

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

**EXHIBIT B TO ~~[PROPOSED]~~
PRETRIAL ORDER #8 –
MASTER SHORT FORM COMPLAINT
AND JURY TRIAL DEMAND**

PLAINTIFF(S)

VS.

**3M COMPANY AND ARIZANT
HEALTHCARE, INC.**

1. Plaintiff, _____, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, _____, is a resident and citizen of the State of _____ and claims damages as set forth below.

3. Plaintiff's Spouse, _____, is a resident and citizen of the State of _____, and claims damages as set forth below. *[Cross out Spousal Claim if not applicable.]*

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where

this Complaint would have been filed absent the direct filing order by this Court is _____.

6. Plaintiff brings this action *[check the applicable designation]*:

_____ On behalf of [himself/herself];

_____ In a representative capacity as the _____ of the _____ having been duly appointed as the _____ by the _____ Court of _____.

A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.

[Cross out if not applicable.]

FACTUAL ALLEGATIONS

7. On or about _____, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of [his/her] surgery at the _____ [medical center and address], in _____ [city and state], by Dr. _____.

8. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJJ”).

9. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff has undergone _____ [Describe treatment(s) received, e.g.,

revision arthroplasty, wound vac treatment, multiple staged procedures, etc.] on or about _____, at _____ [medical center(s) and address(es)] by Dr(s). _____. [*Cross out if not applicable.*]

ALLEGATIONS AS TO INJURIES

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

- _____ INJURY TO HERSELF/HIMSELF
- _____ INJURY TO THE PERSON REPRESENTED
- _____ WRONGFUL DEATH
- _____ SURVIVORSHIP ACTION
- _____ ECONOMIC LOSS

(b) Plaintiff’s spouse claims damages as a result of (check all that are applicable): [*Cross out if not applicable.*]

- _____ LOSS OF SERVICES
- _____ LOSS OF CONSORTIUM

11. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

12. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

- _____ FIRST CAUSE OF ACTION - NEGLIGENCE;
- _____ SECOND CAUSE OF ACTION - STRICT LIABILITY;
- _____ FAILURE TO WARN
- _____ DEFECTIVE DESIGN AND MANUFACTURE

_____ THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;

_____ FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF _____, _____ §§ _____;

_____ FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;

_____ SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;

_____ SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;

_____ EIGHTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA FALSE ADVERTISING ACT;

_____ NINTH CAUSE OF ACTION- CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER LAW OF THE STATE OF _____, _____ §§ _____ ;

_____ TENTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION;

_____ ELEVENTH CAUSE OF ACTION- FRAUDULENT MISREPRESENTATION;

_____ TWELFTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT;

_____ THIRTEENTH CAUSE OF ACTION – LOSS OF CONSORTIUM; and

_____ FOURTEENTH CAUSE OF ACTION – UNJUST ENRICHMENT.

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

[Cross out if not applicable.]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: _____

Respectfully submitted,

[INSERT COUNSEL SIGNATURE BLOCK]