

**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.

**PLAINTIFF(S)**

**MASTER SHORT FORM  
COMPLAINT AND JURY TRIAL  
DEMAND**

**AMANDA KENVIN, INDIVIDUALLY  
AND AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF WILMA R. GRADY**

**VS.**

Docket No. 16-3142

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

1. Plaintiff(s), Amanda Kenvin, Individually and as Personal Representative of the Estate of Wilma R. Grady 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, Amanda Kenvin, Individually and as Personal Representative of the Estate of Wilma R. Grady is a resident and citizen of the State of Texas and claims damages as set forth below. Plaintiff is the daughter and personal representative of estate of Decedent and has standing to bring this wrongful death and survival action under the laws of the State of Louisiana. Decedent, Wilma R. Grady at all times relevant hereto, was a

resident and citizen of the State of Louisiana 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 Western District of Louisiana and the District of Minnesota.

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

\_\_\_\_\_ On behalf of [himself/herself];

In a representative capacity, as wrongful death and survival beneficiary under Louisiana law.

~~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 February 18, 2015, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter "Bair Hugger") was used during the course and scope of her revision left total knee arthroplasty at the Lake Charles Memorial Hospital, 1701 Oak Park Blvd. Lake Charles, Louisiana 70601 by Dr. Robert M. Duarte.

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 (“DJI”). The Pathogen identified was Vancomycin-Resistant Enterococcus (VRE).

9. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff has undergone multi-staged removal and multiple revision arthroplasties, placement of antibiotic spacers, placement of wound vac, underwent numerous irrigation and debridement procedure, and antibiotic therapy. Plaintiff developed a poly microbial infection that ultimately led to her left knee amputation and led to the cause of her death on or about May 14, 2015, June-July 2015, September 2, 2015, September 12, 2015, October 21, 2015, December 11-12, 2015, and January 3, 2016 at Lake Charles Memorial Hospital, 1701 Oak Park Blvd. Lake Charles, Louisiana 70601, by Dr. Robert M. Duarte, Dr. Carlos Choucino, Dr. Taylor Theunissen, and Dr. Thomas Axelrad.

**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 LOUISIANA;
- 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 LOUISIANA;
- TENTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION;
- ELEVENTH CAUSE OF ACTION- FRAUDULENT

MISREPRESENTATION;

  x   TWELFTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT;

  x   THIRTEENTH CAUSE OF ACTION – LOSS OF CONSORTIUM; and

  x   FOURTEENTH CAUSE OF ACTION – UNJUST ENRICHMENT.

  x   FIFTEENTH CAUSE OF ACTION – WRONGFUL DEATH UNDER THE LAWS OF THE STATE OF LOUISIANA

  x   SIXTEENTH CAUSE OF ACTION – SURVIVORSHIP UNDER THE LAWS OF THE STATE OF LOUISIANA

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

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*~~[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: 09/21/2016

Respectfully submitted,



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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

AMANDA KENVIN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WILMA R. GRADY

(b) County of Residence of First Listed Plaintiff Calcasieu Parish, LA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jeffrey L. Raizner, Raizner Slania LLP, 2402 Dunlavy, Houston, Texas 77006, 713-554-9099

DEFENDANTS

3M COMPANY AND ARIZANT HEALTHCARE, INC.

County of Residence of First Listed Defendant Ramsey County, MN (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1332

Brief description of cause: Defective medical device using causing personal injury

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Joan N. Ericksen DOCKET NUMBER MDL 15-2666

DATE 09/21/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Jeffrey L. Raizner

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE