

USTED ESTA ORDENADO COMPARECER EN Arbitration Hearing 1880 JFK Blvd. 5th fl. at 09:15 AM - 10/03/2018
You must still comply with the notice below. USTED TODAVIA DEBE CUJPLIR CON EL AVISO PARA DEFENDERSE.
This matter will be heard by a Board of Arbitrators at the time, date and place specified but, if one or more parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a final appeal from a decision entered by a Judge.

SOLOMON, SHERMAN & GABAY

DAVID B. SHERMAN

Identification No. 36437

RYAN D. BRISKIN

Identification No. 205432

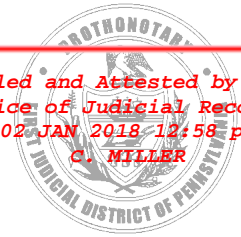
8 Penn Center

1628 J.F.K. Boulevard, Suite 2200

Philadelphia, PA 19103

(215) 665-1100

*Filed and Attested by the
Office of Judicial Records
02 JAN 2018 12:58 pm
C. MILLER*



Attorneys for Plaintiff

EVELYN GEBHARD	:	COURT OF COMMON PLEAS
513 Kline Avenue	:	PHILADELPHIA COUNTY
Pottstown, PA 19465	:	
	:	JANUARY TERM, 2018
	:	
vs.	:	
	:	
ALDI, INC.	:	NO.:
1200 North Kirk Road	:	
Batavia, IL 60510	:	
And	:	
WEETABIX COMPANY, INC.	:	
300 Nickerson Rd	:	
Marlborough, MA 01752	:	

NOTICE TO DEFEND

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with this court your defenses objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER
TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE A LAWYER
OR CANNOT AFFORD ONE, GO TO
OR TELEPHONE THE OFFICE SET
FORTH BELOW TO FIND OUT
WHERE YOU CAN GET
LEGALHELP.
PHILADELPHIA BAR ASSOCIATION
LAWYER REFERENCE SERVICE
ONE READING CENTER
PHILADELPHIA, PA 19107
(215) 238-1701**

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede dedidir a favor del demandante y require que usted cumpia con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

**LLEVE ESTA DEMANDA A UN
ABOGADO INMEDIATAMENTE. SI
NO TIENE ABOGADO O SI NO TIENE
EL DINERO SUFICIENTE DE PAGAR
TAL SERVICIO. VAYA EN PERSONA
O LLAME POR TELEFONO A LA
OFICINA CUYA DIRECCION SE
ENCUENTRA ESCRITA ABAJO
PARA AVERIGUAR DONDE SE
PUEDE CONSEGUIR ASISTENCIA
LEGAL.
ASOCIACION DE LICENCIADOS DE
FILADELFIA
Servicio De Referencia E Informacion
Legal
One Reading Center
Filadelfia, PA 19107
Telefono: (215) 238-1701**

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Attorneys for Plaintiff

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And	:	
WEETABIX COMPANY, INC.	:	
300 Nickerson Rd	:	
Marlborough, MA 01752	:	

COMPLAINT – CIVIL ACTION
20 – Other Personal Injury

1. Plaintiff, Evelyn Gebhard, is an adult individual residing at the above stated address.

2. Defendant, Aldi, Inc., is a corporation and/or similar business entity authorized to do business in the Commonwealth of Pennsylvania with offices located at the above-stated address and at all times pertinent hereto owned, controlled, maintained and possessed and were responsible for the condition of the food items at their supermarkets, including the supermarket where Plaintiff purchased a dangerous and defective food product.

3. Defendant, Weetabix Company, Inc., is a corporation and/or similar

business entity authorized to do business in the Commonwealth of Pennsylvania with offices located at the above-stated address, and at all times pertinent hereto was the manufacturer, producer, distributor and supplier of Millville MultiGrain Crispy Oats cereal intended for sale and distribution in the Commonwealth of Pennsylvania at Defendant Aldi, Inc. supermarkets and/or were the successor corporations or corporation and/or successors to the obligations of said manufacturer.

4. The particular involved product was Millville MultiGrain Crispy Oats cereal.

5. Said product was produced, distributed and/or sold by Defendant retailer, Aldi, Inc., where it was sold for the purpose for which said product was intended.

6. At all times pertinent hereto, the Defendants produced, owned, controlled, operated, maintained, sold and distributed the food item product, Millville MultiGrain Crispy Oats cereal.

7. The product, as purchased from Defendants was unchanged in condition from when it left the possession of Defendant manufacturer.

8. The sales of the product manufactured by Defendant Weetabix Company, Inc., in the Commonwealth of Pennsylvania, in terms of volume and dollar amount, are more than sufficient to make Defendant Weetabix Company, Inc., subject to all applicable statutes and regulations of the Commonwealth of Pennsylvania regarding manufacturing, assembly, performance and safety standards required of product and other similar product for sale in Pennsylvania.

9. The product was purchased from Defendant retailer, Aldi, Inc. on or about February 27, 2016.

10. Plaintiff, Evelyn Gebhard, purchased Millville MultiGrain Crispy Oats cereal at Defendants' store, located at 297 Armand Hammer Boulevard in the City of Pottstown, Commonwealth of Pennsylvania on February 27, 2016.

11. On March 5, 2016, Plaintiff, Evelyn Gebhard had just opened the box of cereal, poured it in a bowl and added milk.

12. While sitting at her table, she took one spoon full and then a second spoon full. On the third spoon full she discovered she had ingested a foreign object, an unpackaged condom that came from the Millville MultiGrain Crispy Oats cereal and she immediately became violently sick.

13. As a result of the aforesaid incident, Plaintiff, Evelyn Gebhard, was caused to sustain severe personal injuries set forth more particularly hereinafter.

COUNT I: Negligence
PLAINTIFF, EVELYN GEBHARD v. DEFENDANT, WEETABIX
COMPANY, INC.

14. Plaintiff, Evelyn Gebhard, hereby incorporates by reference paragraphs 1 through 13 as though the same was fully set forth at length herein.

15. Defendant, Weetabix Company, Inc., placed the aforesaid product into the stream of commerce where it was eventually purchased by Defendant, Aldi, Inc., and purchased by Plaintiff, Evelyn Gebhard.

16. At all times relevant hereto, Defendant, Weetabix Company, Inc., was the manufacturer and supplier of the aforesaid product intended for use by individuals, such as Plaintiff.

17. At all times pertinent hereto, Plaintiff purchased the Millville MultiGrain Crispy Oats cereal product/food from Defendants.

18. The product presented an unreasonable risk of causing physical harm to a user of said product.

19. Said product was used by Plaintiff, whom Defendant Weetabix Company, Inc. should have expected to use said product.

20. Plaintiff was an individual of a nature Defendant Weetabix Company, Inc. should have expected to be endangered by the instant use of said product.

21. The product was used in the manner for which the product was manufactured, distributed and supplied.

22. Defendant, Weetabix Company, Inc., knew or had reason to know that the product was likely to be dangerous for the use for which it was supplied and sold.

23. Defendant, Weetabix Company, Inc., had no reason to believe that Plaintiff would realize the dangerous condition.

24. An injury such as the instant one, at the time and place aforesaid, is a foreseeable event which had been contemplated, or should have been contemplated, by Defendant Weetabix Company, Inc. in their design, manufacturing and packaging of the product.

25. The injuries suffered by Plaintiff were caused by the negligence, recklessness and carelessness of Defendant Weetabix Company, Inc. in the manufacturing, packaging distribution and sale of said product, which consisted of the following:

- (a) failure to properly inspect the product in the packaging so as to insure its safety;
- (b) defective packaging of said product;

(c) negligent sale of said product to retailers and individuals that Defendant Weetabix Company, Inc. knew or should have known would be unable to safely sell said product;

(d) failure to adequately warn and inform Plaintiff and other such individuals of danger of the product and of said danger caused by the defective design, packaging, manufacturing and sale of the product;

(g) failure to follow relevant safety guidelines for products such as the product herein;

(h) failure to use existing and available methods to protect against injuries such as that sustained by Plaintiff;

(i) failure to adequately research and/or develop new methods which would have protected against injuries such as that sustained by Plaintiff;

(j) failure to use due care and acting without due regard for the rights, safety and position of Plaintiff and being otherwise guilty of negligence, recklessness and carelessness, and willful conduct as may be found in the discovery process;

(k) Failing to inspect the food product;

(l) Selling the food product when it was in a defective condition;

(m) Selling a food product that was infested;

(n) Failing to put in place precautionary systems to ensure the safety of the food product;

(o) Allowing the food product to become dangerous and defective;

(p) Failing in their procedures;

(q) Failing to have proper safeguards to ensure the food product was in safe

condition;

- (r) Failing to store and distribute the food product in a safe manner;
- (s) Failing to package the food product in a safe manner;
- (t) Failing to employ properly trained employees;
- (u) Failing to possess proper equipment;
- (v) Failing to have proper methods;
- (w) Being negligent per se;
- (x) Failing to follow regulations, protocols and procedures;
- (y) Violating various provisions of the Restatement of Torts 2nd including Section 402(a) and other relevant sections; and
- (z) Being otherwise negligent act fact and at law.

26. Defendants were negligent in violating various provisions of the Restatement of Torts 2nd including Section 402(a) and other relevant sections;

27. Defendants were negligent in violating various provisions for strict liability and are liable to the Plaintiffs under those theories;

28. Defendants were negligent in violating provisions of the Uniform Commercial Code, as well as implied and expressed covenants and warranties;

29. Defendants set forth in the stream of common area, the product/food identified above.

30. The product/food was used for its intended purpose.

31. All of the acts and omissions of the Defendants were committed by the Defendants and/or thought their servants, agents, workmen and employees.

32. As a result of the Defendants' aforesaid negligence, the Plaintiff became severely sick, experienced nausea and vomiting and other symptoms known and

unknown incidental to ingestion of the defective food product and mental anguish all of which has caused and may further cause in the future great pain and suffering and agony and a deprivation of her normal mode of living and the enjoyment of life.

33. As a further result of the aforesaid incident, Plaintiff has been unable in the past and is likely to be unable in the future to attend to her usual duties and activities and life's pleasures.

34. By reason of the negligence of Defendants acting as aforesaid, the Plaintiff has been and may in the future be required to expend various sums of money for medical services and treatment of the injuries as aforesaid to her great financial detriment and loss.

35. By reason of the negligence of the Defendants acting as aforesaid, the Plaintiff has incurred and may continue to incur other expenses or financial losses which do or may exceed amounts Plaintiff may otherwise be entitled to recover, thereby entitling Plaintiff to additional benefits.

WHEREFORE, Plaintiff demands judgment against Defendants individually, jointly and severally, in an amount not in excess of \$50,000 plus costs, interest and attorney's fees.

COUNT II: Breach of Warranty
PLAINTIFF, EVELYN GEBHARD v. DEFENDANT, WEETABIX
COMPANY, INC.

36. Plaintiff, Evelyn Gebhard, hereby incorporates by reference paragraphs 1 through 35 as though the same was fully set forth at length herein.

37. Defendant, Weetabix Company, Inc., expressly and impliedly warranted that the product was merchantable and fit for the purpose for which it was designed.

38. The product was not, in fact, merchantable, nor fit for use for its intended purpose, but rather, was unsafe and unmarketable as set forth previously in this Complaint.

39. The warranties given by Defendant Weetabix Company, Inc. ran to the benefit of Plaintiff.

40. Reliance was made on Defendant Weetabix Company, Inc.'s skills and judgments that the product was fit for its intended use and Plaintiff was seriously and permanently injured as a result.

41. The product was not, in fact, merchantable, nor fit for use for its intended purposes, but rather was unsafe and unmarketable, as set forth previously in this Complaint.

42. The injuries suffered by Plaintiff were as a result of the breach of warranty of fitness and merchantability.

WHEREFORE, Plaintiff demands judgment against Defendants individually, jointly and severally, in an amount not in excess of \$50,000 plus costs, interest and attorney's fees.

COUNT III: Strict Liability-Restatement of Torts 402A and 402B
PLAINTIFF, EVELYN GEBHARD v. DEFENDANT, WEETABIX
COMPANY, INC.

43. Plaintiff, Evelyn Gebhard, hereby incorporates by reference paragraphs 1 through 42 as though the same was fully set forth at length herein.

44. Defendant Weetabix Company, Inc. sold the aforementioned product in a defective condition unreasonably dangerous to consumers and users of the product.

45. Defendant Weetabix Company, Inc. knew or should have known that the

produce would be used by individuals such as Plaintiff.

46. Defendant Weetabix Company, Inc. knew that members of the public would rely upon the product to be safe.

47. Defendant Weetabix Company, Inc. knew or should have known that an accident of the type that involving Plaintiff could result from the defect.

48. The product manufactured, distributed and sold by Defendant Weetabix Company, Inc. was defective and was unreasonably dangerous to the public.

49. The said defect existed in the product before it left Defendant Weetabix Company, Inc.'s factory.

50. The product manufactured, packaged and distributed by Defendant Weetabix Company, Inc. caused harm to Plaintiff.

51. Defendant Weetabix Company, Inc. because of its position as a manufacturer, owed a strict duty to Plaintiff not to harm her through the use of Defendant Weetabix Company, Inc.'s product.

51. Manufacturers are strictly liable to Plaintiff for its failure to manufacture, distribute and place in the stream of commerce, a product that would not cause harm to the Plaintiff.

52. Defendant Weetabix Company, Inc. misrepresented to the public, including Plaintiff, the quality of said product, claiming the involved product was safe for the involved use.

53. Plaintiff relied upon the misrepresentations of Defendant Weetabix Company, Inc. and suffered the above-referenced injuries as a result.

54. Defendant Weetabix Company, Inc. is liable to Plaintiff because of Defendant's strict liability in tort.

55. Defendant Weetabix Company, Inc. manufactured, packaged and distributed and placed into the stream of commerce a defective product and as such, is liable under 402A of the Restatement of Torts 2d, strict liability.

WHEREFORE, Plaintiff demands judgment against Defendants individually, jointly and severally, in an amount not in excess of \$50,000 plus costs, interest and attorney's fees.

COUNT IV: Negligence
PLAINTIFF, EVELYN GEBHARD v. DEFENDANT, ALDI, INC.

56. Plaintiff, Evelyn Gebhard, hereby incorporates by reference paragraphs 1 through 55 as though the same was fully set forth at length herein.

57. Plaintiff's injuries resulted from the negligence, gross negligence, carelessness, and/or willful and wanton misconduct of Defendant, Aldi, Inc., which consisted of:

(a) supplying and/or maintaining the product in a dangerous, improper and defective manner so that the product caused injury to Plaintiff during normal and expected use of said product;

(b) failing to provide proper warnings for the product;

(c) allowing or causing the product to injure plaintiff;

(d) placing into the stream of commerce a dangerous and defective product;

(e) failing to inspect the food product;

(f) selling the food product when it was in a defective condition;

(g) selling a food product that was infested;

(h) failing to put in place precautionary systems to ensure the safety of the food product;

(i) allowing the food product to become dangerous and defective;

(j) failing in their procedures;

(k) failing to have proper safeguards to ensure the food product was in safe condition;

(l) Failing to have proper methods;

(m) Being negligent per se;

(n) Failing to follow regulations, protocols and procedures;

(o) Violating various provisions of the Restatement of Torts 2nd including Section 402(a) and other relevant sections; and

(p) Being otherwise negligent act fact and at law.

58. All of the acts and omissions of the Defendants were committed by the Defendants and/or through their servants, agents, workmen and employees.

59. As a result of the Defendant's aforesaid negligence, the Plaintiff became severely sick, experienced nausea and vomiting and other symptoms known and unknown incidental to ingestion of the defective food product and mental anguish all of which has caused and may further cause in the future great pain and suffering and agony and a deprivation of her normal mode of living and the enjoyment of life.

60. As a further result of the aforesaid incident, Plaintiff has been unable in the past and is likely to be unable in the future to attend to her usual duties and activities and life's pleasures.

61. By reason of the negligence of Defendants acting as aforesaid, the Plaintiff has been and may in the future be required to expend various sums of money for medical services and treatment of the injuries as aforesaid to her great financial detriment and loss.

62. By reason of the negligence of the Defendants acting as aforesaid, the Plaintiff has incurred and may continue to incur other expenses or financial losses which do or may exceed amounts Plaintiff may otherwise be entitled to recover, thereby entitling Plaintiff to additional benefits.

WHEREFORE, Plaintiff demands judgment against Defendants individually, jointly and severally, in an amount not in excess of \$50,000 plus costs, interest and attorney's fees.

COUNT V: Strict Liability-Restatement of Torts 402A and 402B
PLAINTIFF, EVELYN GEBHARD v. DEFENDANT, ALDI, INC.

63. Plaintiff, Evelyn Gebhard, hereby incorporates by reference paragraphs 1 through 55 as though the same was fully set forth at length herein.

64. Defendant, Aldi, Inc., sold the aforementioned product in a defective condition unreasonably dangerous to consumers and users of the product, such as Plaintiff.

65. Defendant, Aldi, Inc., knew or should have known that the product would be used by individuals such as Plaintiff.

66. Defendant, Aldi, Inc., knew that members of the public would rely upon the safety of the product.

67. Defendant, Aldi, Inc., knew or should have known that the product was not fit for the intended use for which it was sold.

68. Defendant, Aldi, Inc., is strictly liable to Plaintiff for its failure to manufacture and distribute a product that would not cause harm to the Plaintiff.

69. Defendant, Aldi, Inc., misrepresented to the public, including Plaintiff, the quality of said product, claiming the involved product was safe for the involved use.

70. Plaintiff relied upon the misrepresentations of Defendant, Aldi, Inc., and suffered the above-listed injuries as a result.

71. Defendant, Aldi, Inc., is liable to Plaintiff because of Defendant's strict liability in tort.

72. Defendant, Aldi, Inc., distributed and placed into the stream of commerce a defectively manufactured and designed product and as such, is liable under 402A of the Restatement of Torts 2d, strict liability for the resulting harm caused to Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants individually, jointly and severally, in an amount not in excess of \$50,000 plus costs, interest and attorney's fees.

COUNT VI: Breach of Warranty
PLAINTIFF, EVELYN GEBHARD v. DEFENDANT, ALDI, INC.

73. Plaintiff, Evelyn Gebhard, hereby incorporates by reference paragraphs 1 through 72 as though the same was fully set forth at length herein.

74. Defendant, Aldi, Inc., expressly and impliedly warranted that the product was merchantable and fit for the purpose for which it was designed.

75. The product was not, in fact, merchantable, nor fit for use for its intended purpose, but rather, was unsafe and unmarketable as set forth previously in this Complaint.

76. The warranties given by Defendant, Aldi, Inc., ran to the benefit of

Plaintiff.

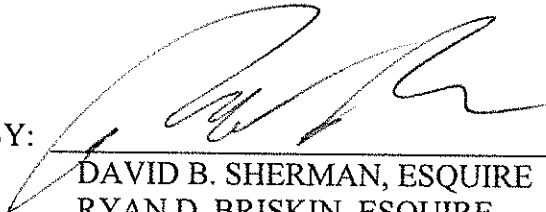
77. Reliance was made on Defendant Aldi Inc.'s skills and judgments that the product was fit for its intended use and Plaintiff was seriously and permanently injured as a result.

78. The product was not, in fact, merchantable, nor fit for use for its intended purposes, but rather was unsafe and unmarketable, as set forth previously in this Complaint.

79. The injuries suffered by Plaintiff were as a result of the breach of warranty of fitness and merchantability.

WHEREFORE, Plaintiff demands judgment against Defendants individually, jointly and severally, in an amount not in excess of \$50,000 plus costs, interest and attorney's fees.

BY:



DAVID B. SHERMAN, ESQUIRE
RYAN D. BRISKIN, ESQUIRE
Attorneys for Plaintiff

Dated: January 2, 2018