

CASE INFORMATION SHEET
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COUNTY AND COURT:

Pinellas County Circuit Court

NAME OF CASE:

Theresa Conley v. Wendy's International, Inc.

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

Crystal Sebago, Esquire
Paul Puzanghera, Esquire
Puzanghera Law Offices, P.A.
1471 South Missouri Avenue
Clearwater, Florida 33756

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

Bryan R. Snyder, Esquire
John P. Daly, Esquire
Rissman, Barrett, Hurt,
Donahue & McLain, P.A.
1 North Dale Mabry Highway, 11th Floor
Tampa, FL 33609

AGE/SEX OF PLAINTIFF:

61 year-old female

CAUSE OF INJURY:

Plaintiff alleged she had consumed food on January 1, 2009, at a Wendy's restaurant and had become violently ill 2 - 3 hours later. She was hospitalized due to renal failure 2 days later and cultures taken at the hospital confirmed a heavy growth of salmonella. Both Plaintiff's primary care physician and a retained expert concluded that the salmonella infection was attributable to the food Plaintiff had ingested at Wendy's.

The defense retained an expert microbiologist to opine that the normal incubation period for salmonella is 12 - 72 hours and therefore it was impossible for Plaintiff's salmonella infection to have come from the Wendy's food. Simply put, bacteria such as salmonella must have sufficient time to grow so that enough of a toxin can be produced to cause

symptoms in an individual. Since Plaintiff's symptoms had manifested within 2 – 3 hours, the timing of the onset of symptoms was too short for the Wendy's food to have been the source of the Plaintiff's salmonella infection.

Plaintiff's expert disagreed and opined that the normal incubation period for salmonella had been shortened due to Plaintiff's preexisting gastric conditions which had compromised her stomach and intestinal lining. In addition, medication Plaintiff was taking had altered her pH balance allowing for more rapid bacterial growth.

Plaintiff testified in deposition that she had consumed only TV dinners and Balance Bars during the six days prior to eating at Wendy's. During the relevant time frame, Balance Bars had been subject to a recall due to an outbreak of salmonella related illnesses linked to peanuts utilized in some flavors of Balance Bars.

NATURE OF INJURY:

Plaintiff alleged that her salmonella infection and hospitalization related thereto were caused by the food she ingested at Wendy's.

PLAINTIFF'S EXPERT WITNESSES:

David Cheesman, D.O.
2121 5th Avenue North
St. Petersburg, Florida 33713

Dr. Cheesman is a family medicine practitioner. He testified in deposition that the Plaintiff's salmonella infection was attributable to the food she had ingested at Wendy's. He further opined that the normal incubation period for salmonella had been shortened due to Plaintiff's preexisting gastric conditions which had compromised her stomach and intestinal lining. In addition, medication Plaintiff was taking had altered her pH balance allowing for more rapid bacterial growth

DEFENDANT'S EXPERT WITNESSES:

Daniel V. Lim, Ph.D.
Department of Cell Biology, Microbiology & Molecular Biology
University of South Florida
4202 E. Fowler Avenue, ISA2015
Tampa, Florida 33620

Dr. Lim, a Distinguished University Professor at the University of South Florida, opined that the normal incubation period for salmonella is 12 - 72 hours and therefore it was impossible for Plaintiff's salmonella infection to have come from the Wendy's food. Simply put, bacteria such as salmonella must have sufficient time to grow so that enough of a toxin could be produced to cause symptoms in an individual. Since Plaintiff's symptoms had manifested within 2 – 3 hours, the timing of the onset of symptoms was

too short for the Wendy's food to have been the source of the Plaintiff's salmonella infection.

He was further prepared to opine that during the relevant time frame, Balance Bars had been subject to a recall due to an outbreak of salmonella related illnesses linked to peanuts utilized in some flavors of Balance Bars, and that Plaintiff's salmonella had come from the Balance Bars.

CHECK APPROPRIATE SPACE: X Dismissal

DATE OF DISMISSAL: Monday, August 18, 2014

VERDICT: N/A

JUDGMENT: Judgment pending

DATE OF JUDGMENT: Pending

DEFENDANT'S OFFER: \$8,000 Proposal for Settlement (December 6, 2013)

PLAINTIFF'S LAST DEMAND: \$11,500 Proposal for Settlement (June 24, 2014)

ATTORNEY COMMENTS:

On the first day of trial, Wendy's sought dismissal of the Plaintiff's case due to repeated violations of court orders by the Plaintiff and/or her counsel related to discovery matters, disclosure of claimed special damages and issues related to the pretrial conference. Plaintiff's counsel sought a continuance of the trial to rectify those violations which the trial court denied. The court then dismissed the Plaintiff's case due to the violations of its orders. The dismissal acted as one with prejudice as the statute of limitations had run.

Submitted By: Bryan Snyder, Esq.
John Daly, Esq.

Date: September 5, 2014

Firm: Rissman, Barrett, Hurt,
Donahue & McLain, P.A.

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