

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
LONDON DIVISION**

**Civil Action No.** \_\_\_\_\_

**LEAMON PERKINS  
and LISA PERKINS**

**PLAINTIFFS**

**vs.**

**COMPLAINT**

**KRAFT FOODS GLOBAL, INC.**

3 Lakes Drive  
Northfield, IL 60093-2753

*Serve: C T Corporation System  
306 West Main Street, Suite 512  
Frankfort, KY 40601*

**AND**

**KRAFT FOODS, INC.**

3 Lakes Drive  
Northfield, IL 60093-2753

**DEFENDANTS**

*Serve: Kentucky Secretary of State  
P. O. 718  
Frankfort, KY 40602-0718*

*C T Corporation System  
208 South LaSalle Street, Suite 814  
Chicago, IL 60604*

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Comes the Plaintiffs, Leamon Perkins and Lisa Perkins, his wife, by counsel, and for their  
cause of action herein and state as follows:

## COUNT I

### The Parties

1. The Plaintiff, Leamon Perkins, is a citizen and resident of the Commonwealth of Kentucky, his specific address being 350 Leamon D. Richmond Road, Pine Knot, Kentucky 42635.

2. The Plaintiff, Lisa Perkins, is a citizen and resident of the Commonwealth of Kentucky, her specific address being 350 Leamon D. Richmond Road, Pine Knot, Kentucky 42635. At all times relevant hereto, the Plaintiff, Lisa Perkins, has been and remains the wife of Plaintiff, Leamon Perkins.

3. The Defendant, Kraft Foods Global, Inc., is a foreign corporation, incorporated in the state of Delaware but registered to conduct business in the Commonwealth of Kentucky, with its principal place of business being at 3 Lakes Drive, Northfield, Illinois 60093. This Defendant has designated as its agent for service of process in the Commonwealth of Kentucky, C T Corporation System, whose address is 306 West Main Street, Suite 512, Frankfort, Kentucky 40601.

4. The Defendant, Kraft Foods, Inc., is a foreign corporation, incorporated in the state of Delaware, with its principal place of business believed to be at 3 Lakes Drive, Northfield, Illinois 60093. This Defendant has designated as its agent for service of process in the state of Illinois, C T Corporation System, 208 S. LaSalle Street, Suite 814, Chicago, Illinois 60604.

At all times relevant hereto, this Defendant was doing business in the Commonwealth of Kentucky but was not authorized to do so and has continuously failed to appoint an agent within this state for service of process. Jurisdiction over this Defendant is established pursuant to KRS

454.210(2)(a)(1)(2)(4)(5). Therefore, in accordance with the referenced statute, the Secretary of State is the statutory agent for service of process on this Defendant.

5. That at all times relevant hereto, the Defendant, Kraft Foods Global, Inc., and the Defendant, Kraft Foods, Inc. (hereinafter collectively referred to as “Kraft Foods”), were engaged in the business of designing, manufacturing, preparing, distributing, and selling commercial foods and food related products throughout the United States and in the Commonwealth of Kentucky.

That at all such times, Kraft Foods acted by and through its unknown officers, agents, servants and employees, each and all of whom were acting within the nature and scope of their respective employments.

## COUNT II

### Jurisdiction and Venue

1. Plaintiffs adopt, reaffirm, and reallege each and every allegation contained in Count I of this Complaint.

2. This is a products liability, negligence, and personal injury action in which Plaintiff, Leamon Perkins, sustained severe and permanent injuries from eating and ingesting a commercial food product specifically, microwaveable macaroni and cheese, which was designed, manufactured, prepared, distributed and sold by Kraft Foods. That the incident and resulting injuries occurred at Plaintiffs’ residence in Pine Knot, McCreary County, Kentucky.

3. This action is of a civil nature involving, exclusive of interest and costs, a sum in excess of the \$75,000. Every issue of law and fact herein is wholly between citizens of different states. As a consequence jurisdiction is conferred upon this Court pursuant to 28 U.S.C., § 1332.

### COUNT III

#### The Facts

1. Plaintiffs adopt, reaffirm, and reallege each and every allegations contained in Count I and Count II of this Complaint.

2. That in September, 2011, but prior to September 21, 2011, the Plaintiffs purchased from Sam's Club in Louisville, Kentucky, a package containing multiple sealed cups of microwaveable macaroni and cheese which had been designed, manufactured, prepared, distributed, and sold, and otherwise placed in the stream of commerce by Kraft Foods. That subsequently and on September 21, 2011, a cup of the referenced macaroni and cheese was prepared as directed and was eaten by the Plaintiff, Leamon Perkins. That the products packaging and container established it to be a Kraft product and bore UPC # 2100002339.

3. That completely unbeknownst to Plaintiff, the macaroni and cheese product designed, manufactured, prepared, distributed, and sold by Kraft Foods contained pieces of metal which caused the product to be hazardous and dangerous if ingested. As a result of eating Kraft Foods macaroni and cheese product, Plaintiff became seriously ill and was admitted to Lake Cumberland Regional Hospital in Somerset, Kentucky on September 29, 2011. That following admission, a CT scan was performed which revealed "a linear metallic foreign body within the small bowel in the mid abdomen which extends through the wall of the small bowel and into the mesenteric fat." Plaintiff's diagnosis was small bowel perforation from metallic foreign body with resulting peritonitis.

4. The Plaintiff was immediately taken to surgery where a significant portion of his small bowel had to be resectioned in order to remove both the metallic body contained in Kraft

Foods macaroni and cheese product and the portion of the bowel which had been damaged by the ingested metal.

5. That on September 30, 2011, Kraft Foods recalled its microwaveable macaroni and cheese, including the batch of the product identified as UPC 21000002339, a portion of which Plaintiff had eaten and ingested as aforementioned. That according to Kraft Foods notice, its macaroni and cheese product contained “small, thin wire bristle pieces.”

6. That at all times prior to, and at the time of the referenced incident, the Plaintiff, Leamon Perkins, used ordinary care for his own safety and was free from any contributory negligence.

7. That the failure of Kraft Foods to properly design, manufacture, prepare, warn, inspect, and test its product, including the microwaveable macaroni and cheese which was purchased and thereafter eaten by the Plaintiff, Leamon Perkins, on or about September 21, 2011, was a substantial factor in causing the injuries and damages herein complained of.

#### COUNT IV

##### Strict Liability

1. Plaintiffs adopt, reaffirm, and reallege each and every allegation contained in Count I, Count II, and Count III of this Complaint.

2. That the microwaveable macaroni and cheese was designed, produced, manufactured, and prepared in whole, or in part, by Kraft Foods and was distributed, sold, and placed in commerce in the United States by Kraft Foods.

3. That Kraft Foods marketed, sold, and distributed the microwaveable macaroni and cheese in a defective condition unreasonably dangerous to the users and consumers thereof.

4. That the Plaintiff, Leamon Perkins, was among the class of individuals who Kraft Foods should have known would be placed in a position of unreasonable danger by the use and consumption of the defective product.

5. That the defective condition of the microwaveable macaroni and cheese was a substantial factor in causing the injuries and damages to Plaintiffs, all of which are more fully set out in Count 7 and Count 8 of this Complaint.

#### COUNT V

##### Negligence

1. That Plaintiffs adopt, reaffirm, and reallege each and every allegation contained in Count I, Count II, Count III, and Count IV of this Complaint.

2. That Kraft Foods was negligent in the design, manufacture, preparation, inspection, testing, and in the sale and distribution of the microwavable macaroni and cheese in a defective and dangerous condition. As a result of the failure of Kraft Foods to use ordinary and reasonable care, the product was continuously unsafe to those persons, including the Plaintiff herein, who might innocently purchase the food product and thereafter eat and ingest the same.

3. That the negligence herein complained of was a substantial factor in causing the injuries and damages to Plaintiffs, all of which are more fully set out in Count 7 and Count 8 of this Complaint.

#### COUNT VI

##### Failure to Warn

1. Plaintiffs adopt, reaffirm, and reallege each and every allegation contained in Count I, Count II, Count III, Count IV, and Count V of this Complaint.

2. That Kraft Foods either knew, or upon the exercise of reasonable care should have known, that the microwaveable macaroni and cheese product which it designed, manufactured, prepared, distributed and sold was not safe, reliable, or suitable for eating and human consumption by those persons, including the Plaintiff, Leamon Perkins, who might purchase, possess and thereafter eat the referenced product. That Kraft Foods had full knowledge of the defects in its product which imposed on Kraft Foods a duty to warn the class of individuals who would be placed in position of unreasonable danger by the eating and consumption of the microwaveable macaroni and cheese, including the Plaintiff herein and yet, Kraft Foods continuously failed to take necessary and appropriate actions to warn Plaintiff of the dangerous condition of the product and of the dangers associated with its consumption.

3. That the negligent failure of Kraft Foods to warn about the dangerous conditions existing in the product, and with eating and consuming the product was a substantial factor in causing the injuries and damages to these Plaintiffs, all being more fully set out in Count 7 and Count 8 to this Complaint.

## COUNT VII

### Injuries and Damages

1. Plaintiffs adopt, reaffirm, and reallege each and every allegation contained in Count I, Count II, Count III, Count IV, Count V, and Count VI of this Complaint.

2. Plaintiff, Leamon Perkins, states that as a direct and proximate result of the wrongful actions and breaches of Kraft Foods as referenced in Counts 3 through 6, that he has suffered severe and permanent injuries to his body, which includes, but are not limited to, injuries to his digestive tract, small bowel, and abdomen and other anatomical structures of the body associated therewith. That as a result of the aforementioned injuries, this Plaintiff has had

pain, suffering, and mental anguish, and will continue to have pain, suffering, and mental anguish in the future and permanently; that his injuries have required surgery and hospitalization, and he has therefore incurred medical expenses, including doctor, drug, and hospital bills, and in all probability, will have additional medical bills and expenses in the future; has lost wages and his ability to earn money in the future has been permanently impaired; that because of his injuries he is at increased risk of future adverse consequences and he has lost the ability and is no longer able to provide the household services that he routinely performed and provided in the past and would have provided in the future but for his injuries, all to his damage in a sum of Three Million Dollars (\$3,000,000.00).

3. Plaintiff, Leamon Perkins, further states that the actions of Kraft Foods in the defective design, manufacture, preparation, inspection, testing, distribution, and sale of its product in an unreasonably dangerous condition; and in the negligence also associated therewith; and in its intentional failure to correct the defects and to warn of the defects and of the hazards resulting from the design and/or manufacture of the defective product, and the use of the defective product, and in its failure to take action promptly to correct said defects, constituted willful, malicious, gross conduct, and gross negligence on behalf of Kraft Foods, and further constituted a wanton and willful disregard for the rights and safety of others, including this Plaintiff, and these actions constituted oppression and malice upon and toward the Plaintiff for which Plaintiff seeks punitive damages against Kraft Foods in the sum of Three Million Dollars (\$3,000,000.00).

### COUNT VIII

#### Spousal Loss of Consortium



1. Plaintiffs adopt, reaffirm, and reallege each and every allegation contained in Count I, Count II, Count III, Count IV, Count V, Count VI, and Count VII of this Complaint.

2. That as direct and proximate result of the wrongful actions and breaches of Kraft Foods, all as aforementioned, and the injuries, disabilities, and damages caused to Plaintiff, Leamon Perkins, the Plaintiff, Lisa Perkins, has lost the affection, comfort, companionship, society, and consortium of her husband, and has had increased burdens placed upon her as the result thereof, all to her damage in the sum of Five Hundred Thousand Dollars (\$500,000.00).

WHEREFORE, Plaintiffs, Leamon Perkins and Lisa Perkins, demand judgment against Kraft Foods, as follows:

(1) That Plaintiff, Leamon Perkins, recover compensatory and general damages in the sum of Three Million Dollars (\$3,000,000.00);

(2) That Plaintiff, Leamon Perkins, recover punitive damages in the sum of Three Million Dollars (\$3,000,000.00);

(3) That the Plaintiff, Lisa Perkins, recover damages for her loss of consortium in the sum of Five Hundred Dollars (\$500,000.00);

(4) That Plaintiffs recover their costs herein expended and for all other relief to which they may appear entitled; and

(5) That Plaintiffs demand trial by jury.

/s/ A. V. Conway, II

A. V. CONWAY, II

**CONWAY & KEOWN**

124 West Union Street

P. O. Box 25

Hartford, KY 42347

Telephone: 270-298-3231

Facsimile: 270-298-7855

Email: [sbclaw@bellsouth.net](mailto:sbclaw@bellsouth.net)

And

/s/ David O. Smith

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DAVID O. SMITH

208 Gordon Street

P. O. Box 699

Corbin, KY 40702

Telephone: 606-528-5001

Facsimile: 606-528-3355