

**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];

 x 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
___x___	INJURY TO THE PERSON REPRESENTED
___x___	WRONGFUL DEATH
___x___	SURVIVORSHIP ACTION
___x___	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:—~~

~~{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,



Jeffrey L. Raizner
Texas Bar No. 00784806
Amy B. Hargis
Texas Bar No. 24078630
Raizner Slania LLP
2402 Dunlavy Street
Houston, Texas 77006
713.554.9099 (phone)
713.554.9098 (fax)
efile@raiznerlaw.com

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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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 (specify)
- ☐ 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