

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

**JACOB DALTON and
PAYTENE PIVONKA,**

Plaintiffs,

v.

**CONAGRA FOODS, INC. and
CONAGRA BRANDS, INC.**

Defendants.

CASE NO. [NUMBER HERE]

Judge [NAME HERE]

COMPLAINT AT LAW AND JURY DEMAND

NOW COMES the Plaintiffs, JACOB DALTON and PAYTENE PIVONKA, by and through their attorney, J. CRAIG SMITH of KOSKOFF KOSKOFF & BIEDER, P.C. and PETER J. FLOWERS of MEYERS & FLOWERS, LLC complaining against Defendants CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. and alleges:

INTRODUCTION

1. This products liability lawsuit seeks compensatory damages on behalf of plaintiffs JACOB DALTON and PAYTENE PIVONKA (collectively, the “PLAINTIFFS”), who were burned and severely injured by a can of PAM Cooking Spray, which Defendants, CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. (collectively, the “DEFENDANTS”), designed, manufactured, marketed, sold and distributed.

COMMON ALLEGATIONS

2. At all times relevant to this complaint, JACOB DALTON was a resident of Provo, Utah.

3. At all times relevant to this complaint, PAYTENE PIVONKA was a resident of Provo, Utah.

4. At all times relevant to this complaint, Defendant CONAGRA FOODS, INC. was a Delaware corporation with its principal place of business in Chicago, Illinois. It is currently a registered trade name for Defendant Conagra Brands, Inc.

5. At all times relevant to this complaint, Defendant CONAGRA BRANDS, INC. was a Delaware corporation with its principal place of business in Chicago, Illinois. It was formerly known as ConAgra Foods, Inc.

6. Defendant CONAGRA BRANDS, INC. is the successor in interest to CONAGRA FOODS, INC.

7. At all times relevant to the allegations in this complaint, DEFENDANTS were and are in the business of manufacturing, advertising and promoting the sale of various food brands, including PAM Cooking Spray.

8. DEFENDANTS designed, manufactured, filled, and/or sold the canister of PAM Cooking Spray that exploded in the kitchen of PLAINTIFFS.

9. The canister of PAM Cooking Spray at issue was designed, manufactured and filled in Illinois.

10. The canister of PAM Cooking Spray at issue was designed and manufactured with u-shaped vents on the domed bottom of the canister that were designed to open when the can buckled or when the bottom of the canister became convex instead of concave.

11. The canister of PAM Cooking Spray at issue was designed and manufactured so that when the can buckled and the u-shaped vents on the bottom of the canister opened, the internal contents of the canister would escape through the vents and the pressure inside the can would be reduced.

12. The contents of the canister of PAM Cooking Spray at issue included not only cooking oil, but also propellants, including extremely flammable materials such as propane and butane.

13. DEFENDANTS designed, manufactured, filled, and/or sold PAM Cooking Spray for use in consumer kitchens.

14. The PAM Cooking Spray reached PLAINTIFFS without substantial change in its condition and was stored and used in a reasonably foreseeable manner on November 6, 2018.

15. On November 6, 2018, PLAINTIFFS were cooking in the kitchen at their residence in Provo, Utah.

16. At said time and place, PLAINTIFFS were cooking on a stove, when a canister of PAM Cooking Spray stored on a wall shelf located over the stove suddenly and without warning began spraying its extremely flammable contents through the u-shaped vents on the bottom of the can and exploded into flames, causing burns to PLAINTIFFS and igniting a fire in the kitchen.

COUNT I – STRICT PRODUCTS LIABILITY
(PLAINTIFFS v. Conagra Foods, Inc. & Conagra Brands, Inc.)

17. PLAINTIFFS incorporate by reference paragraphs 1 through 16 of the Complaint at Law as if fully set forth herein.

18. CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. have a duty to place into the stream of commerce, manufacture, distribute, market, promote, and sell PAM Cooking Spray and products that are not defective, unsafe and unreasonably dangerous when put to the use for which it was designed, manufactured, distributed, marketed, and sold.

19. CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. did in fact design, manufacture, fill, market, promote, supply, distribute and/or sell PAM Cooking Spray to consumers, including PLAINTIFFS.

20. CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. expected the PAM Cooking Spray it was designing, manufacturing, filling, marketing, promoting, supplying, distributing and selling to reach, and it did in fact reach, consumers in the state of Illinois and Utah, including PLAINTIFFS, without substantial change in the condition.

21. At the time the PAM Cooking Spray left the possession of CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. and the time the PAM Cooking Spray entered the stream of commerce, the PAM Cooking Spray was in a defective, unsafe and unreasonably dangerous condition. These defects include but are not limited to the following:

- a. The PAM Cooking Spray was capable of venting at temperatures lower than DEFENDANTS' specifications and/or performance standards allow;
- b. The nature and magnitude of the risk of the can venting and causing a fire was high in light of the intended and reasonably foreseeable uses of the products in and around heat sources in the kitchen, including stoves/grills;
- c. The likelihood that product users were aware of this risk was low, given that the product was designed and advertised to be used around stoves/grills, and had no adequate warnings about possible dangers of doing so;
- d. The likelihood of the PAM Cooking Spray causing and/or contributing to a fire due to venting was high in light of the intended and reasonably foreseeable use of the PAM Cooking Spray product around stoves/grills and other heating sources;
- e. The flammability of the PAM Cooking Spray product's ingredients and the PAM Cooking Spray product's risk of venting were more dangerous than a reasonably prudent consumer would expect when used in the intended and reasonably foreseeable manner of cooking;
- f. At the time it left the control of the manufacturer, in the state of technical and scientific knowledge, reasonable and safer alternative designs were available with respect to the flammability of the ingredients, and alternative can designs would have prevented the venting event and the injuries in this case without substantially impairing the usefulness of the intended purposes of the product;
- g. Failed to provide warnings or instructions concerning the risk of venting, risk of fire, and risk of burn injuries, in light of the likelihood that some

users of the PAM Cooking Spray product would use the product in the kitchen and in close proximity to stoves/grills;

- h. Failed to provide adequate warnings concerning the risk of venting, risk of fire, and risk of burn injuries;
- i. Failed to provide adequate warnings concerning the types of propellants in the PAM Cooking Spray product including isobutane and propane;
- j. Failed to provide warnings or instructions concerning the risk of venting, risk of fire, and risk of burn injuries, in light of incident reports that some people had suffered burn injuries due to venting during ordinary use of the PAM Cooking Spray product; and
- k. Were otherwise defective, unsafe and unreasonably dangerous.

22. At all times relevant to this complaint, PLAINTIFFS used the PAM Cooking Spray for its intended purpose, i.e. cooking spray, and stored it appropriately. There was no other reasonable cause of the PAM Cooking Spray's failure to properly perform other than the PAM Cooking Spray product being defective.

23. PLAINTIFFS could not have discovered any defect in the PAM Cooking Spray through the exercise of due care.

24. CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. as designer, manufacturer, filler, marketer, promoter, supplier, distributor and seller of food products are held to the level of knowledge of an expert in their field.

25. PLAINTIFFS did not have substantially the same knowledge regarding the dangers of the PAM Cooking Spray as the designer, manufacturer, filler, marketer, promoter, supplier, distributor and seller: CONAGRA FOODS, INC. and CONAGRA BRANDS, INC.

26. As a direct and proximate cause of one or more of the foregoing wrongful acts or omissions by CONAGRA FOODS, INC. and CONAGRA BRANDS, INC., the PAM Cooking Spray canister exploded and PLAINTIFFS were caused to suffer and sustain injuries of a

permanent nature including, but not limited to, burns, scarring, and disfigurement. PLAINTIFFS also suffered great pain and anguish in both mind and body. PLAINTIFFS were hindered and prevented from their usual and customary duties and affairs. PLAINTIFFS will be in the future caused to endure great pain, suffering and disability and have expended and become liable for substantial sums of medical care and services while endeavoring to become cured and healed of said injuries and will continue to expend and become liable for additional costs for future medical treatment. PLAINTIFFS were also caused to lose earnings and will continue to lose earnings. Furthermore, PLAINTIFFS were unable to and will in the future be unable to attend to their normal affairs and duties for an indefinite period of time.

WHEREFORE, PLAINTIFFS pray for judgment against Defendants, CONAGRA FOODS, INC. and CONAGRA BRANDS, INC., in a sum in excess of jurisdictional limits of this Court, together with interests and costs of this action.

COUNT II – NEGLIGENCE
(PLAINTIFFS v. Conagra Foods, Inc. & Conagra Brands, Inc.)

27. PLAINTIFFS incorporate by reference paragraphs 1 through 26 of the Complaint at Law as if fully set forth herein.

28. At all times relevant, it was the duty of CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. to exercise due care in designing, manufacturing, filling, marketing, promoting, supplying, distributing and/or selling PAM Cooking Spray products such that they would be reasonably safe for their intended use.

29. CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. negligence in the design, manufacture, testing, filling, marketing, promotion, supplying, distribution and/or sale of the PAM Cooking Spray products includes but is not limited to the following:

- a. Negligently failed to appropriately inform users of the dangers associated with the PAM Cooking Spray;
- b. Negligently misrepresented material facts regarding the PAM Cooking Spray's safety and fitness for use around stoves/grills and other heating sources when in fact they are not safe for use in these areas;
- c. Negligently misrepresented material facts regarding the PAM Cooking Spray's safety by withholding information regarding adverse events and information about incidents of venting and injury caused by the cans;
- d. After receiving post-marketing incident reports and/or testing data, CONAGRA FOODS, INC. and CONAGRA BRANDS, INC., knew, or in the exercise of reasonable care, should have known that there was a significant risk of venting, fire, and burn injuries associated with the use and/or storage of the PAM Cooking Spray product and failed to communicate or warn users of this information;
- e. Failed to provide warnings or instructions concerning the risk of venting, risk of fire, and risk of burn injuries, in light of the likelihood that some users of the PAM Cooking Spray product would use the product in the kitchen and in close proximity to stoves/grills;
- f. Failed to provide adequate warnings concerning the risk of venting, risk of fire, and risk of burn injuries;
- g. Failed to provide adequate warnings concerning the types of propellants in the PAM Cooking Spray product including isobutane and propane;
- h. Failed to provide warnings or instructions concerning the risk of venting, risk of fire, and risk of burn injuries, in light of incident reports that some people had suffered burn injuries due to venting during ordinary use of the PAM Cooking Spray product;
- i. Failed to provide adequate instructions to persons cooking with and around their PAM Cooking Spray products;
- j. Failed to provide adequate instructions concerning safe and/or safer methods of cooking with and around PAM Cooking Spray products;
- k. Failed to conduct adequate testing on their PAM Cooking Spray products to determine the venting hazards to which consumers and individuals such as PLAINTIFFS may be exposed to while working with and/or around their products;

- l. Failed to monitor and analyze what post-marketing reports observed with regard to individuals working with and around DEFENDANTS' PAM Cooking Spray products and/or substantially similar products;
- m. Used a canister which was not designed and/or manufactured to withstand a pressure of at least 270 psig at 130 degrees Fahrenheit without bursting in violation of 49 C.F.R. §178.33a(3)(ii); and
- n. Were otherwise negligent in the design, manufacture, marketing, advertisement, promotion, sale and distribution of the PAM Cooking Spray products.

30. CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. knew or had reason to know that PLAINTIFFS, as members of the general public for whose use the PAM Cooking Spray was placed into interstate commerce, would be likely to use the PAM Cooking Spray in a manner described in this Complaint.

31. CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. knew or reasonably should have known of the danger associated with the manner and circumstances of PLAINTIFFS' foreseeable use of the PAM Cooking Spray, which danger would not be obvious to the general public.

32. PLAINTIFFS used the PAM Cooking Spray for its intended purpose, i.e. cooking spray, and stored it appropriately, and there was no other reasonable cause of the PAM Cooking Spray's failure to properly perform other than the PAM Cooking Spray product being defective.

33. PLAINTIFFS could not have discovered any defect in the PAM Cooking Spray through the exercise of due care.

34. CONAGRA FOODS, INC. and CONAGRA BRANDS, INC. as designers, manufacturers, testers, fillers, marketers, promoters, suppliers, distributors and sellers of food products are held to the level of knowledge of an expert in their field.

35. PLAINTIFFS did not have substantially the same knowledge regarding the dangers of the PAM Cooking Spray as the designer, manufacturer, filler, marketer, promoter, supplier, distributor and seller: CONAGRA FOODS, INC. and CONAGRA BRANDS, INC.

36. As a direct and proximate cause of one or more of the foregoing wrongful acts or omissions by CONAGRA FOODS, INC. and CONAGRA BRANDS, INC., the PAM Cooking Spray canister exploded and PLAINTIFFS were caused to suffer and sustain injuries of a permanent nature including, but not limited to, burns, scarring, and disfigurement. PLAINTIFFS also suffered great pain and anguish in both mind and body. PLAINTIFFS were hindered and prevented from their usual and customary duties and affairs. PLAINTIFFS will be in the future caused to endure great pain, suffering and disability and have expended and become liable for substantial sums of medical care and services while endeavoring to become cured and healed of said injuries and will continue to expend and become liable for additional costs for future medical treatment. PLAINTIFFS were also caused to lose earnings and will continue to lose earnings. Furthermore, PLAINTIFFS were unable to and will in the future be unable to attend to their normal affairs and duties for an indefinite period of time.

WHEREFORE, PLAINTIFFS pray for judgment against Defendants, CONAGRA FOODS, INC. and CONAGRA BRANDS, INC., in a sum in excess of jurisdictional limits of this Court, together with interests and costs of this action.

JURY DEMAND

PLAINTIFFS HEREIN DEMAND A TRIAL BY JURY.

RESPECTFULLY SUBMITTED,

MEYERS & FLOWERS, LLC.

By: /s/ Peter J. Flowers

Peter J. Flowers

One of the Attorneys for Plaintiffs

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