

## **Former Soldier's Lawsuit Against Needles in Burger King Sandwich Nears Trial**

JENNIFER SINCO KELLEHER, Associated Press

HONOLULU (AP) — A former soldier's lawsuit alleging he bit into needles in a Burger King sandwich purchased at Hawaii's Schofield Barracks is headed to trial in August after a settlement could not be reached.

Clark Bartholomew and his family sued in federal court in Honolulu after he said he was injured in 2010 on the sprawling central Oahu base. The former Army sergeant's lawsuit says one needle pierced his tongue when he bit into his Triple Stacker sandwich, and another was lodged in his small intestine, requiring hospitalization.

The defendants include Miami-based Burger King Corp. and the U.S. Army and Air Force Exchange, which operates the franchise.

"We don't feel there's any merit in the claims," Grant Kidani, a Honolulu attorney representing Burger King, said Monday, adding that the franchise is "totally operated by the government."

A spokesman for the exchange referred questions to the assistant U.S. attorney handling the case, who didn't immediately respond to requests for comment.

In a motion to dismiss the lawsuit, government attorneys argued that Bartholomew can't sue because he suffered his injuries during the course of military service. U.S. District Judge J. Michael Seabright refused to throw out the case.

Seabright's order issued last month noted that Bartholomew was at home on base Dec. 1, 2010, when his wife brought home a value meal for his dinner. He was home because of back pain.

"Eating a Burger King Triple Whopper (equally available to the military or general public) while at home on a sick day does not implicate military command or discipline," Seabright's order concluded.

Because a settlement wasn't reached after a conference last week, trial was scheduled for August.

Bartholomew, 46, has since medically retired and lives in Chantilly, Virginia.

"I'm very disgusted," his wife, Tanya Bartholomew, said of the lack of a settlement. "I think we're more irritated than anything. We're not in Hawaii, so now we have to spend even more money to fly to Hawaii to have a trial when everyone agrees someone screwed up."

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Blame, she said, is being passed around.

The argument that her husband's injuries were the result of military service is insulting, she said.

"Him going to war in Iraq has nothing to do with him going to Burger King," she said of her husband. He was a federal police officer assigned to the Pentagon on 9/11, and the terrorist attacks prompted him to enlist in the Army and serve two tours in Iraq, where he injured his back, she said.

"He went back into the military to serve his nation," said the family's attorney, Paul Saccoccio, of Haleiwa, Hawaii. "Why would he come out and be a vexatious litigant when he was prepared to die for his country?"

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