

**LITE DEPALMA GREENBERG & RIVAS, LLC**

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**NEWMAN, CREED & ASSOCIATES**

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*Attorneys for Plaintiff and the Class*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY****DOCUMENT ELECTRONICALLY FILED**

Todd Sokolowski, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

MENU FOODS, INC., MENU FOODS,  
MENU FOODS INCOME FUND, and  
THE IAMS COMPANY

Defendants.

Civil Action No. 1:07-CV-01709 NLH-AMD

**DECLARATION OF JOSEPH J. DEPALMA IN SUPPORT OF PLAINTIFF'S  
EMERGENCY MOTION PURSUANT TO FEDERAL RULE 23(d) FOR A  
PROTECTIVE ORDER TO SUPERVISE OR LIMIT PROCTER & GAMBLE'S  
COMMUNICATIONS WITH CLASS MEMBERS**

I, Joseph J. DePalma, hereby declare that:

1. I am an attorney licensed to practice law in the State of New Jersey and am admitted to appear before this Court. I am a partner at Lite DePalma Greenberg & Rivas, LLC and am counsel for Plaintiff Todd Sokolowski in the above-referenced action. I make this Affidavit in Support of Plaintiff's Emergency Motion Pursuant to Federal Rule 23(d) for a Protective Order to Supervise or Limit Procter & Gamble's Communications with Class Members.

2. Attached hereto as Exhibit A is a true and correct copy of a March 16, 2007 Procter & Gamble Press Release.

3. Attached hereto as Exhibit B are true and correct copies of a letter from D. Jeffrey Ireland to Michael David Myers dated May 16, 2007 and a letter from Michael David Myers to Evan Schwab and James Howard dated May 10, 2007.

4. Attached hereto as Exhibit C is a true and correct copy of the Declaration of Kerri Hamilton, dated May 29, 2007, with an annexed Exhibit A.

5. Attached hereto as Exhibit D is a true and correct copy of the Affidavit of Todd Sokolowski, dated June 11, 2007, with an annexed Exhibit A.

6. Attached hereto as Exhibit E is a true and correct copy of the Affidavit of Carol Chiappetta, dated June 8, 2007.

7. Attached hereto as Exhibit F are the following articles: (1) Lisa Brennan, Law.com, *Judge Seethes Over Direct Contact of Represented Parties in Pet Food Case*, June 4, 2007, available at <http://www.law.com/jsp/article.jsp?id=1180688733567> (last viewed June 14, 2007); and, (2) Judi McLeod, canadafreepress.com, *Main Pet Food Recall Company Bullying Pet Owners?*, May 30, 2007, available at <http://www.canadafreepress.com/2007/cover053007.htm> (last viewed June 14, 2007).

8. Attached hereto as Exhibit G is the Transcript of the May 18, 2007 hearing in *Workman et al. v. Menu Foods et al.*, Case No. 1:07-cv-01338-NLH-AMD [Docket No. 19].

9. Attached hereto as Exhibit H is the Consent Order filed on June 4, 2007 in *Workman et al. v. Menu Foods et al.*, Case No. 1:07-cv-01338-NLH-AMD [Docket No. 31], together with a copy of the docket in that matter as of June 18, 2007.

10. Attached hereto as Exhibit I is a panel attorney service list, attached to Plaintiff Movant Christina Troiano's Notice of Significant Activity in Related Action Pending in the District of New Jersey in *In re: Pet Food Products Liability Litigation* [Docket No. 1850].

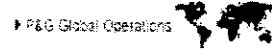
11. Attached hereto as Exhibit J is the Transcript of the May 23, 2007 hearing in *Workman et al. v. Menu Foods et al.*, Case No. 1:07-cv-01338-NLH-AMD [Docket No. 29].

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: June 18, 2007

/s/ Joseph J. DePalma  
Joseph J. DePalma

# **EXHIBIT A**



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June 14, 2007

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### P&G Pet Care Announces Voluntary Participation in Menu Foods' Nationwide U.S. and Canadian Recall of Specific Canned and Small Foil Pouch 'Wet' Cat and Dog Foods

Dayton, OH (March 16, 2007) — In response to the recent Menu Foods, Inc. nationwide recall of wet pet foods, P&G Pet Care has announced a voluntary recall in the United States and Canada on specific 3 oz., 5.5 oz., 6 oz. and 13.2 oz. canned and 3 oz. and 5.3 oz. foil pouch "wet" cat and dog food products manufactured by Menu Foods Inc. Emporia, Kansas plant with the code dates of 6339 through 7073 followed by the plant code 4197. This voluntary recall is part of a larger product recall by Menu Foods Inc., a contract manufacturer that makes a small portion of canned and foil pouch "wet" cat foods for Iams and Eukanuba as well as other non-P&G brands. There have been a small number of reported cases of cats from the US (none in Canada) becoming sick and developing signs of kidney failure. The signs of kidney failure include loss of appetite, vomiting, and lethargy. P&G Pet Care has received no case reports involving dogs.

This voluntary product recall involves discontinuation of all retail sales and product retrieval from consumers. Consumers should stop using the affected products immediately, and consult with a veterinarian if any symptoms are present in their pet. All Iams and Eukanuba products carry a 100 percent guarantee, and consumers can receive a refund for recalled products. For more information, consumers can contact the company at 1-800-882-1591 or visit [www.iams.com](http://www.iams.com) and [www.Eukanuba.com](http://www.Eukanuba.com) for details.

To read can product codes, refer to the bottom of the can (click here to see illustration). The first four numbers of the second line of numbers are the date code, and the following four numbers indicate the plant code. For example, if the second line begins with four numbers from 6339 to 7073 followed by the plant code 4197, then the can should be recalled. For foil pouches, the code numbers are located at the lower left hand corner on the back of the pouch. The date and plant codes appear in the third group of numbers, beginning an 11-digit sequence. See [www.iams.com](http://www.iams.com) and [www.Eukanuba.com](http://www.Eukanuba.com) for illustrated details.

P&G Pet Care is taking this proactive step out of an abundance of caution, because the health and well-being of pets is paramount in the mission of Iams and Eukanuba. Tests of some affected product have not revealed the cause of sickness, and testing will continue until a better understanding of the facts has been achieved. All other canned and small foil wet pouch products produced at other plants are not affected by this issue. Iams and Eukanuba "dry" products are not manufactured at Menu Foods and not affected by this issue. Iams and Eukanuba biscuits, treats and sauces are not affected by this issue.

P&G Pet Care has informed the Food and Drug Administration and the Canadian Food Inspection Agency on this issue. The company regrets any inconvenience to its consumers and retail customers.

Touching lives, improving life. P&G™

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# **EXHIBIT B**

**FARUKI IRELAND & COX P.L.L.**  
ATTORNEYS AT LAW

500 Courthouse Plaza, S.W. 10 North Ludlow Street Dayton, Ohio 45402 937-227-3700 Fax 937-227-3717

D. Jeffrey Ireland  
(937) 227-3710  
djiireland@ficlaw.com

May 16, 2007

**VIA FACSIMILE;**  
**CONFIRMATION COPY VIA U.S. MAIL**

Michael David Myers, Esq.  
MYERS & COMPANY, P.L.L.C.  
1809 Seventh Ave., Suite 700  
Seattle, WA 98101

Re: In re: Pet Food Products Liability

Dear Mike:

We represent The Procter & Gamble Company ("Procter & Gamble") and its subsidiary, The Iams Company ("Iams") (collectively "P&G Pet Care"). This letter responds to your May 10, 2007 letter to Evan Schwab and James Howard. We are looking into your allegation that a claims adjuster from Risk Enterprise Management Limited ("REM") contacted one of the named plaintiffs in a currently pending class action suit that was filed by your firm. We will ask REM not to return the telephone calls of any named plaintiff in any class action filed against P&G Pet Care. You should know, however, that neither P&G Pet Care nor REM is directly contacting any named plaintiff (or any potential claimant or consumer for that matter), unless that consumer has called P&G Pet Care directly in order to seek reimbursement for losses allegedly suffered as a result of the recent recall of certain pet food products.

P&G Pet Care has provided a toll free number for consumers to call with questions or concerns about its products for over 20 years. P&G Pet Care relies on its toll free number to communicate with its consumers about a number of issues, including the recent pet food recall, and it will continue to discuss issues with consumers, as they contact the Company through its consumer care telephone number.

Consumers are calling P&G Pet Care to seek reimbursement for expenses associated with the pet food recall. Like numerous other companies, P&G Pet Care is in the process of responding to these telephone calls and assisting its consumers in attempting to resolve any issues that may have occurred as a result of the pet food recall. P&G Pet Care has



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**FARUKI IRELAND & COX P.L.L.**

Michael David Myers, Esq.  
May 16, 2007  
Page 2

retained REM to assist in returning consumers' telephone calls and resolving any issues, if possible,

Neither P&G Pet Care nor REM will return the telephone call of any consumer who has brought suit against Procter & Gamble or Iams and is currently a named plaintiff in a class action lawsuit to discuss issues relating to the pet food recall. However, we reject your contention that P&G Pet Care is in any way prohibited from contacting (or returning the telephone calls) of any of its many other consumers. Finally, we reject your contention that any discussions with any consumers have any possibility of undue influence or that these consumers are unsophisticated in any way. P&G Pet Care is not acting improperly; to the contrary, it is acting responsibly because it cares about its consumers.

If you would like to discuss this issue further, then please do not hesitate to contact me at the telephone number above.

Very truly yours,



D. Jeffrey Ireland

DJI/vj

cc: Steve Berman, Esq.  
Jeniphr Breckenridge, Esq.  
Adam Karp, Esq.  
Evan Schwab, Esq.  
James Howard, Esq.



MYERS & COMPANY, P.L.L.C.  
*A Professional Limited Liability Company*

May 10, 2007

**SENT VIA FACSIMILE: (206) 903-8820**  
**AND VIA U.S. MAIL**

Evan Schwab  
James Howard  
Dorsey & Whitney LLP  
1420 Fifth Avenue, Suite 3400  
Seattle, Washington

Re: *Menu Foods/Iams Class Action Suit*

Dear Counsel:

Earlier today, a claims adjustor from Risk Enterprise Management contacted one of the named plaintiffs in the currently pending class action suit. This named plaintiff is represented by our firm. The claims adjustor requested information from our client in an attempt to settle her claims. The telephone number for Risk Enterprise Management states that the company is the third-party claims administrator for Proctor and Gamble.

Our firm, along with Hagens Berman and the Law Offices of Adam Karp, has been contacted by hundreds of affected pet owners. While the class has not been certified, we believe that our representation is sufficiently direct (as opposed to putative) to prohibit IAMS' third-party administrator from contacting the pet owners directly.

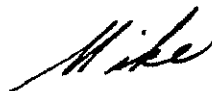
Even if our representation was only putative, the possibility of undue influence by the third-party administrator upon unsophisticated and unrepresented individual members of the putative class is sufficient to make this an improper practice. It is our understanding that a motion to prevent this type of direct contact is pending in New Jersey. We would like to resolve the issue on an agreed basis. Toward this end, please instruct any and all third-party administrators acting on behalf of IAMS to immediately desist from contacting all class members, putative or otherwise. We would appreciate written confirmation that this instruction has been issued by Friday, May 18, 2007.

Evan Schwab  
James Howard  
Dorsey & Whitney LLP  
May 10, 2007  
Page 2 of 2

Thank you. We look forward to hearing from you.

Sincerely,

MYERS & COMPANY, P.L.L.C.

A handwritten signature in black ink, appearing to read "Mike", written in a cursive style.

Michel David Myers

MDM:tbb

C: Steve Berman  
Jeniphr Breckenridge  
Adam Karp

# **EXHIBIT C**

**LITE DEPALMA GREENBERG & RIVAS, LLC**

Joseph J. DePalma, Esq.  
Two Gateway Center, 12<sup>th</sup> Floor  
Newark, New Jersey 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0211

**NEWMAN, CREED & ASSOCIATES**

Bruce E. Newman, Esq.  
Kevin E. Creed, Esq.  
99 North Street, Rte. 6  
P.O. Box 575  
Bristol, CT 06011-0575  
Telephone: (860) 583-5200  
Facsimile: (860) 582-0012

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

Todd Sokolowski, Individually and on

Behalf of All Others Similarly Situated,

Plaintiffs,

v.

MENU FOODS, INC., MENU FOODS,  
MENU FOODS INCOME FUND, and  
THE IAMS COMPANY

Defendants.

Civil Action No. 1:07-CV-01709 NLH-AMD

**DECLARATION OF KERRI HAMILTON**

I, Kerri Hamilton, declare as follows:

1. I am a member of the class of individuals whose pets either became ill or died as a result of consuming tainted pet food manufactured by the defendants. I have personal knowledge of the matters set forth herein, and if called upon to testify, would be competent to do so.

2. Prior to March 2007 I owned three Yorkies. At the time, I regularly fed my dogs food manufactured by Proctor & Gamble under the trade name IAMS. I have been advised that the type of pet food I fed my pets was actually manufactured by Menu Foods through a contract with Proctor & Gamble. (Throughout this declaration I refer to these defendants collectively as "IAMS").

3. On March 6, 2007 one of my dogs, Molly, became ill. My veterinarian diagnosed Molly as having ingested something toxic. Although my veterinarian attempted to save the dog, we had no choice but to put Molly to sleep on March 8, 2007.

4. A few days later I became advised that there was a massive pet food recall that involved IAMS pet food. I checked my inventory of dog food and realized that Molly and my other two dogs had been eating food included on the recall list.

5. Thereafter, I had my other two Yorkies checked out by my veterinarian. Jazzie, age three, had crystals in her urine and a kidney infection. Lola, who is only 5 months old, had a high creatinin level in her blood. Although both dogs were ill, the veterinarian was able to save them. Throughout this entire process I spent approximately \$1,500 in vet bills.

6. Following this ordeal, I contacted IAMS through their 1-800 hotline that I found on the Internet. The first time I called I spoke with what I believed to be an IAMS veterinarian named Dr. Dicke. Dr. Dicke collected detailed information about my pets and the circumstances under which they became ill. At the conclusion of the call Dr. Dicke stated that he would contact my veterinarian to get additional information about my case. He also requested that I send him any recalled food that I had in my possession to substantiate my claim. Following this phone call, I sent IAMS a packet of the unopened recalled food I had in my possession along with receipts showing that I had purchased the food.

7. A few weeks later I received a call from Dr. Dicke who advised me that IAMS would reimburse me for my vet bills. I subsequently learned that Dr. Dicke had not only spoken with my veterinarian, but had actually obtained all of my dog's veterinarian records and bills directly from this source. I was also told that in order to be reimbursed for these bills I would have to sign a release. However, I was concerned about releasing my rights since IAMS would not pay for the cost of replacing the pet that died. I estimated this costs to be from \$750 to \$1,000. I also expressed my concern about having to pay future vet bills for the two dogs that became ill. Dr. Dicke advised me that this should not be a concern since there were no long term health consequences associated with eating the food in question. I was told that any health issues would manifest themselves within 4 months of digesting the food. Following this conversation, I received a cover letter and document entitled "Partial Release." True and correct copies of these documents are attached hereto as Exhibit A. Based on my concerns, I refused to sign these documents.

8. On April 12, 2007 I received a call from Lynn McCahren, who I subsequently learned is the claims manager for Risk Management Enterprise Limited. At the time, I was led to believe Ms. McCahren was calling on behalf of IAMS. During our conversation, Ms. McCahren attempted to convince me that I should accept IAMS' offer. She advised me that under Michigan law, IAMS was not required to pay me for the cost of a replacement dog. At the conclusion of the conversation, Ms. McCahren stated that the offer to pay my vet bills was a "take it or leave it offer" and that under Michigan law I had three years to decide whether to accept it. During this phone call I felt as if Ms. McCahren was attempting to pressure me into accepting IAMS' offer.

9. On May 6, 2007 I again spoke with Ms. McCahren. During this phone call she reiterated that, under Michigan law, I was not entitled to recover the replacement value of my pet. She further indicated that because the pet that died was 8 years old at the time, it had "depreciated" much like an old car. I found this comment very disturbing.

10. During all of my conversations with IAMS or its agents, I was never asked if I had an attorney or was represented by counsel. However, once I advised them that I had retained counsel, my communications with them stopped.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on May 29, 2007 in Traverse City, Michigan.

  
Kerri Hamilton

# **EXHIBIT A**





April 6, 2007

Ms. Kerri Hamilton  
667 Francis Drive  
Traverse City, MI 49686

Dear Kerri:

First and foremost, we want to repeat our profound regret for your pet's illness. We appreciate your patience in this difficult situation.

While the cause of the reported illnesses has not been definitively determined, we are reimbursing your medical bills associated with the Menu Foods recall. Attached is our standard release form indicating that you understand that this reimbursement is not to be construed as an admission of liability. Please read carefully and sign the form and return it to us in the self-addressed envelope provided. Upon receipt of this signed release we will promptly send you a check for \$ 1544.18. Should a health concern arise in the next four months we will consider providing reimbursement for medical bills that are demonstrated to be linked to the Menu Foods recall.

Again, as pet owners, we are deeply sorry for your pet's illness

Sincerely,

A handwritten signature in cursive script that reads "Marti Hissong".

Marti Hissong

Manager Customer Relations

Iams/Eukanuba

7250 Poe Avenue  
Dayton, OH 45414-5801  
(937) 898-7387



Kerri Hamilton  
667 Francis Drive  
Traverse City, MI 49686

April 6, 2007

PARTIAL RELEASE

FOR AND IN CONSIDERATION of the payment to the undersigned by The Iams Company, (a subsidiary of The Procter & Gamble Company), an Ohio corporation, with its principal office in Dayton, Ohio, of \$ 1544.18 \_\_\_\_\_ the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby jointly and severally releases The Iams Company, its parent company and their respective agents, directors, officers, employees, successors and assigns, from any and all actions, causes of action, claims, losses, damages and demands which either of them now has, has ever had or may have.

The undersigned understands that this settlement is the compromise of a disputed claim and that the payment is not to be construed as an admission of liability on the part of the persons, firms and corporations hereby released by whom liability is expressly denied.

It is also understood that the undersigned may submit an additional claim should a health concern related to the Menu Foods recall arise in the next four months, and this Partial Release shall not bar the submission of that claim. Further, The Iams Company is not obligated to pay any additional claims.

IN WITNESS WHEREOF, the undersigned has signed this release as of the date below.

Date: \_\_\_\_\_

7250 Poe Avenue  
Dayton, OH 45414-5801  
(937) 898-7387

**EXHIBIT D**

Todd Sokolowski, Individually and On	)	Civil Action No. 1:2007cv01709
Behalf of All Others Similarly Situated,	)	
Plaintiff,	)	
vs.	)	
	)	
MENU FOODS, INC., MENU FOODS,	)	
MENU FOODS INCOME FUND, and THE	)	
IAMS COMPANY,	)	
Defendants.	)	

JUNE 11, 2007

**AFFIDAVIT OF TODD SOKOLOWSKI**

I, Todd Sokolowski, do depose and state as follows:

1. I am over the age of eighteen years and believe in the obligations of an oath.
2. I have personal knowledge of the foregoing facts and could, and would, competently testify thereto if called upon to do so.
3. I retained an attorney, Bruce E. Newman, to handle my case against Menu Foods, Inc. and Iams on or about April 4, 2007. I have two cats that were affected by pet food which was part of the recall. One of my cats, Harley, died on March 15, 2007, one day before the recall was issued. My other cat, Leo, is still undergoing treatment as a result of his eating the tainted pet food.
4. I received a letter on or about June 6, 2007 from Jean Burke, a claims representative from Risk Enterprise Management, a third party administrator for Iams. This letter is dated May 31, 2007 and informs me that I must contact Ms. Burke.
5. A copy of this letter is attached as Exhibit "A."

  
 \_\_\_\_\_  
 Todd Sokolowski



**EXHIBIT A**

# REM<sup>®</sup>

---

May 31, 2007

Todd Sokolowski  
34 Bigelow Ave  
Enfield, CT 06082

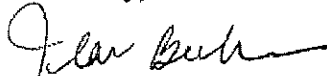
~~RE: Claim Number: 5710830341~~

Dear Claimant:

Please be advised, Risk Enterprise Management has been appointed as third party claims administrator on behalf of The Iams Company with respect to the above captioned matter. Your adjuster is Jean Burke and may be reached at (800) 230-7795 Ext. 4982. We have tried, unsuccessfully, to contact you.

Please call us as soon as possible. We cannot proceed with the proper handling of your claim without speaking with you. If you have decided that you do not wish to pursue this claim, please call us at our toll-free number and let us know.

Sincerely,

  
Jean Burke  
Claims Adjuster

Risk Enterprise Management P. O. Box 105026 , Atlanta, Georgia 30328

# **EXHIBIT E**



Todd Sokolwski, Individually and On )  
Behalf of All Others Similarly Situated, )  
Plaintiff, )  
vs. )  
MENU FOODS, INC., MENU FOODS, )  
MENU FOODS INCOME FUND, and THE )  
IAMS COMPANY, )  
Defendants. )

Civil Action No. 1:2007cv01709

JUNE 8, 2007

**AFFIDAVIT OF CAROL CHIAPPETTA**

I, Carol Chiappetta, do depose and state as follows:

1. I am over the age of eighteen years and believe in the obligations of an oath.
2. I have personal knowledge of the foregoing facts and could, and would, competently testify thereto if called upon to do so.
3. I retained an attorney, Bruce E. Newman, to handle my case against Menu Foods, Inc. and Iams on or about April 17, 2007. My dog, Sandy, was a Pomeranian and died on January 24, 2007 after eating Iams Select Bites in gravy, which was one of the recalled pet foods.
4. I incurred both veterinary expenses and bills for the cremation of my dog along with other costs for medication. Recently, on or about May 25, 2007 I was contacted by a woman who identified herself as Aya, a claims representative for Risk Enterprise Management. She told me that she wanted to settle my case against Iams.
5. I explained to her that I was represented by an attorney and filed a class action, but nonetheless received another phone call from her on or about June 4, 2007. She offered to pay veterinary bills, the cost of cremation, reimbursement for the cost of food, and \$150.00 to replace Sandy.

*Carol L. Chiappetta*  
Carol Chiappetta



# **EXHIBIT F**

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## Judge Seethes Over Direct Contact of Represented Parties in Pet Food Case

Lisa Brennan  
New Jersey Law Journal  
06-04-2007

A federal judge got growling mad at a pet food manufacturer whose insurance adjuster had direct discussions with plaintiffs suing over allegedly contaminated products, although they were represented by attorneys.

U.S. District Judge Noel Hillman ordered Menu Foods Inc. to stop the contacts and to identify the lawyers who may have said they were proper.

"I want to know the names and bar admissions of all the lawyers who advised Menu Foods on its communications with the putative class," he said at a hearing in Camden, N.J. "I want to know the content of the telephone messages. I want to know what scripts are given to the people who are calling people live on the phone and what they're being told to say, and in particular anything that they're being told to say in response to any questions by the parties they're contacting."

Hillman was incensed that the calls were made during the weekend of May 19, despite his cautionary instruction on May 18 -- in response to earlier rounds of calls -- that plaintiffs represented by lawyers not be contacted.

Nevertheless, represented plaintiffs said in affidavits that an insurance adjuster, Crawford & Co. of Atlanta, questioned them on the phone about their claims and asked them to reconsider their decisions not to talk with the company.

The plaintiffs lawyers say the adjuster was trying to extract information that could be used as a litigation defense.

One of the plaintiffs lawyers, Lisa Rodriguez of Haddonfield's Trujillo Rodriguez & Richards, had written to Hillman on May 21, asking that he allow plaintiffs counsel to send Menu Foods' lawyers a list of pet owners represented by counsel so the company could remove their names from its contact database.

The company's lawyer, Edward Ruff of Chicago's Pretzel & Stoffer, told Hillman at the hearing that he had informed his client about the May 18 order to stop the calls.


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Menu has since posted a summary of Hillman's May 24 order on its Web site, [www.menufoods.com](http://www.menufoods.com), adding: "In light of the order, we regret that we cannot communicate with you at this time. As soon as the court permits, we intend to resume efforts to resolve claims directly with pet owners. We will post additional information when we are able."

Hillman's order comes amid mass litigation by pet owners across the country, consolidated as *In re Pet Food Products Liability Litigation*, MDL-1850, claiming contaminated food caused the deaths of their cats and dogs.

On March 16, Menu Foods, based in Ontario, Canada, with a plant in Pennsauken, recalled the products, which are sold under 100 different brand names, including Wal-Mart's Ol' Roy and Procter & Gamble's Iams. The contamination has been tied to whole wheat flour imported from China that was allegedly tainted with melamine, a poisonous chemical.

About 120 federal suits have been filed in Arkansas, California, Illinois, New Jersey, New York, New Mexico, Florida, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas and Washington.

They seek compensation for veterinary care, medical monitoring and other expenses, damages for negligence and breach of express and implied warranty and attorney fees and costs.

Courts traditionally have viewed pets as property and have allowed damages only for the cost of replacing an animal. But the plaintiffs lawyers argue that pets are special property because their owners become emotionally attached to them.

The U.S. Judicial Panel for Multi-District Litigation has not picked a venue for the consolidated case but New Jersey is a likely choice since the food was made here, says Michael Ferrara Jr. of Cherry Hill's Ferrara Law Firm, who along with co-counsel in Chicago and San Francisco represents more than a dozen plaintiffs.

"Judge Hillman already has his finger on the file," says Bruce Greenberg of Newark's Lite DePalma Greenberg & Rivas in Newark, whose firm represents at least 13 plaintiffs. "The fact that he is one of the only judges who has done anything may weigh in his favor."

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## Menu Foods, pet owners Main pet food recall company bullying pet owners?

By Judi McLeod  
Wednesday, May 30, 2007



You have to wonder about the sincerity of the public apologies extended to pet owners by a pet food company that soon after the apology was allegedly harassing them.

Toronto area-based Menu Foods, a publicly traded income trust fund, whose CEO testified at a Congressional hearing in late April, apologized to pet owners whose pets had fallen ill or died.

"Our hearts go out to many thousands of pet owners across Canada and the U.S. for their losses and worry," Paul Henderson, president and CEO of Menu Foods said on March 23.

"Many of our employees are pet owners," Henderson told the hearing on April 24.

Within a month the company Henderson heads had gone from apologies to harassment.

"The pet food company that recalled 60 million cans of contaminated dog and cat food repeatedly made harassing phone calls to pet owners who had lawyers and said they didn't want to talk, even after a judge ordered the firm to leave them alone, court records show." (USA TODAY May 26, 2007). "Lawyers from six firms representing clients who claim their pets were harmed by Menu's pet food asked a federal judge in New Jersey Wednesday to stop Menu from "bullying" people who had called the company since the recall was announced March 16, according to their court filing."

"US District Judge Noel Hillman in Camden, N.J. agreed with the plaintiffs, describing the calls as "aggressive" according to a transcript of the hearing obtained by USA TODAY.

It seems that worried and grieving pet owners were harassed on weekends through automated telephone calls.

Menu Foods, which seems to have dispensed with PR, has hired Crawford & Co. an insurance adjustor in Atlanta, to contact pet owners who called the company to report animal illnesses or deaths, according to the hearing transcript.

When the contaminated pet food scare broke, the first desperate call to Canada Free Press (CFP) came from the Cesar Cerda family in St. Bernardino, Calif.

"The Cerda family doesn't want to give up believing in miracles," CFP wrote on March 26. "Since Saturday they've been waiting for the telephone to ring hoping that it will be someone from Menu Foods on the other end of the line."

It was a call that never came.

The family's beloved Reina, a three-year-old AKC Newfoundland dog, was fighting for her life due to kidney failure, the result of contamination in Nutro Ultra food and pouches.

"We want others to be aware of the severity of the contamination and the damage it can do to healthy, loved pets," daughter Andrea Cerda, 21, wrote in an email to CFP.

Asked what he wanted to say to Menu Foods, Cerda said, "Tell them we're desperate. We're not too proud to beg and plead because it's Reina. Please, please return our calls."

Even though the Cerdas came up with thousands of dollars for vets, Reina

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died.

Judge Hillman ordered Menu Foods to have no contact with anyone who believes their animal was injured by its product unless a lawyer representing them is involved.

Pet owners, who called the company to report animal illnesses deaths, were pressed with questions even after being told the owners had hired lawyers. In some cases, the pet owners received multiple calls from computerized telephone banks.

"It appears that the company was engaging in a cynical strategy, designed to settle some of the strongest claims cheaply and induce pet owners to give up information it might be able to use to defend against others," Bin & Edelson said in a letter sent to clients and posted on the Internet for pet owners.

Menu is facing dozens of lawsuits stemming from the recall. This week a federal multi-district litigation panel will meet in Las Vegas to determine which district court will hear the cases against Menu. The panel is not expected to announce a decision until mid-summer.

Ironically, ChemNutra, the company that sold melamine-laced Chinese imported pet food ingredients to Menu Foods, is also based in Las Vegas.

Canada Free Press founding editor Judi McLeod is an award-winning journalist with 30 years experience in the print media. Her work has appeared on Newsmax.com, Drudge Report, Foxnews.com, Glenn Beck and The Rant. Judi can be reached at: letters@canadafreepress.com. Other articles by Judi McLeod

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