

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

NICOLE BENTLEY RUSSELL	*	CIVIL ACTION:
AND ANDY RUSSELL	*	
Petitioners	*	
	*	
v.	*	JUDGE
	*	
	*	MAG. JUDGE
General Electric Co., GE Healthcare, Inc.,*	*	
GE Healthcare Bio-Sciences Corp.,	*	
Bayer Corp., Bayer Healthcare	*	
Pharmaceuticals, Inc., Tyco Healthcare,	*	
Tyco Healthcare, Ltd., Mallinckrodt, Inc.	*	
Bracco Diagnostics, Inc.	*	
Defendants	*	
	*	JURY TRIAL REQUESTED

PETITION FOR DAMAGES

Petitioners, Nicole Bentley Russell, though undersigned counsel, bring this Petition for Damages and allege as follows:

NATURE OF THE ACTION

1.

This is an action for personal injuries and economic damages suffered by Petitioners as a direct and proximate result of the Defendants' negligent and wrongful conduct in connection with the design, development, manufacturing, testing, packaging, promoting, marketing, distribution, labeling and/or sale of gadolinium-based contrast agents (GBCAs) known as

Magnevist, Gadavist, MultiHance, Omniscan, Dotarem, ProHance, OptiMARK, Eovist and Ablavar.

PARTIES

2.

Petitioners, Nicole Bentley Russell and Andy Russell are of the full age of majority and residents of and domiciled in the Parish of St. Bernard, State of Louisiana.

3.

Defendants, General Electric Co., GE Healthcare, Inc., GE Healthcare Bio-Sciences Corp., Bayer Corp., Bayer Healthcare Pharmaceuticals, Inc., Tyco Healthcare, Tyco Healthcare, Ltd., Mallinckrodt, Inc. and Bracco Diagnostics, Inc. (collectively referred to as the “Manufacturing Defendants”), are corporations doing business within the State of Louisiana and within the jurisdiction of this Honorable Court.

JURISDICTION AND VENUE

4.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a)(1) because this case is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

5.

Venue is properly set in this District pursuant to 28 U.S.C. §1391(b) since Defendants transacts business within this judicial district. Likewise, a substantial part of the events giving rise to the claim occurred within this judicial district.

6.

This court has personal jurisdiction over Defendants pursuant to and consistent with the

Constitutional requirements of Due Process in that Defendants, acting through their agents or apparent agents, committed one or more of the following:

- a. The transaction of any business within the state;
- b. The making of any contract within the state;
- c. The commission of a tortious act within this state; and
- d. The ownership, use, or possession of any real estate situated within this state.

7.

Requiring Defendants to litigate these claims in the State of Louisiana, Petitioners' home state does not offend traditional notions of fair play and substantial justice and is permitted by the United States Constitution. All of Petitioners' claims arise in part from conduct Defendants purposefully directed to Petitioners' home state.

8.

Defendants regularly conduct or solicit business and derive substantial revenue from goods used or consumed in, inter alia, the State of Louisiana, Petitioners' home state.

9.

At all relevant times Defendants transacted, solicited, and conducted business in Louisiana, Petitioners' home state and derived substantial revenue from such business.

10.

At all times relevant hereto Defendants expected or should have expected that its acts would have consequences within the United States of America, and in the State of Louisiana, Petitioners' home state in particular.

11.

At all relevant times, Defendants placed its product used by Petitioner into the stream of interstate commerce.

12.

Defendants named herein is conclusively presumed to have been doing business in this state and are subject to Louisiana's long arm jurisdiction.

13.

At all relevant times, Defendants expected or should have expected that their acts and omissions would have consequences within the United States and Louisiana.

14.

Petitioners' damages in this matter accrued in Louisiana.

FACTUAL CLAIMS OF PETITION FOR DAMAGES

15.

Defendants, are indebted unto Petitioners jointly and *in solido* for all sums as are reasonable, together with legal interest from the date of judicial demand until paid, for all costs of these proceedings, and for all other general and equitable relief as may be afforded by this Honorable Court, for the following reasons:

16.

On or about May 30, 2017, Petitioner was admitted to Ochsner Health Systems d/b/a Ochsner Hospital – Kenner to undergo a brain MRI, which was performed by Dr. Todd Layman. Prior to the procedure, Petitioner was given an IV of various medications, including Gadavist/ Gadolinium, which is an IV dye. Dr. Todd Layman ordered and administered the medication.

17.

After being administered the IV, plaintiff began suffering from an allergic reaction. Plaintiff has been re-admitted to the hospital several times due to ongoing complications from the IV dye.

18.

Petitioner, Nicole Bentley Russell, alleges that GBCAs caused her severe, disabling, and disfiguring injuries to her entire body.

19.

Upon information and belief, the GBCAs produced by Manufacturing Defendants and used by Petitioner, is defective in its design or formulation in that it is not reasonably fit, suitable, or safe for its intended purpose and/or its foreseeable risks exceeded the benefits associated with its design and formulation.

20.

Upon information and belief, the GBCAs produced by Manufacturing Defendants and used by Petitioner was defective and unreasonably dangerous when it left the possession of Defendants in that it contained warnings insufficient to alert Petitioners and/or Petitioner's healthcare providers of the dangerous risks and reactions associated with the subject product.

21.

Upon information and belief, the GBCAs produced by Manufacturing Defendants and used by Petitioner was not fit for its intended purpose, was not of merchantable quality, did not

conform to Defendants' express representations of its intended use because the GBCA was not safe, caused Petitioner serious side effects, and caused Petitioner severe and permanent injuries.

22.

Defendants, are also liable to Petitioners in redhibition inasmuch it sold a product to Petitioners containing a hidden defect which rendered the product unfit for ordinary use and so inconvenient that Petitioners would not have purchased the product had she known of the defect.

23.

Defendants, are also liable to Petitioners for breach of warranty of fitness of ordinary use inasmuch it sold a product to Petitioners that was contaminated and/or defective, and not reasonably fit for its ordinary use

24.

In addition to the above, and in the alternative thereto, the injuries, offenses, and damages suffered by Petitioner were caused by acts or omissions of Defendants which may be beyond proof by Petitioners herein; however, because the product was, at all times pertinent, within the exclusive control of the Defendants, there is no other possible conclusion than that Petitioners' damages resulted from the negligence of Defendants. Accordingly, Petitioner pleads the doctrine of *res ipsa loquitur*, and/or that Defendants is strictly liable for Petitioners' injuries and damages.

DAMAGES

25.

The conduct of Defendants directly and/or proximately caused Petitioner, Nicole Bentley Russell, to suffer severe and painful personal injuries and damages, which presently include, but are not limited to:

- a. otherwise unnecessary medical treatment and all risks associated therewith;
- b. keen mental anguish, embarrassment, humiliation, and emotional distress;
- c. the need for medical monitoring;
- d. future medical problems not yet known or realized;
- e. past medical expenses;
- f. future medical expenses;
- g. loss of enjoyment of life;
- h. loss of earnings and/or earning capacity;
- i. attorneys' fees; and
- j. all other elements of damages and injuries, as may be shown at the trial of this matter.

26.

The conduct of Defendants directly and/or proximately caused Petitioner, Andy Russell, to suffer severe and painful personal injuries and damages, which presently include, but are not limited to:

- a. loss of consortium; and,
- b. all other elements of damages and injuries, as may be shown at the trial of this matter.

JURY TRIAL DEMAND

27.

Petitioner is entitled to, and request, a trial by jury.

WHEREFORE, Petitioners, Nicole Bentley Russell and Andy Russell, pray that Defendants, General Electric Co., GE Healthcare, Inc., GE Healthcare Bio-Sciences Corp., Bayer Corp., Bayer Healthcare Pharmaceuticals, Inc., Tyco Healthcare, Tyco Healthcare, Ltd., Mallinckrodt, Inc. and Bracco Diagnostics, Inc., be served with a copy of this Petition for

Damages, and that, after due proceedings, there be judgment herein in favor of Petitioners and against Defendants, for all damages as are reasonable, together with legal interest thereon from the date of judicial demand until paid, for all costs of these proceedings, including attorneys' fees, for all general and equitable relief, and for trial by jury.

Respectfully submitted,

/s/ John D. Sileo
JOHN D. SILEO (LA. BAR NO.: 17797)
CASEY W. MOLL (LA BAR NO.: 35925)
320 North Carrollton Avenue, Suite 101
New Orleans, Louisiana 70119
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casey@johnsileolaw.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

NICOLE BENTLEY RUSSELL AND ANDY RUSSELL

(b) County of Residence of First Listed Plaintiff ST. BERNARD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

JOHN D. SILEO/CASEY W. MOLL
320 N. CARROLLTON AVE. #101
NEW ORLEANS, LA 504-486-4343 - JACK@JOHNSILEOLAW.COM

DEFENDANTS

GENERAL ELECTRIC CO., ET AL

County of Residence of First Listed Defendant _____
(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 type="checkbox"/> 4 |
| Citizen of Another State | <input 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)Click here for: [Nature of Suit Code Descriptions.](#)

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	<input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input 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"/> 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"/> 835 Patent - Abbreviated New Drug Application <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))	<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
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	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

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:

Plaintiff sustained injuries due to a defective product.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$

UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

05/30/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/John D. Sileo

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____