

COURT FILE NUMBER 2001-08269
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS BERNADETTE PEREZ-NANA as REPRESENTATIVE PLAINTIFF
DEFENDANTS CARGILL LIMITED.
DOCUMENT **STATEMENT OF CLAIM**



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A Class Proceeding pursuant to the Class Proceedings Act, S.A. 2003, C-16.5

NOTICE TO THE DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

STATEMENT OF FACTS RELIED ON:

I. PARTIES

A. PLAINTIFF

1. The proposed Representative Plaintiff, Bernadette Perez-Nana (the "Plaintiff") is an individual resident of the City of Calgary, in the Province of Alberta.

B. DEFENDANTS

2. The Defendant, Cargill Limited ("Cargill"), is subsidiary of a U.S. based corporation and is based in Canada at 300, 240 Graham Avenue in the City of Winnipeg, in the Province of Manitoba.

3. At all material times, the Defendant carried on business as a meat processing facility located at 472 Avenue and Highway 2A North, near the Town of High River, in the Province of Alberta (the “Cargill Facility”).

C. CLASS

4. The Plaintiff sues on her own behalf, and on behalf of all person who contracted COVID-19 between March 17, 2020 and June 1, 2020, and either lived with or had close contact with an employee who worked at the Cargill Facility.
5. For the purposes of the class definition, close contact shall be defined as follows:
 - (a) Provided direct care for the worker, including healthcare workers, family members or other caregivers, or who had similar close contact (e.g., intimate partner) without consistent and appropriate use of personal protective equipment; or
 - (b) Lived with or otherwise had close face-to-face contact (within 2 metres) with a worker for more than fifteen (15) minutes (may be cumulative, i.e., multiple interactions) prior to symptom onset; or
 - (c) Had direct contact with infectious body fluids of worker (e.g., was coughed or sneezed on) while not wearing recommended personal protective equipment; or
 - (d) Has been identified by the local health authority as a possible contact.

D. SERVICE EX JURIS

6. The Plaintiffs have sufficient facts and grounds to serve this Statement of Claim ex juris outside of Alberta on the Defendant, since there is a real and substantial connection between Alberta and the facts on which claims in the action are based as outlined in this pleading, including without limitation to the following grounds and facts:
 - a. The within claim arises out of and relates to torts committed in Alberta; and
 - b. The Plaintiff is a resident of Alberta.

II. FACTS AND BACKGROUND

A. THE DEFENDANT

7. The Defendant’s parent corporation, CARGILL INC., was founded in 1865 and is headquartered in Wayzata, Minnesota.
8. CARGILL INC. is the largest privately held corporation in the United States by revenue.

9. CARGILL INC. has an estimated annual revenue of \$114 billion and employs approximately 166,000 individuals in 70 countries.
10. The Defendant, Cargill operates over 70 facilities in Canada, with at least 20 in the Province of Alberta.
11. The Cargill Facility processes approximately 4, 500 head of cattle per day which accounts for more than a third of the beef-packing capacity of Canada.
12. A large portion of the employees at the Cargill Facility are temporary foreign workers.

B. GENERAL FACTS

13. In or about December of 2019, a novel coronavirus, SARS-CoV-2 ("COVID-19"), was identified in Wuhan, China. COVID-19 is more highly transmissible than influenza.
14. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic.
15. On March 17, 2020, the Province of Alberta declared a public health emergency because of outbreaks of COVID-19 in the province.
16. On March 25, 2020, the Government of Alberta and the Chief Medical Officer of Health made the following recommendations to businesses and the public:
 - a. Any persons who exhibited symptoms such as cough, fever, shortness of breath, runny nose or sore throat were to isolate for a minimum of 14 days;
 - b. Any persons who become sick must isolate for a further period of 10 days from the date of first symptoms;
 - c. All persons who have tested positive for COVID-19 are legally required to isolate for minimum of 10 days from the beginning or end of symptoms, whichever is longer;
 - d. All persons in close contact (being defined as "persons who come into direct contact with someone who tested positive for COVID-19, and those who provide care, lives with, or has physical contact without appropriate use of protective equipment") are legally required to isolate for 14 days.
17. On March 27, 2020, the Government of Alberta further ordered the following guideline:
 - a. Workplaces that have not been ordered to close can continue to have more than 15 workers on a worksite, provided that the businesses maintain public-health measures, including:
 - i. two-metre social distancing;
 - ii. hygiene enforcement; and

- iii. processes to ensure that any person who is ill does not attend these spaces.
18. In late March of 2020, the Cargill Facility continued to operate, without enforcing social distancing and continued to maintain close proximity between employees.
19. In or about early May 2020, the Agriculture Union of the Canadian Food Inspection Agency had reported that embedded inspectors of the Cargill Facility reported that management at the Cargill Facility threatened disciplinary action against employees who refused to work at the Cargill Facility during the outbreak.
20. In or about early May 2020, the Cargill Facility became the largest single site for a COVID-19 outbreak in Canada.
21. On May 4, 2020, the Government of Alberta confirmed 936 positive cases directly linked to the Cargill Facility.
22. On May 11, 2020, it was reported that the Cargill Facility was considered the largest single-site outbreak of COVID-19 in North America.

C. FACTS OF THE PROPOSED REPRESENTATIVE PLAINTIFF

23. The proposed Representative Plaintiff, Bernadette Perez-Nana (hereinafter referred to as the "Plaintiff"), is a resident of the City of Calgary in the Province of Alberta.
24. The Plaintiff lives in a multi-family residence with her husband.
25. The Plaintiff shares her living space at home with an individual employed at the Cargill Facility (the "Employee"). The Employee was, at all material times, employed at the Cargill Facility. The Employee worked at the Cargill Facility before and during the COVID-19 outbreak and before and during the declaration of a Public Health Emergency by the Province of Alberta.
26. The Plaintiff and her husband live in the upper-level area of the residence. The Employee and his partner live in the lower-level area of the residence.
27. The Plaintiff and the Employee share living space including a common kitchen area and main entranceway. The Plaintiff and the Employee interact with each other almost every day.
28. On or about the week before and during April 6th, 2020, the Employee worked regular shifts at the Cargill Facility. On or about April 11th, 2020, the Plaintiff and Employee, along with their respective partners, shared dinner.

29. On or about April 29th, 2020, the Plaintiff's husband exhibited symptoms of COVID-19. On or about April 29th, 2020, the Plaintiff and her husband were tested for COVID-19.
30. On or about May 2nd, 2020, the Plaintiff began exhibiting symptoms of COVID-19, including fever and cough. The Plaintiff had already self-isolated prior to May 2nd, 2020 for a period of 10 days. The Plaintiff continued to self-isolate.
31. On or about May 6th, 2020, the Plaintiff experienced severe difficulty breathing.
32. On or about the early morning of May 7th, 2020, the Plaintiff went to the South Health Campus hospital, located at 4448 Front Street SE, Calgary, Alberta. While waiting in the emergency waiting area, the Plaintiff received oxygen therapy, i.e. supplemental oxygen.
33. While at the hospital, the Plaintiff tested positive for COVID-19. The Plaintiff then received an x-ray, a computerized tomography (CT) scan, and an ultrasound test. The Plaintiff was found to have an abnormally large and dangerous amount of phlegm in her left lung.
34. The Plaintiff was treated at the hospital for a period of eight (8) days. The Plaintiff was treated with supplemental oxygen for approximately seven (7) of those days.
35. On or about May 14th, the Plaintiff was removed from oxygen therapy and was determined to be well enough to return home.
36. Beginning on or about May 15th, after returning home from the hospital, the Plaintiff self-isolated for a period of 14 days.

III. THE CLAIM

37. Notwithstanding the public health directives and widely publicized information regarding the need to socially distance and take protective measures to slow or stop the spread of COVID-19, the Defendants failed to take proper, or any, steps to limit the spread and protect the health of workers and those who would be in close contact with them.
38. The Defendants knew or ought to have known that there was a significant risk to workers in the Cargill Facility as well as their friends, families, and close contacts and that harm to families and close contacts as a result of contracting COVID-19 was a reasonably foreseeable result of failing to take adequate measures to limit the spread of this highly communicable disease.

A. DUTY OF CARE

39. This claim concerns the Defendant failing in their duty to enact protective measures in order to limit the spread of COVID-19.

40. The Defendant owed a duty of care to the Plaintiff and Class Members to ensure that the Defendant's employees, whom the Defendants' knew or ought to have known have family members, relatives and other persons living or interacting with them in close proximity, were protected from unnecessary and reckless exposure to COVID-19.
41. The Defendants knew or ought to have known that failure to take reasonable steps to ensure their own employees were not recklessly or unreasonably exposed to the risk of contracting COVID-19 would result in harm to both those employees and their families, relatives and other individuals living or interacting in close proximity to them.
42. The Defendants acted recklessly and unreasonably in encouraging and even threatening employees of the Cargill Facility to not miss a single shift at the Cargill Facility, and further in failing to take reasonable protective measures.

B. PARTICULARS OF DEFENDANTS BREACHES

43. The particulars of the Defendant's breaches of their duty of care, which stem from their negligence, are as follows:
 - (a) Failing to take reasonable steps to ensure the Plaintiff and Class Members were protected from unreasonable exposure to COVID-19;
 - (b) Failing to inform the Plaintiff and Class Members of the outbreak of COVID-19 at the Cargill Facility in a timely manner;
 - (c) Failing to inform the Plaintiff and Class Members of the risk of COVID-19 at the Cargill Facility;
 - (d) Failing to monitor employees exhibiting symptoms of COVID-19;
 - (e) Failing to implement or maintain readily known and accepted protocols to avoid the spread and transmission of COVID-19, including but not limited to social distancing, the use of face masks and reduced concentration of employees in workspaces;
 - (f) Failing to properly supervise and instruct management staff with preventative procedures and protocols;
 - (g) Acting in bad faith by failing to follow readily available, easy to implement and commercially accepted best practices;
 - (h) Failing to properly respond to cases of COVID-19 including but not limited to clearing employees for continued work despite positive test results for COVID-19, incomplete isolation periods, and recent travel abroad;
 - (i) Threatening disciplinary measures against employees who proposed missing work;

- (j) Enticing employees to continue working without protective measures with a sizeable bonus payment;
- (k) Threatening and enticing workers to come in to work despite knowing that they were symptomatic, and were, or might be, contagious;
- (l) Such further and other particulars as may be proven at the trial of this action.

44. The Plaintiff proposes that this action be tried in the City of Calgary in the Province of Alberta.

IV. **DAMAGES**

45. As a result of the Defendants acts and omissions, the Plaintiff and the Class Members have suffered harm.

46. The acts, omissions and conduct of the Defendant, as referred to herein, were reckless and resulted in the Plaintiffs and Class Members being affected directly or indirectly as a result of contracting COVID-19.

47. The actions of the Defendant, set out herein, amount to a reckless disregard of their responsibilities and the rights of the Plaintiff and Class Members. The reckless actions of the Defendant warrant an award of punitive damages.

48. The Plaintiffs claim this entitlement is appropriate for, among other things, the following reasons:

- (a) The Plaintiff and Class Members suffered physical harm as a result of contracting COVID-19 from employees of the Cargill Facility;
- (b) The Plaintiff and Class Members suffered increased costs of living as a result of contracting COVID-19 from employees of the Cargill Facility;
- (c) The Plaintiff and Class Members suffered loss of income as a result of missing work due to contracting COVID-19 from employees of the Cargill Facility
- (d) The Plaintiff and Class Members suffered psychological harm as a result of contracting COVID-19 from employees of the Cargill Facility
- (e) Where the Plaintiff or Class Members suffered personal injury or death of a relative, family member or companion, the Plaintiff or Class Members have suffered loss of care, companionship, guidance, and loss of consortium
- (f) Where an individual related to or companion to the Plaintiff or Class Members has died, the Defendants' conduct gives rise to damages pursuant to the *Fatal Accident Act*, RSA 2000, c F-8 for the deceased's family and dependents; and

- (g) The Defendants engaged in wrongful conduct through negligent and reckless disregard for safety protocols and measures related to the prevention of the spread of COVID-19, causing losses to the Plaintiff and Class Members.

V. REMEDY SOUGHT

49. As against the Defendant, the Plaintiff and Class Members claim the following awards, on the bases specified or such other bases, in such amounts, to be allocated amongst the Class Members, as this Honourable Court may deem fit, namely:
- (a) An Order for certification pursuant to the *Class Proceedings Act*, SA 2003, c-16.5 and appointment of the Plaintiff as the Representative Plaintiff;
 - (b) An order appointing Bernadette Perez-Nena as the representative Plaintiff for the Class Members;
 - (c) Judgment for damages as outlined under the above heading "Damages", including general and special damages, estimated to be in the amount of \$4,000,000.00, or such other amounts as counsel may advise and this Honourable Court may accept;
 - (d) Judgment for damages pursuant to the *Fatal Accidents Act*, RSA 2000, c F-8 where applicable;
 - (e) Judgement for punitive damages in an amount to be proven at the trial of action as counsel may advise and this Honourable Court may accept;
 - (f) Interest on the amount of the Judgment pursuant to the terms of the *Judgment Interest Act*, R.S.A. 2000, c. J-1, and the regulations thereunder and the amendments thereto;
 - (g) Any applicable Goods and Services Tax pursuant to the terms of the *Excise Tax Act*, S.C. 1985, c. E-14, Part IX, the regulations thereunder and the amendments thereto, including a gross-up sufficient to satisfy any Goods and Service Tax levy (G.S.T.), which the Plaintiff and Class Members may be obliged to pay on any amounts awarded;
 - (h) An Order for distribution amongst the Plaintiff and Class Members of the aggregate assessment of monetary relief as this Honourable Court deems appropriate;
 - (i) Costs of this action on a solicitor/client basis or on such other basis as this Honourable Court may see fit; and
 - (j) Such further and other relief as this Honourable Court may allow or counsel may advise.

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING If you do not file and serve a statement of defence or a demand of notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of those things, a court may give a judgement to the plaintiff(s) against you.