplings soup purchased by Plaintiff was not fit for human consumption at the time it left Defendant CSC's control and was in a dangerous, over pressurized condition making the can dangerous to unsuspecting consumers like Plaintiff.
39. As a proximate result of Defendant Kroger's breach of implied warranty, Plaintiff Debra Thompson was seriously and permanently injured as described above.

WHEREFORE, Plaintiff requests entry of a Judgment against Defendant Kroger in a fair and just amount given the nature of her harms and losses which will fairly and adequately compensate her, together with costs, interest and attorney fees.

Respectfully submitted,

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/s/ Craig S. Romanzi

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Dated: March 23, 2019