Costco Must Face Lawsuit Over Hepatitis A, Frozen Berries

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A federal judge in California has struck down a request from Costco to quickly end a class-action lawsuit filed against the grocery giant by customers who claim they were exposed to the hepatitis A virus (HAV) after buying frozen berries from its stores, Law 360 reports.

As part of the decision, U.S. District Judge David O. Carter will allow the case, which was filed by shoppers across nine states, to proceed based on claims that consuming contaminated food allegedly caused them harm and required them to seek emergency medical care. However, the judge denied additional claims alleging emotional distress caused by the customers' fear of contracting hepatitis A.

The case was filed in June 2013, after an outbreak of hepatitis A that spanned Hawaii, Colorado, Nevada, New Mexico, Oregon, California, Idaho, Arizona and Washington. The outbreak was eventually traced back to a Townsend-brand frozen berry mix sold by Costco, which was likely contaminated and responsible for spreading the virus. A month prior to the lawsuit, the product was removed from all Costco shelves, and the company notified customers and advised them to get a hepatitis A vaccination immediately.

In January 2016, Judge Carter certified nine single-state subclasses for the purpose of determining liability, with the issue of damages reserved for a second part of the trial. So far, Costco has twice attempted to end the suit on claims that none of the consumers had direct proof they ate berries contaminated with hepatitis A. However, Judge Carter ruled that Costco's and Townsend's own post-outbreak statements that the berries weren't fit for human consumption nullified that argument.

Typically, a person who consumes a potentially contaminated food has no liability claim against a manufacturer if they didn't fall ill from the product. But in this case, the judge held, the alleged harm caused to Costco clients was their requirement to receive an HAV vaccination. The judge also denied the defendant's claim that those who got a free shot from Costco and signed a consent form waived their claims against the company, saying the form wasn't tailored to an outbreak situation.

According to trial attorneys, Judge Carter heard three and a half hours of argument and reversed his course on the summary judgment bid before making his decision. The class-action case is

expected to proceed.

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