

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE CONAGRA PEANUT
BUTTER PRODUCTS LIABILITY
LITIGATION

MR. DAVID BAUMGARTNER, et
al.,

Plaintiffs,

v.

CONAGRA FOODS, INC.,

Defendant.

MDL DOCKET NO. 1845
1:07-md-1845-TWT

CIVIL ACTION FILE
NO. 1:11-CV-569-TWT

ORDER

This is a personal injury action transferred to this Court by the Judicial Panel on Multidistrict Litigation. It is before the Court on the Defendant's Motion for Summary Judgment [Doc. 21]. Summary judgment is appropriate only when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court should view the evidence and any inferences that may be drawn in the light most favorable to the non movant. Adickes v. S.H. Kress and Co., 398 U.S. 144, 158-159 (1970). The party seeking summary judgment

must first identify grounds that show the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). The burden then shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact exists. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986).

To survive summary judgment, the Plaintiffs must come forward with specific, non-speculative evidence to demonstrate that the peanut butter that Mr. Baumgartner consumed was contaminated with Salmonella and that he suffered from a Salmonella infection that subsequently led to the Plaintiffs' injuries. The Plaintiffs have no such evidence. The Plaintiffs have no evidence that the peanut butter consumed by Mr. Baumgartner was contaminated with Salmonella. Rather, the Plaintiffs' claims come down to Mr. Baumgartner's unsubstantiated testimony that he consumed ConAgra peanut butter and subsequently became ill. To the contrary, Mr. Baumgartner's medical records indicate bacterial infections from clostridium difficile in 2009 and staph aureus in 2011. Yet, the only bacteria associated with the recall of ConAgra's peanut butter was Salmonella Tennessee. Accordingly, Mr. Baumgartner's medical records indicate that his illness was more likely the result of a preexisting medical condition than his consumption of peanut butter. Therefore, based on the record evidence, the Plaintiffs' claims are inadequate as a matter of law, and ConAgra is

entitled to summary judgment. Mr. Baumgartner's statement that he wishes to obtain a new lawyer and submit new evidence is not a legal or sufficient response to the Defendant's motion. The Defendant's Motion for Summary Judgment [Doc. 21] is GRANTED. The Defendant's Motion to Enforce Settlement Agreement [Doc. 25] is DENIED without prejudice as moot.

SO ORDERED, this 29 day of August, 2013.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge