

SAMPLE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

John Doe,

Case No. 3:22 CV 1234

Plaintiff,

-vs-

MOTION FOR
TELEPHONE CONFERENCE

Jane Roe,

Defendant.

Counsel for Defendant recently notified Plaintiff's counsel that Defendant intends to move for summary judgment in the above captioned case. In compliance with this Court's Summary-Judgment Protocol, counsel for both sides met and conferred regarding the merits of the proposed motion. Counsel exchanged letters (individually attached) briefly outlining their positions, and request a Telephone Conference to discuss next steps.

LETTER ONE

Dear Plaintiff's Counsel:

This letter is being sent in accordance with Rule 3 of Judge Zouhary's Standing order.

This case arises from a food-poisoning incident at a party. Plaintiff asserts one claim of negligence against Defendant. The law of the State of Ames governs this case. To prevail in a negligence action under Ames law, a plaintiff must prove four elements: duty, breach, causation, and harm. *See Jordan v. Thomas*, 18 Ames St. 3d 346, 348 (2012). Defendant concedes the duty and harm elements in this case. However, for the following reasons, no jury could reasonably conclude Defendant breached her duty of care or that she caused Plaintiff's injuries.

Breach

- Defendant prepared the casserole with a factory-made mix (Doc. 17 at 31).
- The mix's packaging did not indicate the mix contained peanuts (Doc. 17-3 at 1).
- The mix did, in fact, contain trace amounts of peanuts (perhaps due to cross-contamination at the factory), but Defendant cannot be charged with that knowledge. *See Ewing v. Robinson*, 125 Ames App. 4th 496, 499 (2019). Plaintiff will likely point to *Bryant v. Bell*, 49 Ames St. 56 (1997), but that case involves entirely different facts.
- Thus, as a matter of law, Defendant did not breach her duty of care.

Causation

- Minutes before eating the casserole, Plaintiff ate tortilla chips dipped in oyster sauce (Doc. 20 at 14).
- Plaintiff allegedly experienced symptoms only after he ate the casserole (*id.* at 15), but exposure to shellfish typically does not produce symptoms until several minutes have passed (Doc. 17-5 at 2).
- According to experts, Plaintiff's symptoms correlate most closely with shellfish exposure, not peanut exposure (Doc. 17-6 at 11; Doc. 22 at 9; Doc. 29 at 22).
- Plaintiff previously ate peanuts with only minimal symptoms, but he was hospitalized in 2016 after attending a lobster bake in Nantucket (Doc. 20 at 55).
- Therefore, a reasonable jury could conclude only that the oyster sauce, not the casserole, caused Plaintiff's injuries.

LETTER TWO

Dear Defense Counsel:

This letter is in response to your correspondence regarding summary judgment in this case.

Plaintiff generally agrees with the legal standard articulated by Defendant and understands that Defendant concedes the duty and harm elements. Thus, the parties dispute only breach and causation. These disputes are genuine and material for the following reasons:

Breach

- Sally Anderson told Defendant about Plaintiff's severe peanut allergy (Doc. 22 at 5).
- Defendant offered her homemade casserole to Plaintiff at the party, and she did not tell Defendant it contained peanuts (Doc. 24 at 16–17).
- Although Defendant claims she did not know the casserole contained peanuts, in the State of Ames “one who prepares a meal is charged with knowledge of the ingredients.” *Bryant v. Bell*, 49 Ames St. 56, 59 (1997).
- The morning of the party, a neighbor looked through Defendant's kitchen window and saw Defendant preparing a casserole (Doc. 27 at 42).
- A jury could reasonably conclude Defendant made the casserole and negligently offered it to Plaintiff, who did not know it contained peanuts.

Causation

- Within five minutes of eating Defendant's casserole, Plaintiff experienced breathing difficulties and was taken to the hospital by ambulance (Doc. 20 at 15).
- Plaintiff's serious injuries were caused by an allergic reaction (Doc. 29 at 2).
- Plaintiff has only two known allergies: peanuts and shellfish (Doc. 20 at 13–15).
- Although Plaintiff came in contact with shellfish minutes before eating Defendant's casserole (*id.* at 14), a jury could reasonably conclude the casserole, not the shellfish, caused his allergic reaction. *See Curry v. Irving*, 587 Ames App. 4th 234, 237 (2019).