

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

Derrick Carter

Petitioners

v.

Bracco Diagnostics, Inc.

Defendants

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CIVIL ACTION:

JUDGE

MAG. JUDGE

JURY TRIAL REQUESTED

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**COMPLAINT**

Petitioner, Derrick Carter, though undersigned counsel, bring this Complaint and alleges as follows:

**NATURE OF THE ACTION**

1.

This is an action for personal injuries and economic damages suffered by Petitioner 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 MultiHance Gadobenate Dimeglumine.

**PARTIES**

2.

Petitioner, Derrick Carter is of the full age of majority and residents of and domiciled in the Parish of East Baton Rouge, State of Louisiana.

3.

Defendant, Bracco Diagnostics, Inc. (collectively referred to as the “Manufacturing Defendant”), is a corporation 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 April 18, 2018, Petitioner was admitted to Lane Regional Medical Center to undergo a Cervical Spine MRI, which was ordered by Dr. Brent Mazoch. Prior to the procedure, Petitioner was given an IV of MultiHance Gadobenate Dimeglumine.

17.

Plaintiff has been re-admitted to the hospital several times due to ongoing complications from the IV dye.

18.

Petitioner, Derrick Carter, alleges that GBCAs caused him severe, disabling, and disfiguring injuries to his entire body.

19.

Upon information and belief, the GBCAs produced by Manufacturing Defendant 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 Defendant and used by Petitioner was defective and unreasonably dangerous when it left the possession of Defendant 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 Defendant and used by Petitioner was not fit for its intended purpose, was not of merchantable quality, did not conform to Defendant's 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.

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

23.

Defendant, are also liable to Petitioner for breach of warranty of fitness of ordinary use inasmuch it sold a product to Petitioner 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 Defendant which may be beyond proof by Petitioner herein; however, because the product was, at all times pertinent, within the exclusive control of the Defendant, there is no other possible conclusion than that Petitioner's damages resulted from the negligence of Defendant. Accordingly, Petitioner pleads the doctrine of *res ipsa loquitor*, and/or that Defendant is strictly liable for Petitioner's injuries and damages.

**DAMAGES**

25.

The conduct of Defendant directly and/or proximately caused Petitioner, Derrick Carter, 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.

**JURY TRIAL DEMAND**

26.

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

WHEREFORE, Petitioner, Derrick Carter, prays that Defendant, 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 Petitioner and against Defendant, 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)  
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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

DERRICK CARTER

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

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

JOHN D. SILEO, LLC, 320 N. CARROLLTON AVE. STE 101 NEW ORLEANS, LA 70119 504-486-4343

DEFENDANTS

BRACCO DIAGNOSTICS, INC.

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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: Product liability defect

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 DOCKET NUMBER

DATE 03/29/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ John D. Sileo

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE





Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: