

Orem woman seeks \$5 million for E. coli infection from spinach

Published: Monday, Jan. 10, 2011 8:06 p.m. MST

SALT LAKE CITY — No one questions whether Chelsey Macey suffers from a painful intestinal disorder that has left her sobbing on the floor of a public restroom because she couldn't reach the toilet in time.

At issue is whether the E. coli-infected Dole baby spinach she ate more than four years ago caused a case of post-infectious irritable bowel syndrome so severe that it rendered the 26-year-old Orem woman disabled.

Macey's attorneys argued in U.S. District Court on Monday that it did, and that the married mother of three is entitled to more than \$5 million for medical expenses, future care and future lost wages. Macey and her husband Tony Macey filed a federal lawsuit in April 2008 against the spinach grower, packager and distributor.

In addition to compensatory damages, the suit seeks punitive damages based on the companies' "reckless indifference," according to court documents. The scheduled nine-day jury trial will be split in two parts to argue issues separately.

"In its worst form, (post-infectious IBS) is crippling," Dick Burbidge told jurors in opening statements. "This is Chelsey's one and only chance to obtain her justice."

Macey spent a short time in the courtroom Monday during jury selection before having to leave due to her illness.

The grower, Mission Organics; the packager, Natural Selection Foods; and distributor, Dole Food Co., have each accepted responsibility for the contaminated spinach and are willing to pay some but not all damages. All three companies are based in California.

There is no argument that an E. coli infection caused by the spinach nearly killed Macey in August 2006.

"In dispute is if Ms. Macey is truly forever disabled," said Al Maxwell, an Atlanta-based attorney representing Natural Selection Foods.

Lawyers for the companies contend she is not, and that anxiety and depression brought on her IBS. They're willing to cover past medical costs and treatment, including psychotherapy, that would lead to a "tolerable" recovery, Maxwell said.

"The defendants are not willing to write Chelsey Macey off," he said.

Burbidge painted a picture of Macey as a once healthy, talented, ambitious young woman. She worked full time at Maceys grocery store, attended school to become a pharmacist at the same time being a wife and mother of two daughters.

But a bite of tainted pre-washed, ready-to-eat spinach changed her life. Macey was rushed to the hospital in an ambulance a few days after eating the greens. She recovered from the infection, but doctors later diagnosed her with post-infectious IBS.

"The problem with this disease is there isn't any cure. Period," Burbidge said.

Macey suffers gripping abdominal pain and fatigue which prevents her from working, going to school, attending church and managing her household, he said. She shies away from shopping and eating out for fear of losing control of her bowels.

"Every day she gets up is a miserable day," Burbidge said. "The question is how miserable."

Dr. Keith Tolman, a University of Utah gastroenterologist who has examined Macey, testified that Macey's post-infectious IBS rates a 10 on the severity scale.

"This is a very paralyzing illness when it is this severe," he said.

Maxwell, in his opening statement, said the testimony of Macey's doctors gives the defendants pause because the severity of her symptoms seemed to coincide with their examinations of her.

Macey, he said, well before the E. coli infection, suffered from depression and anxiety which contribute to IBS. Yet, she refused to see a dietitian or a psychiatrist even though she was advised to do so. It wasn't until her lawyers hired the expert witnesses in 2009 that she went to counseling, he said.

Maxwell also questions why, with all of her symptoms, Macey would become pregnant last year with her third child.

"That act alone seems inconsistent with someone who truly is totally disabled," he said.

e-mail: romboy@desnews.com
