

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

TYSON FOODS, INC., and TYSON FRESH  
MEATS, INC.

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 19 : 4020

**COMPLAINT**

Plaintiffs Tyson Foods, Inc., and Tyson Fresh Meats, Inc., for their Complaint against Defendant United States of America (“United States”), pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b) and 28 U.S.C. § 2671 et seq., allege and state as follows:

**JURISDICTION AND VENUE**

1. Tyson Foods, Inc. is a corporation, formed under the laws of Delaware, with its principal place of business located in Springdale, Arkansas. Tyson Fresh Meats, Inc. is a Delaware entity and is a wholly-owned subsidiary of Tyson Foods, Inc. (Tyson and Tyson Fresh Meats are hereinafter referred to as “Tyson”).

2. The United States of America is a sovereign state. Liability for the acts described herein is based on actions of agents and employees of the United States Department of Agriculture (“USDA”) and its Food Safety Inspection Service (“FSIS”), agencies of the United States, for which sovereign immunity is waived under the Federal Tort Claims Act, 28 U.S.C. § 1346(b) and § 2671

et seq. (“FTCA”).

3. This Court may properly exercise original jurisdiction over the parties and the subject matter of this action pursuant to 28 U.S.C. § 1346(b)(1), 28 U.S.C. § 1331, and 28 U.S.C. § 2674.

4. Venue is properly laid in the Northern District of Iowa, Western Division, pursuant to 28 U.S.C. § 1402(b). The events and acts complained of and which give rise to this action occurred within this District and Tyson does business in this District.

5. Iowa law applies to this action.

6. Tyson Foods, Inc., has exhausted the administrative requirements set forth in 28 U.S.C. § 2675, by submitting Form SF-95, Claim for Damage, Injury, or Death, to the USDA-FSIS, 4520 114<sup>th</sup> Street, Des Moines, IA 50322, on or about August 23, 2018. The SF-95 submitted by Tyson Foods, Inc. provided the Defendant with all of the information needed to investigate and resolve Plaintiffs’ claim for damages. The SF-95 submitted to USDA-FSIS fully described the basis for Plaintiffs’ claim, identified the claimants, and provided a sum certain quantifying the damages suffered as a result of Defendant’s tortious misconduct. On or about November 16, 2018, the Office of General Counsel for USDA notified Tyson Foods, Inc. via letter of its denial of the claim. Tyson Foods, Inc. was further notified of the right to file suit within six (6) months from the date of the mailing of the denial letter.

### **FACTUAL BACKGROUND**

7. Under the Federal Meat Inspection Act, the USDA is responsible for ensuring the healthiness of livestock (including pork) entering the United States food supply.

8. One aspect of USDA fulfilling this responsibility is to conduct, through FSIS, certain ante and post-mortem inspections on hogs at pork processing facilities. *See* 9 CFR 309, Animals

and Animal Products, Chapter III – Food Safety and Inspection Service, Department of Agriculture.

9. The USDA trains and supervises FSIS inspectors as to the manner and methods of conducting ante and post-mortem inspections.

10. The USDA then places trained FSIS inspectors at each pork processing facility in the United States to perform these inspections.

11. Tyson Fresh Meats, Inc. operates a pork processing facility located at 1009 Richland Drive, Storm Lake, Iowa (“Tyson Storm Lake”).

12. Tyson Storm Lake, like every pork processing facility in the United States, operates under continuous USDA-FSIS inspection while the processing facility is operating.

13. All hogs slaughtered at Tyson Storm Lake are subject to USDA-FSIS ante-mortem inspection.

**USDA-FSIS Inspections Control the Release or  
Condemnation of Hogs**

14. The FSIS employees on-site at Tyson Storm Lake are responsible for performing the ante-mortem inspections on hogs by visually observing the hogs and determining whether to release or condemn the hogs based on the inspection results.

15. The USDA-stated goal and purpose of ante-mortem inspection is to accept only those animals that are healthful, safe from harmful chemical and drug residues, and capable of being converted into safe wholesome products fit for the use and enjoyment of the consumer.

16. At the conclusion of any ante-mortem inspection, USDA-FSIS protocols dictate only three possible outcomes. FSIS determines that the hogs will either be (1) passed for slaughter, (2) classified as suspect, or (3) condemned. Condemned hogs are considered not fit for human consumption. Suspect hogs are those hogs which will require additional inspection in order to determine whether they are fit for human consumption.

17. FSIS is the sole entity responsible for conducting these inspections on behalf of USDA and designating whether hogs are fit to be slaughtered and enter the stream of commerce.

**USDA-FSIS Conducted Negligent Ante-Mortem Inspections on 4,622 Hogs**

18. On March 26, 2018, approximately 4,622 hogs were slaughtered at Tyson Storm Lake and were, thereby, subject to ante-mortem inspection by the USDA-FSIS.

19. On March 26, 2018, the ante-mortem inspections of the slaughtered hogs were the responsibility of FSIS inspector Dr. Yolanda Thompson, an employee and agent of the Defendant. On this date, Dr. Thompson presented to Tyson Storm Lake management signed inspection pen cards certifying that the hogs had been inspected and were eligible to bear the mark of inspection.

20. Unbeknownst to Tyson Storm Lake management, Dr. Thompson conducted negligent ante-mortem inspections of the hogs prior to slaughter. Video footage obtained later revealed that Dr. Thompson never entered the pre-slaughter holding area to perform an in-person visual inspection of the hogs as required to satisfy her duties as both (1) an employee and agent of the Defendant and (2) a reasonable person taking on the duty to conduct inspections for the protection of others. Instead, Dr. Thompson remained in her vehicle, signing the inspection cards without entering the holding area to examine the hogs.

21. Tyson Storm Lake management was unaware that Dr. Thompson was negligent in conducting the ante-mortem inspections until the following day, March 27, 2018, when they were informed by FSIS personnel that the hogs at issue had not received proper ante-mortem inspections.

**Tyson Suffered Damages As a Result of USDA-FSIS's Conduct**

22. Upon notification of Dr. Thompson's actions, Tyson Storm Lake management took steps to mitigate damages.

23. Unfortunately, by this time, the negligently inspected hog carcasses had been

intermingled into a larger group of approximately 8,000 hog carcasses and, consequently, the negligently inspected hog carcasses could no longer be positively identified.

24. On March 30, 2018, USDA, acting through supervisors of the Des Moines Field Office, concluded that it was not possible to clearly identify whether the animals were subject to any health conditions that would have necessitated condemnation of the negligently inspected carcasses. This left Tyson with no choice but to destroy the negligently inspected carcasses and those with which they had been commingled, salvaging portions of the product for non-food related purposes at a greatly reduced rate.

25. As a result of the required condemnation, Tyson incurred a loss of \$1,971,616.61, with only a portion of the loss (\$120,612.32) being offset by rendering some of the meat into non-edible products. This yielded a net loss to Tyson for the condemned pork of \$1,851,003.29.

26. Tyson incurred \$314,905.63 in cancelled sales primarily related to offal and lard that had been sold to third parties within the brief window of time between when the hogs were slaughtered and when Tyson was notified of the negligent inspection.

27. Tyson incurred \$50,070.85 in freight and temporary storage fees pending destruction of the product.

28. Tyson incurred \$51,468.25 related to overtime hours worked on an emergency basis to segregate, render, or otherwise destroy the product rendered useless by Defendant's negligence.

29. Tyson incurred \$213,513.04 due to reduction in normal processing activities while diverting resources to respond to the emergency created by the Defendant's negligence.

30. The USDA-FSIS inspector's negligence proximately caused \$2,480,961.07 in total damages to Tyson.

**USDA-FSIS Personnel Were Aware of Dr. Thompson's Performance Issues**

31. Upon information and belief, at all pertinent times, USDA-FSIS personnel were aware of deficiencies in the quality, scope and integrity of Dr. Thompson's inspection practices.

32. Upon information and belief, prior to the negligent inspections described above, USDA-FSIS personnel were aware of issues with Dr. Thompson's performance as indicated by a USDA-FSIS employee mentioning to Tyson employees during the investigation of the negligent inspections that Dr. Thompson had bad habits related to her inspection practices

33. Moreover, USDA-FSIS personnel were aware of Dr. Thompson's physical limitations and that she had difficulty walking. Dr. Thompson's normal inspection site was the turkey processing plant, a plant that is much smaller in size than the pork processing plant. In addition, the way in which the animals are kept in the pork processing plant requires an inspector to navigate the holding pens.

34. If the USDA and/or FSIS personnel adequately trained and supervised Dr. Thompson, or otherwise addressed Dr. Thompson's deficient inspection practices and her health issues, the damage to Tyson could have been avoided.

**COUNT ONE  
(Negligence)**

35. Tyson incorporates by reference paragraphs 1 through 34 as if fully set forth herein.

36. Under Iowa law, private parties are liable when they have a duty to conform to a standard to protect others and they fail to do so, resulting in damages to another.

37. Under the FTCA, the United States is liable to the same extent as a private party in Iowa. In this case, the United States, through its agents and employees, had a duty to conform to a standard of conduct to protect Tyson's property and failed to do so.

38. Dr. Thompson, the FSIS inspector and the agent and employee of Defendant, failed to act as a reasonable person when she negligently performed the ante-mortem inspections.

39. The duty to conduct a reasonable and competent inspection was an operational task and did not involve the United States exercising discretion.

40. The United States, through Dr. Thompson's actions, proximately caused damages to Tyson. The proximate result of Defendant's wrongful and tortious conduct was the destruction of approximately 8,000 hog carcasses. The monetary damages resulting from the Defendant's misconduct is \$2,480,961.07.

**COUNT TWO**  
**(Negligent Inspection)**

41. Tyson incorporates by reference paragraphs 1 through 34 as if fully set forth herein.

42. Under Iowa law, private parties are liable when they undertake a duty to inspect and then negligently carry out that duty.

43. Under the FTCA, the United States is liable to the same extent as a private party for negligently executing its undertaken duty to inspect.

44. The United States, through the USDA and FSIS, undertook a duty to inspect pork product at the Tyson Storm Lake processing plant by placing inspectors at the facility.

45. The United States undertook the duty to inspect the live hogs at issue in this case.

46. The United States' undertaking created a common law duty under Iowa law owed to Tyson to competently perform inspections.

47. The United States' undertaking supplanted Tyson's duty to conduct ante-mortem inspections to help ensure the safety of its pork products.

48. The USDA-FSIS inspectors, including Dr. Thompson, should have recognized that the services they undertook to perform were necessary for the protection of Tyson and others.

49. The duty to inspect was an operational task and did not involve the United States exercising discretion.

50. The United States' undertaking the duty to inspect caused Tyson to forego other inspection options or precautions against the risk of contamination.

51. Tyson relied upon the USDA-FSIS inspectors, including Dr. Thompson, to perform their duties non-negligently.

52. Tyson relied on Dr. Thompson and other USDA-FSIS inspectors, not plant employees, to conduct the ante-mortem inspections and make the critical determination as to the health of the hogs.

53. The USDA-FSIS inspectors who were assigned to Tyson Storm Lake, including Dr. Thompson, undertook to provide inspection services of Tyson's pork products and should have reasonably foreseen that negligent performance of their inspection duties would result in injury to persons or property.

54. The United States breached the duty to inspect by negligently conducting ante-mortem inspections on approximately 4,622 hogs on March 26, 2018.

55. The United States' acts constituted negligence in the performance of an operational task for which they had no discretion.

56. The United States' acts in negligently performing the inspections caused approximated 4,622 hogs to be commingled and intermingled into a larger group of approximately 8,000 hog carcasses, resulting in the destruction of approximately 8,000 hog carcasses.

57. Tyson suffered property damages as a result of the United States' negligence.

**COUNT THREE**  
**(Negligent Retention)**

58. Tyson incorporates by reference paragraphs 1 through 34 as if fully set forth herein.



59. Under Iowa law, private parties are liable when they knew, or in the exercise of ordinary care should have known, of an employee's unfitness at the time the employee engaged in wrongful or tortious conduct.

60. Under the FTCA, the United States is liable to the same extent as a private party under Iowa law for knowingly allowing an unfit employee to engage in wrongful or tortious conduct.

61. The United States, through negligent retention of the inspector, Dr. Thompson, proximately caused injuries to Tyson.

62. Dr. Thompson, as an FSIS inspector, was an employee of the United States through USDA.

63. Dr. Thompson committed an underlying tort that caused compensable injury to Tyson through her negligence and negligent ante-mortem inspections.

64. Upon information and belief, prior to the time Dr. Thompson conducted the negligent ante-mortem inspections, other USDA and/or FSIS employees and inspectors were aware of deficiencies in the quality, scope, and integrity of Dr. Thompson's inspection practices.

65. The United States should have recognized Dr. Thompson's unfitness to perform the inspections that were necessary for the protection of Tyson's property. However, the United States failed to so recognize, resulting in the destruction of approximately 8,000 hog carcasses, causing injury to Tyson.

66. The duty to (1) provide inspectors who are competent and able to perform inspections as required or (2) remove and replace inspectors who are either incompetent or unable to perform inspections as required was an operational task and did not involve the United States exercising discretion.

**COUNT FOUR**  
**(Negligent Supervision)**

67. Tyson incorporates by reference paragraphs 1 through 34 as if fully set forth herein.

68. Under Iowa law, private parties are liable when they know, or in the exercise of ordinary care should have known, of an employee's unfitness at the time the employee engaged in wrongful or tortious conduct.

69. Under the FTCA, the United States is liable to the same extent as a private party under Iowa law because it should have known that Dr. Thompson was an unfit employee at the time she conducted the negligent ante-mortem inspections.

70. The United States, through negligent supervision of the inspector, Dr. Thompson, proximately caused injuries to Tyson because of Dr. Thompson's incompetence and lack of fitness for her position.

71. Dr. Thompson, as an FSIS inspector, was an employee of the United States through its agency, the USDA.

72. Prior to the time that Dr. Thompson conducted the negligent inspection, other USDA and/or FSIS employees and inspectors were aware of deficiencies in the quality, scope and integrity of Dr. Thompson's inspection practices.

73. It is also believed that other USDA and/or FSIS inspectors were aware of Dr. Thompson's mobility and performance issues. The United States should have addressed Dr. Thompson's mobility and performance issues before assigning Dr. Thompson to the pork processing plant, which is larger and requires more mobility.

74. The duty to competently and reasonably supervise employees was an operational task and did not involve the United States exercising discretion.

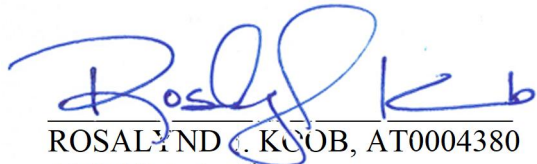
75. The United States' failure to address Dr. Thompson's mobility and performance issues caused Tyson to suffer damages.

WHEREFORE, Tyson prays as follows:

- a. That this Court award incidental and consequential damages arising from the United States' negligence in an amount no less than \$2,480,961.07;
- b. That this Court award any and all relief provided for under 28 U.S.C. § 1346(b) and 28 U.S.C. § 2671 et seq.; and
- c. That this Court award such other relief as the Court deems just and appropriate under the circumstances.

Dated this 14th day of May, 2019.

HEIDMAN LAW FIRM, P.L.L.C.

By:   
ROSALYN D. KOOB, AT0004380  
1128 Historic 4<sup>th</sup> Street  
P.O. Box 3086  
Sioux City, Iowa 51101  
Telephone: (712) 255-8838  
Facsimile: (712) 258-6714  
Email: Roz.Koob@heidmanlaw.com

ATTORNEYS FOR TYSON FOODS, INC., AND  
TYSON FRESH MEATS, INC.

Original filed.